

QUESTIONS FOR JAMES BROWN

Introduction

1. Could you please set out your main qualifications and vocational experience?

A> I am a Chartered Civil Engineer; a Fellow of the Institution of Civil Engineers; Fellow of the faculty of engineering at Herriot Watt University a former Fellow of the Institution of Highways and Transportation; a former Fellow of the Inst of Water and Environmental Management and former Fellow of various other professional bodies relating to civil engineering and water and environmental management. In 2002. I was made an Officer of the British Empire; OBE, for services to the Water Industry in Scotland.

2. Prior to the Edinburgh Tram Project, what, if any experience, did you have in delivering major infrastructure projects? What, if any, experience did you have in delivering major transport infrastructure projects, including tram or light rail projects?

A> As the former Director of Roads and Transportation for Central Region, I had significant experience of managing major multi-million pound road construction projects. As the Director of Operations and later Chief Executive at East of Scotland Water, I had substantial experience of delivering and improving a major public utility service. As the Director of Integration for Scottish Water, I had direct responsibility for managing a complex set of project interactions which were successfully delivered on time and within budget. I have no direct experience of tram or light rail projects.

3. We understand from Companies House that you were a Director of TIE Ltd (TIE) between 3 May 2002 and 30 October 2005. Is that correct? What were your main duties and responsibilities?

A> It is correct that I was Director of Tie Ltd between 3 May 2002 and 30 October 2005. I was a Non-Executive Director of the Board and acted as Chair of the Remuneration Committee (Remcom) from its establishment until my resignation in October 2005.

4. It would be helpful if you could explain the circumstances surrounding your appointment as a director of TIE e.g. were you asked to become a director or did you apply to become a director? If the former what reasons were given to you to with regard to the skills and experience you would be expected to bring to the role? If the latter, what prompted your application e.g. did you see an advert for the directorship?

A> I was invited to become a member of the Board of TIE by the Chief Executive of City of Edinburgh Council, supported by, I understand, one or more of the former Board Members of East of Scotland Water. I was given to understand that my experience at senior management level in delivering infrastructure projects together with my reputation for “getting things done” would add some value to what was recognised as a major public sector project.

Governance and project management

5. It would be helpful if you could briefly explain your understanding of the of each of City of Edinburgh Council (CEC), Transport Scotland/the Scottish Ministers, TIE, Transport Edinburgh Limited (TEL) and the Tram Project Board in the delivery of the tram project? (perhaps consider CEC00380894?)

A> My understanding was that ENTICO, later rebranded TIE, was an arm’s length company set up and wholly owned by CEC in 2002. At that time TIE Ltd was a project development company looking at developing and refining the proposals set out in the New Transport Initiatives [NTI] for CEC. This included Congestion Charging; West Edinburgh Busway; Ingliston Park & Ride and the options for tram lines 1 and 2. The bulk of the funding for the Tram lines was coming from the Scottish Government. In 2004, the company, TIE Ltd. took on responsibility for project delivery, that is to say full design, procurement and delivery of tram lines 1 and 2 through the Tram Project Board. TEL was to be established as a wholly owned subsidiary of CEC responsible for the integration of tram and bus operations after project delivery.

6. Which body or organisation do you consider was in charge of the tram project during your time at TIE?

A. TIE Ltd.

7. Which individual did you consider was the Senior Responsible Owner for the project i.e. the individual responsible for ensuring that the project was delivered on time and within budget?

A> The Chief Executive Officer, was the Senior Responsible Owner for delivering the Project; On Time and within Budget.

8. What support did you receive from the Chief Executive of TIE and other senior personnel at TIE during your tenure as a director?

A> I was initially impressed by the Chief Executive in regard to his knowledge and experience. I have to say however that after a year or so, I began to lose confidence. I very much got the impression that he was more interested in building his own personal portfolio and contacts within the industry and beyond, rather than focusing on the “job in hand.” I did not get a great deal of personal support from the Chief Executive and felt that my public sector background was looked upon by him with some disdain. I had a much better working relationship with some members of the Board and some of the senior management team.

9. What views do you have of the Governance structure in place for the tram project? Was it clear who was responsible for each aspect of the project?

A> Initially it was quite clear. Alex Macaulay was the trams project director and he had responsibility for managing the Parliamentary process of getting the necessary parliamentary bills through the Scottish parliament. After the necessary parliamentary procedures had been concluded, the tram project moved from project development to project delivery. At that time, Michael Howell, CEO, was very keen to bring Ian Kendall on board because of his direct experience with the Croydon tram project. I expressed my concern about making such an important appointment without going through a proper recruitment process. As I recall he was employed initially on a consultancy basis but there was some confusion as to who was responsible for what. Initially, Ian Kendall reported to Alec Macauley but later, Ian Kendall took over and had direct responsibility for the project delivery stage. He was appointed Trams Project Director but we never had an open selective recruitment process to be sure that he was “the best person for the job”.

10. Document TRS00008528 comprises the papers for the TIE board meeting on 22 August 2005. Page 50 onwards deals with the proposals for the establishment of the Tram Project Board (TPB). It is noted at paragraph 5.1 that the intention was that the TPB should take over most of the authority vested in TIE. Why was this proposal put forward? What difficulties if any, was it intended to address? Was this proposal accepted and implemented?

A> TIE had taken on responsibility for the Edinburgh Airport Rail Link (EARL) direct to the Scottish Executive. My understanding was that setting up a Tram Project Board and an EARL Project board was so that more detailed consideration could be given by the Non-Executive Members to each separate project. It was also my understanding that the Chief Executive of TIE Ltd would be the Senior Responsible Officer for each of these 2 projects. I’m not sure whether this proposal, agreed in principle at the TIE board meeting of 22 August 2005, was fully implemented. Certainly, I was asked to chair the EARL Board but I never got round to taking up that position as I resigned from TIE shortly thereafter.

11. See document CEC01884897 - TEL Implementation Plan on 20 December 2004. What were the functions of TEL and TIE? In your view was there sufficient clarity regarding the respective roles and was there sufficient cooperation? Did TEL carry out the role that had been envisaged for it?

A> My understanding is that Lothian Buses, wholly owned by CEC, had been operating quite successfully. It was clear that there would be some conflict of interest if the buses and trams operated independently. The concept was therefore that TEL be established to integrate bus and tram operation.

TIE was responsible for the delivery of the tram network, thereafter TEL would take over responsibility for integration and operation of both the tram and bus network. This element postdated my departure.

Integrated Transport Initiative

12. What elements were included in the Integrated Transport Initiative (ITI)? Was TIE to deliver it all? What was the impact within TIE of various aspects of the ITI being completed or cancelled?

A> My recollection is that initially the main components of the ITI tie was to deliver the business case for congestion charging [CC]; West End Busway [WEBS]; Ingliston Park and Ride and the project development for tram lines 1, 2 and 3. It soon became clear that tramline 3 was not a viable option. In 2005, when the congestion charging scheme was abandoned, this had a significant impact on TIE's workload in that some of the schemes identified in the ITI which were only going to be possible through the funding resource from CC. It followed that when CC was abandoned the other transport initiatives went with it. Tie's main responsibility, then was reduced to tramlines 1 and 2 and the move from project development to project delivery.

13. Were the elements part of a package or were they severable? Document CEC01793597 "Integrated Transport Initiative for Edinburgh and South East Scotland", dated 30 September 2002 suggests at page 53, paragraph 8.2 that the tram proposal was part of a package that also included funding through road user charging. Do you agree with that? As part of the overall package what was the significance of road charging?

A> Some of the other initiatives such as WEBS and perhaps other Park and Ride facilities depended on income from Congestion Charging.

Arm's Length Company

14. A letter written by Wendy Alexander, the Minister for Enterprise, Transport and Lifelong Learning, on 28 February 2002 discussed how best to deliver the transport projects in the Council's New Transport Initiative (USB00000232) (page 10). It stated, "As you know I firmly believe that the private sector has much to contribute to this process and I strongly support the principle of an off balance sheet company (ENTICO) [eventually TIE] to progress the Council's plans". After discussion of the proposed road charging scheme the Minister went on, "I believe that we must make significant progress on planning an Edinburgh Tram Network before you begin public consultation on the New Transport Initiative". It was considered crucial that ENTICO took forward that work and appraised the options in detail, using the government's Scottish Transport Appraisal Guidance (STAG). In principle was an arm's length company the best way to progress the Council's plans for the variety of projects in the ITI?

A> I believed so at the time.

TIE

15. Having regard to its particular structure, the skills and experience of its employees and board members and its resources; was using TIE in particular the best way to progress the Council's plans for the variety of projects in the ITI?

A> In principle I agreed that an arms length company was or should have been an efficient and effective way of delivering the various projects within the Council's Integrated Transport Initiative. Otherwise I would have not taken on the role of Non-Executive Director.

The model failed, in my opinion, and why I ultimately resigned, was because there was no passion and commitment from senior management, and some of the Board, that the various projects were vital to the wider Edinburgh area. For some of those in senior and influential positions, it was "just a job" or a way of making money. Certainly the salaries of some senior management posts greatly exceeded that from what was originally intended and budgeted. Much more in some cases than had been my recent experience at East of Scotland Water with equivalent levels of responsibility and experience. My recollection is that some of the Directors were on personal contracts with TIE

16. After the reduction in its responsibilities was TIE still required or should there have been a review of the best way to deliver the tram project at that point?

A> Yes. For the reasons outlined in question 5

17. Did the TIE Board possess sufficient skills and experience to deliver what was required of it?

A> Only to a degree.

18. Were the employees of TIE sufficiently skilled and experienced to deliver what was required of TIE?

A> To a degree, yes. The main problem lay at the very top of the organisation. It is my belief that public service delivery is best achieved when people at the top of the organisation are passionate about the service and the community interests that it is designed to serve. Likewise successful companies are those where those with authority and responsibility are fully committed to the aims and objectives of the company. This is relatively easily measured in the private sector where profit is usually the motivating factor. In the public sector, be it primary health care, public transport or whatever, there has to be passion and commitment that what is being done is vital for the people receiving the service and/or wider community benefit. Whilst not criticizing anyone some of the senior management were in effect acting in a consultative capacity where money was the driving factor.

19. If you did not think that the Board or the employees of TIE were sufficiently skilled or experienced to deliver what was required of TIE what steps did you take to address that?

A> I discussed the matter with the Chairman and Chief Executive on more than one occasion, latterly with the Chairman because I was losing confidence in the Chief Executive because of his lack of enthusiasm, drive and commitment and we were farming out more and more to the private sector. Eventually I put the matter in writing to the Chairman as follows.

"As I think we have discussed before I have a general concern about what seems to me to be a lack of commercial rigour being applied to the cost of running the business. Whether that concern is well-founded I will leave for others to judge but I might offer a couple of examples.

The massive increase in legal services costs beyond that anticipated at competitive tender stage. Whilst one might question the fact that some prior scoping work had not been done that might have given a better understanding of the scale of the work before going to market that is perhaps knowledge with hindsight. The issue is I think that there was no scope for re-negotiating the rates downwards on the grounds of substantially increased volume of work. Similarly, concerns have been expressed at the Board about the amount of the fees being paid to Weber Shandwick and whether or not this represents value for money. To date nothing has been forthcoming to allay these concerns. I was surprised that no-one could or would answer my question at the recent Board meeting as to the quantum of fees being paid. I have subsequently been advised by Graham Bissett that it is in order of £450k pa for professional fees to WS with the same again on external costs. The vast bulk of tie's total expenditure is on external costs, c£12m pa, so it is not too difficult to see where the rigour must apply if we are to close the current funding gap.

My more particular concerns relate to the role of the Remuneration Committee; my position as Chairman; the arrangements whereby Paul Prescott and Graham Bissett have been appointed as Directors and the present personal bonus payments. I should say immediately that so far as Paul and Graham are concerned I have no concerns whatsoever about their competence or professionalism or indeed their individual contribution to the work of tie as a Company. My concern is that they seem to have the status of Directors of tie, but at least so far as Graham is concerned, it is his Company that has been engaged on a contractual basis to provide an agreed service. I assume the same circumstances apply to Paul. The remuneration committee has not been involved in agreeing their level of remuneration or personal performance bonuses as nominal Directors of tie. Whilst I have no difficulty with the principle of engaging private consultants I do have some concern where they are engaged on a contractual basis and paid a *discretionary* bonus without this being cleared by the remuneration committee or the Board.

On a related issue I do accept that tie did need some high-level expertise in sorting out the company's financial framework and reporting procedures. I am not personally convinced that we need a finance director at an annual equivalent salary of around £250k on an ongoing basis given the scale of the business in terms of turnover, number of employees and complexity of financial arrangements."

I took what was for me, the very serious step of resigning from the Board as I thought this might act as a warning bell to others on the Board and within the Company.

20. The minutes of the remuneration committee held on 22 August 2005 (CEC02086947) indicate that you felt that there was a failure by TIE employees to provide the committee with information required for its decision making. In general were you and your fellow directors given sufficient information in order properly carry out your role? If not, what information would have been helpful? What steps did you take and who did you speak to try to ensure you received sufficient information?

A> No. I was very concerned that we, as a Board, should have in front of us an overall project plan against a specific timetable with output targets clearly defined on a year by year if not, quarter by quarter or month by month basis. As will be noted from the minute of the meeting on 24 August 2005, despite pressure from me, this had not been forthcoming. This concern did not seem to be shared to the same by some of my fellow directors on the Remcom. I resigned shortly afterwards.

Budget

21. At the time of your involvement in the project, the Scottish Ministers were to initially contribute £375 million. Did you have any knowledge of how this figure was calculated and what steps were taken to test its validity?

A> No. My limited understanding is that it was based on tramlines recently constructed elsewhere in the UK and Ireland. From my perspective, one of the significant responsibilities of TIE Ltd was to progress the project to the point where funding costs could be accurately determined and then referred back to the funding authorities, CEC and the Scottish government, for authority to proceed or not to full implementation.

Interaction between TIE and CEC

22. We understand that CEC was the promoter of the tram project. If so what does that involve? What was TIE expecting from CEC in that role? Was CEC, both elected members and officials, adequately engaged in and supportive of the project?

A> As mentioned elsewhere TIE was initially set up as a project development company. It later became responsible for project delivery. From my understanding TIE was expecting funding and support up to the point when firm costs of the tram project could be determined and then commitment from CEC and Scottish government to fund the project through to completion. When TIE's remit was extended to include other infrastructure projects then the same principle would have applied. Given that elected members of CEC were on the board of tie and senior officials from CEC attended board meetings, I

would have thought that CEC were adequately engaged. Given that they had set up TIE as an arm's length company, I thought it went without saying that they were supportive of the project.

23. Did CEC manage to properly manage its relationship with TIE in terms of the balance between, sufficient control and direction of TIE as a wholly owned company, and sufficient autonomy for TIE to determine matters properly within its purview?

A> Yes. Elected members of CEC sat on the board of TIE and senior officials of CEC attended all TIE board meetings

24. Did CEC have proper controls and procedures in place to allow it to have access to confidential information relative to TIE's contractual arrangements for the delivery of the trams project and matters relating to TIE employees (e.g. their remuneration and bonuses)?

A> These aspects were fully delegated to TIE, but so far as I am aware, CEC had access to all relevant information through attendance at board meetings.

25. Was information withheld from CEC for reasons of confidentiality? Were you comfortable with the decisions of TIE as to what information was and was not to be shared with CEC? If not, what steps did you take in that regard?

A> My recollection is that the only confidential item that was withheld from CEC was the developing relationship between TIE and the Scottish Executive where the Executive had asked TIE to take on the role of promoter of the EARL Private Bill and that consideration be given to TIE taking on wider responsibilities in regard to Scottish Executive's transport initiatives.

26. Did TIE ever inform CEC that it could not share information with it for reasons of confidentiality? If so what was CEC's reaction to that?

A> Not that I'm aware of.

27. In your view was there an appropriate degree of co-operation between the various interested departments within CEC relative to the delivery of the ITI and in particular, the tram project? If not how did that impact upon the delivery of the project? What was done to secure sufficient collaboration on the project within CEC?

A> There was a bit of friction with the prevailing public transport service in Edinburgh, Lothian buses plc. This is understandable in that the bus and tram network would be competing for customers in the same market. The concept of TEL, as mentioned before, was designed to combine the interests of the bus and tram operator into a unified approach that would best serve the community.

Interactions between TIE and the Scottish Ministers

28. What did you consider to be the role of Transport Scotland/Scottish Ministers to be in ITI? Where did Transport Scotland/Scottish Ministers fit into that arrangement alongside CEC and TIE?

A> I'm not sure I can answer that question. Certainly, as mentioned before, some overtures were made, late 2004, for TIE to take on the role of a Scotland wide transport project delivery business.

29. What steps beyond just payment of grant were taken by Ministers/Transport Scotland to ensure progress towards delivery of the project? Do you think their involvement should have been less or more than it was? Was their involvement ever such as to cause confusion as to which party (CEC or Scottish Ministers) was directing the project?

A> Scottish executive was represented at all or most of the TIE board meetings, together with representatives from CEC. During my time on the board there was no confusion as to who was responsible for the project development and later, project delivery. TIE Ltd had full responsibility.

30. How active were officials from Transport Scotland/Scottish Executive at the TIE meetings they attended or otherwise? How frequently did they attend meetings, or fail to attend meetings?

A> My recollection is that the Scottish Executive were represented at all or most Board meetings. The representation varied and those attending tended to assume a relatively passive role.

31. Document TRS00008522 includes minutes of the TIE Board meeting on 25 May 2005 where reference is made to the absence of Scottish Executive representatives at meetings of the TIE Board (see page 5 of the document and item 1 of the minutes). Was this an issue at the time? Given the financial commitment to the project from Scottish Ministers was the absence of SE representatives a concern or were you satisfied that reporting to them after the meeting would be sufficient? Do you recall any explanation for the non- attendance?

A> I do not recall this as much of an issue. The briefing proposed by the Chairman and Chief Executive would be a matter of courtesy, but I do not recall any reason given in advance or later for non- attendance.

Contract structure

32. What was your understanding of the main elements and objectives of the procurement strategy for the project? How important was it to obtain a fixed price for the contract to build the tram line and supply the trams (Infraco)? How complete did you expect the detailed design to be when the Infraco

price was negotiated and agreed? How complete did you expect the design and utility diversion works to be by the time that Infracore works commenced?

A> The main objectives of an engineering contract for procurement is to get the best price at a fixed cost to the client and within a specific and agreed timescale. Given the scale of the project, I would have thought it was essential to obtain a fixed price. It goes without saying that it is impossible to get a fixed price if the detailed design works have not been completed. Allowing the construction work to start without all the preliminary and utility diversion works having been completed, would, in my opinion, have represented a relatively serious risk of delay and cost overrun.

33. Reference is made on pages 9 – 11 of document CEC01875336 to the benefits of the preferred procurement strategy. What views did you have of the referred strategy? Did you have any concerns? If so what were they, how did you articulate them and to whom?

A> The procurement strategy was developed by a working group comprising Partnerships UK, TIEs financial adviser, Grant Thornton; TIEs legal adviser, DLA and TIEs technical adviser. This was extensive and expensive support to the Chief Executive and Senior Management. As a non-executive director. I did not feel that I had the knowledge or experience to challenge their recommendations.

34. Did you consider there to be any difficulties with the separation of different elements (design, utility diversion, infrastructure, tram vehicle supply) and how did you think that these could be addressed? In your view were they addressed successfully in whole or in part? If not what more could have been done?

A> Based on my experience I would have adopted a traditional approach of: design the network; arrange for joint utility diversion works; tender for the construction works; tender for the supply of vehicles.

Delivery Issues

35. Document TRS00018644 is the papers of the TIE board meeting of 25 October 2004. Reference is made on page 18 to the “cautionary tales for Edinburgh” based on discussion with counterparts in Dublin. Which of the experiences in Dublin were considered to be applicable to Edinburgh and what steps were taken to address them e.g. Unexpected political decisions, public reaction and significance of communications?

A> I’m not sure any specific action was taken other than points to be noted and taken account of during the construction process.

36. The Design contract was entered into in September 2005. There was subsequently delay in delivery of the design. Was there any indication that there were likely to be problems in the carrying out of the contract by Parsons Brinckerhoff? Did you form an impression of Parsons Brinckerhoff (either positive or negative) during your time as a director of TIE? Was any information given to TIE by Parsons Brinckerhoff at the outset that delivery would be delayed? Was any indication given to Parsons Brinckerhoff by TIE or others that the project may be delayed or not go ahead?

A> This was after my time as a non-executive director.

Bonus Scheme

37. In document TIE00564368 Michael Howell raises the point, in his emails of 23 August 2005 at 12.42 and 12.44, that performance against the main objectives within the corporate targets year to date against the programme as it existed at the beginning of the year, accounts for up to 30% of bonus payments for all employees. You then reply at 16.33 making the point that “the milestones” have to be seen against the backdrop of the whole project plan and that progress in 2005/06 is only valid against an end to end programme that will deliver the whole project on time and within budget; and, that you do not think taking one year in isolation is sufficient to give the Board confidence that each of the projects is all on target. ☐ Did you feel that the bonus scheme in TIE was insufficiently focussed on rewarding progress towards the completion of TIE’s projects as a whole and rather was too focussed on short term annual goals that that may, on their own not constitute satisfactory progress? **Answer; Yes**☐ Was it your view that the bonus scheme at the time risked skewing behaviour in such a way that it may not have been the most helpful in helping TIE achieve its overall corporate goals? **Answer; Yes. It was skewed towards individual performance.** ☐ Were bonuses paid despite TIE failing to meet its’ corporate objectives? **Answer; tie employees, bonus scheme had been implemented on at least one occasion without approval and clearance from the Remuneration Committee. Bonus payments to contract employees e.g. Director of Finance, Director Heavy Rail was outwith the scope of Remcom**☐ Was CEC aware of the details of the bonus scheme within TIE? **Answer; CEC should have been aware of the principle if not the detail of the bonus scheme**

A> Answers included

38. In the minutes of the meeting of the TIE Remuneration Committee held on 24 October 2005 (CEC02086948), you are recorded as expressing concern, in relation to the 2005 corporate objectives, that the expected translation of the annual objectives into a multi-year long term plan and that had not been done. The minutes record that that had not been the expectation of Michael Howell and “GB” (we are unsure as to whom that refers). Is this the same issue that you had raised 2 months previously and referred to in document TIE00564368 (question 19)?

A> Yes. It is the same concern that I had raised, formally 2 months previously, informally, with Michael Howell something before that (GB is Graeme Bissett – director of finance)

☐ If this is the same issue, were you satisfied as to the reasons given for the apparent lack of progress in resolving this issue? ☐ Was there a reluctance on the part of officers of the company to take action in

the area of reforming the bonus system in place? Can you explain in more detail the nature of your concerns surrounding the bonus system? What did translating the annual objectives into a multi-year long term plan mean? Why would that have benefitted TIE and/or the projects TIE was running? Who had proposed and implemented the bonus scheme that you were trying to change at that time? Did payments under the bonus scheme depend too much on the personal achievements of the staff member at the expense of depending on the overall corporate achievements of TIE?

A> I will try to answer these questions collectively. The bonus scheme as implemented was proposed initially by Michael Howell on the grounds that this was common within the private sector and was necessary to recruit private sector resources. My primary concern was that a bonus schemes with too much emphasis on individual performance means that individuals focus on doing their own job without necessarily overall commitment to corporate objectives. A company-based bonus scheme means that everyone within the company works towards corporate objectives and outputs. My personal experience in the public sector is that employees do not need to be motivated by personal financial targets. Non-profitmaking organisations should be driven by service delivery. My background is such that there was no personal bonus incentive other than for senior management/directorate whose performance had a direct impact on meeting high-level objectives. For the majority of staff, if you did your work properly you kept your job and had the prospect of promotion if you did it exceptionally well.

39. In general why was a bonus scheme thought appropriate at all given TIE was funded by the public sector to deliver on projects wholly owned by and on behalf of CEC?

A> As mentioned in question 38 above, the Chief Executive believed that it was necessary to have a personal bonus scheme so that we could recruit from the private sector. I did not share that view other than for the Directorate

40. Do you think that the TIE bonus scheme in place when you were a director was necessary in order to attract and retain appropriately qualified staff to work for TIE? Why was an appropriate salary not considered sufficient?

A> I think this is covered in my answer to Q38 and Q39

41. Did you express any further concerns as to the bonus system put in place in TIE? How did you express you concerns and to whom? What was done in response?

A> The concept of a personal bonus scheme was supported by the board. I was one voice on the Board and was prepared to go along with it, provided that it was focused primarily on corporate objectives and outputs.

42. Papers prepared for the meeting of TIE's remuneration committee held on 23 September 2009 (CEC00672874) and (CEC00672875) (both after your departure from TIE) narrate the bonus arrangements at that time and suggest a new arrangement. From those papers are you able to

determine whether the arrangement set out there as being 'current' has similar characteristics to the scheme which you were not content with when you were a director of TIE in 2005?

A> The bonus arrangements as outlined as prevailing in September 2009 are similar in concept to those applying in 2005. However, the bonus payments available in 2009 are significantly increased from those applicable in 2005. In 2005, as I recall, maximum available for CEO and directors was 15%, senior managers 10% and support staff 5% of base salary.

43. CEC00672874 sets out at page 2 that a bonus of up to 50% of salary is (at that time) available for the 16 most senior employees of TIE, with a bonus of up to 25% of salary available for all other employees. The paper further sets out that bonus payment is linked to personal objectives:

“insufficient account given to company objectives could give rise to a situation where individual bonus moved towards the top end of the award range in circumstances where, for whatever reason, the company was not meeting its stated objective....”

In document TIE00034046 there is an email sent by Pat Denholm (but written by Jim Inch, the Director of Corporate Services at CEC), to Tom Aitchison, Chief Executive CEC on 23 November 2009, it states:

“...As you know I had a number of concerns about the TIE bonus proposals.....I recognise that a great deal of thought has gone into the proposals. The situation is, of course complicated by the fact that the organisation already operates with a bonus culture. In an ideal world, with the benefit of hindsight, and in recognition of the current market place, a completely new remuneration package would be warranted. The emphasis would be on paying the fair rate for the job and using bonus much more sparingly than at present.....”

Was the bonus system in place for TIE employees at the time you were a director similarly linked to employees achieving their personal objectives, rather than TIE achieving its corporate objectives? If so was that appropriate?

A> I think I have covered this in my previous answers.

44. Do you have anything that you would like to add regarding bonuses or remuneration at TIE during your time there?

A> No.

Your departure

45. Why did you resign as a director of TIE?

A> When I joined TIE as a non-executive director I was excited at the prospect of what was a relatively new concept of an arm's length company delivering public sector initiatives that would have a beneficial impact on public transport in the greater Edinburgh area. As things developed I began to lose confidence that the business model was as effective as I had anticipated. My most recent experience with East of Scotland Water had demonstrated that private sector input at board level had a beneficial effect. I also believed that the private sector had much to contribute to public service delivery. After a couple of years, I began to lose confidence. This is perhaps best covered in my letter of resignation to Ewan Brown, Chairman.

"You are well aware of my concerns about employing consultants/contractors without clearly defined and measurable outputs, also my reservations that they are at the same time benefiting from staff bonus arrangements. I raised this with you last year and we had a discussion, including Michael, at the Stakis Airport Hotel on this, the use of external consultants generally, and the need to demonstrate value for money. I am sure you are aware of my strong views on the subject. As one who has variously commissioned and supplied such professional services I am not unfamiliar with the contractual, not to say competitive, arrangements that can be applied in such circumstances. I was somewhat dismayed to hear from Michael in his email of 25 October that despite now having a Project Director for EARL, a project manager for SAK and a soon to be promoted Finance Director it is intended to continue with open-ended consultancy support in both of these areas.

So far as the bonus scheme is concerned I believe that any employee bonus scheme should be firmly rooted in rewarding only above average corporate and personal performance. In my opinion the present scheme does not. I invested some time and effort to improve the present scheme but without success.

So far as the Tram Project Director's post is concerned, as I advocated strongly at the Remcom, I do not believe we should be filling what potentially is one of the most highly remunerated posts in the public sector in Scotland, without going through a competitive selection process. This in much the same way as we were encouraged to do with the appointment of the Chief Executive and if only to demonstrate that market value is being achieved."

46. If not covered in your answer to question 45 above: ☐ Were there any particular issues relating to TIE, (including its structure, its directors, employees, bonus scheme) which played a part in or caused your resignation? ☐ Were there any particular issues relating to TIE's role and overall position relative to CEC, TEL, Scottish Ministers or others, in the delivery of the overall ITI, or a project within the ITI which played a part in or caused your resignation? ☐ Were there any particular issues relating to TIE's role and overall position relative to CEC, TEL, Scottish Ministers or others, in the delivery of the tram project which played a part in or caused your resignation?

A> I thought the relationship with the other interested bodies, CEC, Scottish Ministers, etc. was well managed by the Chairman, Ewan Brown, now Sir Ewan Brown. My primary concern was the management of the business.

47. What steps if any did you take prior to resigning to raise any particular issues which led to your resignation with your fellow board members, the Chairman of TIE (Sir Ewan Brown) or the Chief Executive of TIE?

A> My concerns about the bonus scheme were well-known. My concerns about bringing in consultants on sometimes open-ended contracts to the degree that we did was discussed with the Chairman but I think he had more confidence in the Chief Executive than perhaps I had.

48. Did you raise any of those particular issues with any of CEC, TEL, Scottish Ministers or others?

A> In my letter of resignation Tom Aitchison, Chief Executive CEC offered me the opportunity to discuss the reasons behind my resignation, but I decided that it was more appropriate for me to share these with the Chairman.

49. What steps if any were taken in response to you raising those issues?

A> None that I know of.

50. What was your impression at the time of your departure as to the ability and capacity of TIE to successfully deliver the tram project?

A> To use a public transport analogy, I thought the wheels were coming off the bus.

51. What were your views on TIE as an organisation and the tram project more generally at the time when you resigned from the Board?

A> I thought the business had lost direction and focus. The company had a lot of disparate resources in the shape of consultancy services.

Conclusion

52. Are there any other matters which you wish to add or which you consider are relevant to the Tram Inquiry's Terms of Reference?

A> No.

Final Thoughts - If you feel you have already answered any of the questions below please indicate that and which previously given answer you feel is applicable.

53. Which body or organisation do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?

A> TIE Ltd.

54. Did you have any concerns at any stage in relation to any of the bodies involved in the terms project: TIE, TEL, CEC, Tram Project Board, Transport Scotland/Scottish Executive, or any of the senior personnel or Board/elected members of any of these bodies?

A> My concerns all related to TIE Ltd and the way things were being run.

55. How did your work on the Tram Project compare with other projects you have worked on (both previously and subsequently)?

A> My previous and subsequent experience was of working in a much more controlled environment where it was clear who was doing what and where responsibilities lay. In TIE the use of multiple consultancies and support agencies made this less clear.

56. Did you have any concerns at any stage in relation to the reporting of any concerns, difficulties or problems either within or between these bodies and organisations?

A> I was not aware of any of any direct problems of communications between TIE and associated organisations including CEC or Scottish Executive.

57. Do you have any views on what were the main reasons for the failure to deliver the Tram Project in the time, within the budget and to the extent proposed?

A> I can only talk with confidence about my time with TIE but I was not surprised that things went wrong later. I was however shocked to the degree that the project failed in terms of cost and timescale.

58. Do you have any comments, even with the benefit of hindsight, on how these failures might have been avoided?

A> Again I can only speak about my time on the Board and in that case I think more control and input and control from the Board would have helped. Also, I think a more hands on approach by the CEO in directing and controlling in-house management and less farming out work to external consultants would have led to better outcomes.

Jim Brown

21st March 2018