

Edinburgh Tram Inquiry Office Use Only
Witness Name: Ainslie McLaughlin
Date of signing: 17 MAY 2017

The Edinburgh Tram Inquiry
Witness Statement of Ainslie McLaughlin

Statement noted at 0900 hours on Tuesday 29 March 2016 in Edinburgh in the presence of Stephen Rees, Solicitor, Scottish Government, Victoria Quay, Edinburgh by Gordon Mitchell, Statement Taker, Edinburgh Tram Inquiry.

My full name is Ainslie McLaughlin. I am aged 61, my date of birth being [REDACTED]. My current occupation is Director of Procurement for the Scottish Government.

My role at the time of the tram project was as Director of Major Transport Infrastructure Projects at Transport Scotland between March 2007 and March 2015. I did not have any formal role in relation to the tram project until 2010. My main duties and responsibilities were to oversee the Scottish Government's transport infrastructure investment programme.

My contact details are known to the Inquiry.

Introduction

1. I am a professional civil engineer by background. I joined the Department of Transport in 1987 and was seconded to the Scottish Development Department to work with the Chief Road Engineer's Office. Throughout my civil service career I have worked mostly in the transport and roads sectors, although for a 3 year period between 1998 to 2001 I worked in local government policy and finance within the Scottish Government.
2. Transport Scotland was set up as an Executive Agency in 2006. I transferred to the new agency from the outset and, as part of this restructure, Transport

Scotland's headquarters moved from Edinburgh to Glasgow. In March 2007, I took on the role of Director of Major Transport Infrastructure Projects (MTRIPs), which role I held until March 2015. As Director of MTRIPs I was responsible principally for the delivery of the motorway and trunk road programme, which was a portfolio of about 50 projects including the Forth Replacement Crossing, the M8 motorway works, the M74 extension in Glasgow, major motorway PFI projects and various smaller projects with values down to about £5 million. As part of my responsibility as Director of MTRIPs I also held the role of Director of Purchasing within Transport Scotland responsible for providing all procurement advice to the Chief Executive for all the activities of Transport Scotland. I was Director of Purchasing for the same period as I was Director of MTRIPs – i.e. March 2007 to March 2015. I assumed responsibility for the tram project in November 2010. Until that date responsibility for the tram project came under Bill Reeve as Director of Rail. In March 2015 I left Transport Scotland to become Director of Procurement for the whole of the Scottish Government.

3. The tram was not a Scottish Government project and nor was Transport Scotland responsible for its delivery. Transport Scotland's role was to manage the government's £500 million grant contribution. City of Edinburgh Council (CEC) was the project owner, and TIE was its appointed project manager and delivery organisation.

4. As Director of MTRIPs I did not have a formal role in relation to the tram project initially. Towards the end of 2009, when it became apparent that the project was in difficulty and Ministers were becoming concerned about its progress, I became involved in providing general contractual and project management advice to David Middleton, the Chief Executive of Transport Scotland, and Bill Reeve, the Director responsible for the tram project in terms of overseeing the grant payments to CEC. Although this was not a Scottish Government project, Ministers were concerned that the project was damaging the reputation of the city of Edinburgh and clearly the Scottish Government was a significant funder of the project. The project was facing mounting criticism in the media and Ministers were concerned about the Princes Street

closures and about what appeared to be an increasingly fractious relationship between CEC, TIE and the consortium delivering the contract. I was asked to provide a view on the possible contractual position as well as a view on the capability of Bilfinger Berger (who as well as being part of the tram consortium, were at that time also working for Transport Scotland on the major £320 million upgrade of the M80 on the outskirts of Glasgow).

5. Around March 2010 I, along with other colleagues from Transport Scotland, met TIE and their key advisers to assess the contractual position. TIE's view was that their contract was robust. TIE was unhappy with the performance of Bilfinger Berger / Siemens and were proposing to take steps to strengthen contract compliance and to hold the contractor to account for poor performance. At that time there were a number of adjudications underway which TIE felt would be upheld in their favour and would confirm that the contract was fundamentally robust. The contract had been described throughout as a fixed price contract and TIE was determined that the contractor would deliver to the tendered price. In discussion, however, it became apparent that it was only a fixed price contract to an extent. It was recognised in the contract that the design had not been fully developed, and that there were elements of the design that the client side recognised might need further development. It was those further developments that I think were the nub of the contractual disputes that ultimately caused many of the problems that emerged in 2010.

6. Throughout 2010, there were several meetings between the Chairman of the TIE Board (David Mackay), the Chief Executive of TIE (Richard Jeffrey), and the Cabinet Secretary (John Swinney), to provide progress updates on the tram project. I cannot recall how many meetings there were, but David Mackay and Richard Jeffrey continued to give assurances to the Cabinet Secretary that TIE was in control of the project. Throughout that time, I also had a number of informal meetings with Richard Jeffrey to keep apprised of how TIE was approaching the contractual dispute with the Bilfinger Berger/Siemens Consortium ("BSC"). I never attended the Tram Project Board nor was I a member. Later in 2011, when Transport Scotland took on a formal role in helping CEC complete the revised project, I was on a board chaired by

Sue Bruce, then Chief Executive, which I think was called the Senior Management Group.

7. I formally assumed responsibility for Transport Scotland's role in the funding of the tram project towards the end of 2010 after an internal restructuring of responsibilities for rail within Transport Scotland. Bill Reeve moved to a new role of Commercial Director for the ScotRail franchise; and Francis Duffy became Director of Rail. As part of that restructuring the responsibility for progressing a number of rail projects, including the tram project, moved to MTRIPS.

Transport Scotland withdrawal from governance arrangements in 2007

8. In June 2007 the SNP administration's motion to scrap the project was defeated in a parliamentary vote. I had no involvement after the vote in any decisions within Transport Scotland about withdrawal from the tram governance arrangements in 2007, other than as part of general discussion which took place in the Transport Scotland Board.
9. I gave no informal or formal advice on contract matters in 2007. At that time I reported to the then Chief Executive, Malcolm Reed. Bill Reeve was responsible for rail, including the tram project, at that time and his team provided all advice to Ministers.
10. On 9 July 2007, I and all other Directors were copied-in to an email **(TRS00004522)** attached to which was Malcolm Reed's memo to the Cabinet Secretary, John Swinney, about next steps in relation to EARL and the Edinburgh tram project. Malcolm Reed's memo is dated 6 July 2007 **(TRS00004523)**. Malcolm Reed's memo suggested that the role of Transport Scotland on the tram project was yet to be determined and that Transport Scotland needed to discuss and define its role in relation to the trams. The memo recommends that Transport Scotland should cap its financial

contribution and withdraw from active participation in the governance of the project. The memo stated that once grant conditions were in place, Transport Scotland staff should withdraw from active participation in the project. The £500 million cap was announced by John Swinney at the end of the Parliamentary debate on 27 June 2007 when the motion to scrap the tram project was defeated. He accepted the will of Parliament but said that the government's funding would be limited to £500 million and not a penny more.

11. On 11 July 2007, in response to Malcolm Reed's memo, Mr Swinney agreed that Transport Scotland should scale back its involvement with the tram project (**TRS00004536**). In regard to Mr Swinney's involvement, I believe officials would have been discussing matters with him but I was not part of that and cannot really comment. I was, however, part of the team that was briefing him on other matters (the motorway and trunk road programme) before the debate. I did not provide briefing on the tram project.

12. At Annex C of Malcolm Reed's memo (**TRS00004523**) he suggests that to achieve clarity of roles and to prevent further calls on central funding, future engagement should be on the basis of revised grant conditions and Transport Scotland should withdraw from the project, once they were in place. The background here is that the project had the green light, the funding was in place, and the project was moving to the procurement and construction phase. TIE was responsible as project manager, on behalf of CEC, for delivering the project. It is commonly accepted that in managing major projects, it is essential that there is a clear line of accountability and management. This was clearly a City of Edinburgh project, despite the fact that 90% of the funding was coming from central government. The funding was effectively a subsidy for a project that City of Edinburgh Council wished to deliver. It was not a Scottish Government project. The City of Edinburgh Council had set up TIE with the specific purpose of delivering this project and other major projects. TIE had recruited a range of personnel with expertise in delivering light rail projects. On the face of it they had more expertise than Transport Scotland to deliver the tram project. Whilst the project was being defined and developed, Transport Scotland colleagues were members of the

Tram Project Board. When it moved to the delivery phase there was a different position in terms of the Project Board. I recall discussions taking place at various TS board and senior management team meetings about TS removing itself from the governance of the project.

13. I am referred to an email dated 18 July 2007 (**TRS00004547**) in which the decision as to how the Scottish Ministers would proceed was discussed. In the email Malcolm Reed said *"I am getting very strong signals from the Cabinet Secretary that Transport Scotland should not be on the Project Board, he reiterated this at the Portfolio meeting on Tuesday morning. Of course we need to fulfil any obligations under the SPFM, but we need to withdraw from active engagement in the delivery of this project and, crucially, in any decision-making processes that could compromise the new arrangements for allocation of financial risk for this project"*. Bill Reeve, replied *"I remain concerned about the risk arising from withdrawing from governance arrangements that Audit Scotland have found satisfactory. Compliance with the SPFM must be seen in this context. We must have a well recorded reason for making these changes"*. This was Bill Reeve's view, shared with Malcolm Reed. I do not believe I was copied-in on that email.
14. There were a series of discussions between officials, Malcolm Reed and John Swinney. My recollection from the various meetings at Director level was that there were discussions about the extent to which it was reasonable for us to remove ourselves from the governance process. But, I reiterate, we were moving into a different phase of the project. The TIE Board had significant non-executive representations, with senior people with experience of rapid transport systems across the world, as well as a well-resourced and highly experienced delivery team. My view at the time was that this was a perfectly reasonable decision to come to in terms of ensuring clear and effective project delivery structures.
15. From my perspective there was a recognition that this was a reasonable and sensible move to make at this point, as the project was moving into its construction phase. It was a City of Edinburgh Council project and they had

set up a significant resource within TIE to deliver it. Audit Scotland had looked at the governance arrangements and considered that there was a robust management structure around the project, so the thought that TS pulling out of the board would undermine the delivery is, in my view, not credible. I think that would have been my view at the time.

16. The decision to withdraw Transport Scotland from governance arrangements was made ultimately by Ministers on advice from Transport Scotland. The advice would have come from Malcolm Reed. Although I understand Bill Reeve expressed some concerns, my view is that those concerns would have been taken into account in the decision making. I cannot see my opinion reflected in any of the written material, but my view at that time would have been that that was a rational way to proceed with the next phase of the project.
17. Attached to an email (**TRS00011964**) that I received on 14 September 2011 was a news release and media materials. The news release contained a proposed question and answer regarding why Transport Scotland were getting involved in the tram project in 2011. The answer was that Audit Scotland gave the governance structure a clean bill of health in 2007. That governance structure included Transport Scotland sitting on the Tram Project Board. The reference to the Audit Scotland 2007 report in the Q&A was to put in context that the governance arrangements had been considered robust at that time. The decision in 2011 to involve Transport Scotland in assisting in the project management was based on the fact that TIE had been wound up and City of Edinburgh Council was taking the project back under its own wing. Sue Bruce was taking direct charge of that and the council had brought in Turner and Townsend to replace the project management arm that TIE had previously provided.
18. The Audit Scotland report in 2007 reflected very different circumstances to that of 2011. I would again make the point that in 2007 Transport Scotland was represented on the Board by just one official compared to a large full time TIE team supported by professional advisers. I assumed formal responsibility

for TS's role in the project in November 2010. At that time in 2010, TIE was still responsible for day to day management and delivery and TS was not represented on the TIE Board. There were other City of Edinburgh Council groups; including the Funding Oversight Group and a Client Group that David Anderson chaired reviewing the progress reports from TIE. I attended a couple of those meetings. These were not project governance groups; they were oversight groups being run by the Council.

19. The news release stated that now Transport Scotland were involved, £72 million was to be released to TIE. The release of the remaining £72 million in grant support was connected to CEC's decision to review its original decision to take the tram only to Haymarket and confirm that the line would extend to St Andrew's Square.

20. The project had effectively ground to a halt at the end of 2010. TIE's preferred plan of action up to that point was to seek to terminate the contract with Bilfinger Berger. By the end of 2010 they realised that there were insufficient reasons to terminate on breach. Work had effectively stopped and relationships between TIE and Bilfinger Berger had broken down to the point where there was no communication between them. There was a meeting between Bilfinger Berger and John Swinney which I attended to try to break the impasse. In subsequent meetings with the Council mediation was suggested and, following that process, an agreement was reached for £776 million. At that point, about March 2011, the existing grant had expired. I issued an interim grant letter to cover between March and the summer. The mediation was in two parts and Heads of Terms were agreed. The first part was for an immediate resumption of work and the main agreement was due to be in September 2011. There would be £40 million spent to get back into Princes Street and to get things moving, whilst the main contractual arrangements were hammered out over the summer and were to be in place in September 2011. The interim grant arrangement covered that period of £40 million spend. The Mar Hall arrangements were based on the tram line going into St Andrew Square. This was put to the Council formally and the Council rejected it. That was around about August. I then wrote a letter to the Council

saying that the Ministers did not consider that taking the line to Haymarket represented value for money and that on that basis the remaining grant funding would not be released. There were then discussions with the Council as to how the £72 million grant might be reinstated. It was important to the Ministers at that time that if the £72 million was to go back in, then the line had to be taken into St Andrew Square. That was the prime condition. As part of ensuring that, and given what had happened after the Mar Hall arrangement, Ministers were of the view that Transport Scotland should take a more active role in supporting the project delivery, working alongside the City of Edinburgh Council team.

21. It was important, as part of what was still a viable project, in terms of business case justification, that the line be taken into the centre of Edinburgh to St Andrews Square. It was not just symbolic, there was a case for a return on investment which was not achievable if it just went to Haymarket. That was also consistent with the agreement reached in the Mar Hall negotiations. Subsequent to the Mar Hall agreement, in August 2011, CEC voted to overturn the Mar Hall agreement, on the basis that they thought the risk of taking the line into St Andrew's Square was too great. That then led to Ministers decision to stop any further grant payments.
22. I do not believe that a similar condition could have been stipulated at an earlier stage when Transport Scotland were becoming aware of the problems. TIE had decided on its strategy to resolve the contractual disputes. TIE was confident of its strategy. They had a new Chief Executive, they had a new Chairman, they were backed by their Board and they had a course of action that would allow them to deliver. They had given assurances to the Cabinet Secretary that they would resolve the dispute and move the contract forward; it was only by the end of 2010 that it became clear that TIE's strategy had failed.
23. I am referred to a background note that was drafted on 1 December 2011, in response to a Labour MSP's Parliamentary Question, setting out brief reasons for Transport Scotland's withdrawal from the governance structure

(TRS00013066). The note stated that the Scottish Government thought withdrawal was good governance and that a separation of roles was required to avoid a situation where Transport Scotland was part of a Tram Project Board that might make representations to itself as funder. I have already given my understanding of the reasons for withdrawal. Essentially it is not good governance to have two project delivery organisations trying to control one project.

24. I am referred to an email from John Ramsay to me dated 24 December 2011 (TRS00012860), in which he provided reasons why Transport Scotland withdrew from the governance arrangements in 2007. He said Transport Scotland was represented on the Tram Project Board until June 2007 when, following the Auditor General's first report and Parliament's vote to support the project, it was decided to discontinue this level of involvement. Funding had been agreed following the vote in Parliament, the business case was well advanced; the governance structure was in place, the procurement strategy had been agreed and was underway and advance contracts had been let. City of Edinburgh Council remained the owner and Transport Scotland, as funder, did not have the same oversight role for the tram project as it had for other Scottish Government National Transport projects. Audit Scotland's 2007 report 'Edinburgh Transport Project Review' stated that "*Arrangements in place to manage the project appear sound*". I did agree with the reasons John Ramsay gave. Audit Scotland's conclusion was that there was a clear corporate governance structure, clearly defined project management with sound financial management reporting, procedures in place to manage risk and a clear procurement strategy in minimising risk.

25. I am referred to a memo from Campbell Docherty to the Scottish Ministers on 2 September 2011 (TRS00012306), in which he wrote "*Ministers and CEC agree that Transport Scotland's expertise in successful delivery of major transport infrastructure is now essential to assist in completion of Edinburgh Trams and any direct involvement from Transport Scotland earlier in this project, however desirable that might be now in hindsight, would have resulted in confused project management and been completely impractical given that*

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TIE was already set up to perform this expert role". This memo was produced ahead of the formal announcement of the agreement to release the £72 million remaining grant on the basis that the Council had agreed to take the line to St Andrew Square. Ministers also acknowledged, at that point, that there had been an interim Audit Scotland report over the summer which suggested that it might be helpful for Transport Scotland to become more directly involved because of the experience we had in delivering major projects. I think the Council had suggested that it would welcome our participation and oversight in delivering the project post the Mar Hall arrangements. That was the context to the memo. I think it was just to give some reassurance after the events over the summer where the Council had changed its mind and agreed that the £72 million was going to be released only on the basis they took the line through to St Andrew Square.

26. The decision to disband TIE was a City of Edinburgh Council decision. TIE had been set up by them as an expert arm's-length body to deliver this project and it had failed. It had been given autonomy to deliver the project with a significant senior management and board structure. The decision to disband TIE followed the agreement at Mar Hall, and in part had been taken in order for the contractor to have confidence going forward. The delivery post-Mar Hall required a constructive partnership between the contractor and the client. Transport Scotland had experience of working in partnership with contractors.

27. I am referred to **CEC01561047** which is minutes from the Tram Project Board (TPB) on 9 August 2007 recording the fact that under the changed governance arrangements, all engagement from Transport Scotland would be directly with CEC, not TIE or TEL. The minutes set out that this engagement would consist of continued four weekly reporting and that the four weekly meetings would be between Transport Scotland (which would likely be Bill Reeve and Jerry Morrissey), CEC and TIE. The TPB considered whether the decision to withdraw from the Tram Project Board may be politically motivated. The minutes record that it was pointed out that this was the same approach as applied by the Department for Transport (DFT) in England. Although Transport Scotland now had no executive role, these new oversight

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arrangements were required because Transport Scotland were paying grants to CEC, and this was by far the biggest one at £500 million. There needed to be some reporting mechanism for us to be able to pay those grants and some certification from CEC and TIE so we could pay it. We needed this mechanism to verify their request for payment. We needed some evidence that those payments were justified because we had no contractual arrangements with TIE. We had it with CEC, and CEC and TIE had contractual arrangements with a whole string of consultants, suppliers and contractors. These arrangements provided assurance, to back up requests for payment.

28. In an email exchange between David Middleton and me dated 1 December 2010 (TRS00011413), I said *"you might find this useful to know. The last bullet point in particular will make it harder for Audit Scotland to suggest Transport Scotland should have seen the disaster coming"*. In response David Middleton said *"thanks I didn't want to debate in front of AS (Audit Scotland) last week and I know you weren't directly involved, but why did we pull back in 2007? It must have been political to a degree"*. The Auditor General of Scotland said that estimates in the project had been subjected to robust testing. If Audit Scotland had crawled all over the project and said they thought it was robust and had a good chance of delivering a successful project, why would Transport Scotland have thought differently at that time? Audit Scotland felt sufficiently comfortable to give an opinion about a project that was not yet delivered.
29. In the email exchange I stated that I thought there was a clear corporate governance structure in place on the tram project. The governance structure was not just one person sitting on a project board; it was a coherent robust arrangement with a well-defined project management structure and organisation. Transport Scotland was not delivering the project at any time, even when it was represented on the TPB, prior to the award of the contract or when the contract moved to the next phase. We were part of the TPB at that time because we were potentially advising Ministers on whether it was a worthwhile project to invest in. The incoming SNP Ministers had a policy not to deliver the tram project. That policy was not accepted by Parliament. The

important things are *“well defined project management organisation, sound financial management, good risk management procedures and procurement strategy”*, those are the ingredients that are essential in trying to secure the successful delivery of any major project. Having moved to the actual delivery phase with a significant and substantial organisation like TIE ready to deliver the project (which was probably about 80 or 90 strong at that point) and a TPB comprised of members who had commercial and transport expertise, including expertise of light rapid transit, I do not believe it is credible to argue that the absence of a TS representative on the board undermined the project.

Reporting to Transport Scotland/ Transport Scotland oversight

30. I am referred to document **TRS00004643** which is a note of a meeting between Graeme Bissett and Damian Sharp on 2 August 2007. The note recorded the requirements for both four-weekly and quarterly reporting and review, with the quarterly reports required in terms of the grant letter. The new monitoring arrangements were considered and the note stated that Transport Scotland would withdraw from routine monitoring and from the TPB and subcommittees, in favour of the monitoring regime to be summarised in the new award letter. It is noted that there will be four-weekly reports and four-weekly meetings between senior Transport Scotland personnel, probably Bill Reeve and Jerry Morrison, and senior CEC personnel, probably Andrew Holmes (later replaced by David Anderson) and Donald McGougan. This was an arrangement agreed by TIE. I was not involved in setting up this reporting mechanism. These new arrangements were put in place to regulate the grant payments. The grant was the basis of our contractual relationship with CEC, and it had to be regulated, to give us assurance when we were dispersing grant funding to the project.

31. The four-weekly reports provided by TIE offered supporting information on progress to inform the grant payment process.

Transport Scotland knowledge of problems with project

32. Audit Scotland carried out an interim review which was the subject of Public Audit Committee scrutiny in the spring of the following year and I was interviewed along with others in Transport Scotland for the review. David Middleton and I then had to appear before the Public Audit Committee. The purpose of the review, which was entitled "Edinburgh Trams Interim Report", was to provide an objective review of the progress the project, the costs incurred and the overall governance arrangements that were in place. It was published in February 2011 and the review undertaken in during the second part of 2010. David and I appeared before the PAC on 2 March 2011.
33. Bill Reeve would be better placed than me to say what problems Transport Scotland were aware of when TIE was experiencing severe contractual problems in early 2009, when BBS announced that they would not commence work on Princes Street as per the contract programme. I was aware of the problems as much as anybody else - I think most people in Edinburgh were aware that there was a problem with the tram project. In 2009 I had no knowledge of the details of the problems. Bill Reeve would be in a better position to comment as he was leading on the trams within Transport Scotland at that time. Clearly we were aware that there were problems and I think that is a matter of record. David Middleton and I gave evidence to the Public Audit Committee that it was towards the end of 2009 into 2010 when it became apparent that there were emerging contractual issues in terms of the delivery of the project to time and to budget. Whilst people might have had views as to how successful the project was going to ultimately be, there was nothing at that time (early 2009) to suggest that it would not be delivered on time. That was my view at that time. However, my view has changed by what I subsequently found out when I became more involved and the severity of the contractual issues being reported by CEC and TIE became more apparent.
34. **TRS00016931** is an email that David Middleton sent to me on 17 March 2009 regarding a meeting between John Swinney, Stewart Stevenson and David MacKay. John Swinney said that "*CEC and TIE had not been whiter*

than white". I cannot elaborate on what John Swinney meant by this. The email records that Mr Swinney said he felt reasonably reassured by David Mackay, however, he was apparently worried about the budget and there is consideration given to the issues if Transport Scotland walked away. There was a refusal by the contractor to go into Princes Street because there was a contractual dispute over whether the site was ready. David Mackay was quoted in the press as being critical of the contractor's behaviour, which is presumably why John Swinney had the meetings. I think Mr Swinney was quite clear that he felt that the situation was damaging the reputation of Scotland's capital city.

35. I was not at the meeting referred to with David MacKay. I do recall being at a subsequent meeting with John Swinney, which would not necessarily be in relation to the tram, but the tram would be one of a number of subjects discussed. The implications of abandoning the project were raised; there would be financial consequences, and I would have talked these through with Mr Swinney. There would also be issues around reinstatement works because if the city was half dug up, things would have to be put back in place or equipment that had already been put up would have to be taken down. It would have been a factual discussion with him just to give him some feel for what would have happened if the plug on the project was pulled. It is not like a switch that you can switch off and everything goes away. There are significant consequences to terminating a major infrastructure project of this size mid-way through its construction

36. I do not know what advice TIE were providing to Transport Scotland as I was not involved at that point. I was asked offline for some contractual advice. I think there were some concerns that if the confrontational contractual relationship between TIE and Bilfinger Berger was to continue then it might threaten the budget and the delivery. John Swinney was reasonably reassured by David Mackay's confidence that TIE were on top of this and there was no need to worry. At that stage TIE were the only people who could make that informed judgement, as only they knew the strengths of their contractual position. Looking at it from the outside, I think Mr Swinney was

right to be worried. It is stated *"from the look of the City streets it seems to be taking a lot longer and on the face of it does not bode well"*. That proved to be the case.

37. I do not know how TIE's reporting compared to reporting on other projects because the tram was a unique project. All the other projects I ran, I ran directly, whereas this was a grant project where we were one step removed.
38. **CEC00966220** is an email dated 4 March 2009 from Stewart McGarrity to David Mackay and others in which Bill Reeve was reporting difficulties with the contract back to Ministers. I am not on the circulation of this email and I was not at the meeting referred to. This is before I had the tram project as part of my portfolio.
39. **TRS00016973** referred to estimates in March 2009 which Bill Reeve considered to be optimistic and other cost increases identified in documents **TRS00017060** and **TRS00017088**. This was Bill Reeve's responsibility at this time, and any questions regarding how Transport Scotland was processing this information and the course of action taken as a result would be best answered by Bill Reeve.
40. I am referred to **TRS00017098** (Ministers briefing note prepared by John Ramsay on 3 August 2009). I was not copied in on that note and did not comment on it. In the note it is stated that *"over the course of the last few months, TIE's strategy based on intensive negotiations and mediation has not proved successful and that BSC are sustaining their demand for an additional sum up to £100 million"*. It was noted that the project would not be delivered for £512 million and that it would not be ready on time. Transport Scotland was considering the fact that CEC officials had difficulty in explaining to the full Council why the costs might be as much as £601 million when the public figure was £512 million. I have no reason to dispute anything written by John Ramsay in his brief for the Minister but it looks as if John was just relaying whatever facts he has been provided with by the Council and TIE. I am not aware exactly when TIE officially said that the £545 million figure was no

longer achievable because this brief states that it could no longer be delivered for £512 million, but the total budget was £545 million. I do not remember any of the discussions about that time because I was not involved in them and therefore could not comment any further. In 2009 I was not directly involved, although I was occasionally asked for an informal view on the contractual position.

41. An email sent on 19 August 2009 (**TRS00017140**) by the Cabinet Secretary noted that Stewart Stevenson asked Transport Scotland (Bill Reeve) to consider schemes to refinance the trams. I was not involved in this either. Again it was Bill Reeve that had the lead on this. In August 2009 it appears that Scottish Ministers did consider getting involved in the project. I do recall Ministers considering whether to get involved, and this would probably be in 2010. This was at a time when I was more involved, when I was providing advice to Ministers.
42. With regard to the request to consider refinancing or reducing specifications - obviously Ministers were concerned. The Scottish public were concerned, the city was concerned, and there were questions in Parliament, so Ministers were considering what options might be available. You would not expect them to do otherwise.
43. **TRS00010627** is a Ministerial briefing by John Ramsay dated 21 January 2010 noting that *"Given current levels of uncertainty and TIE's advice regarding future costs, Transport Scotland believe it reasonable to expect that final costs will now be significantly in excess of £600 million"*. Transport Scotland was kept informed of what was going on throughout all the disputes. The notion that Ministers were standing back is not a view I would take. Ministers were looking for assurances that this was going to be delivered and making it quite clear that the £500 million grant funding would not be increased and it would be for CEC to fund any increase over the original £545 million budget.

44. In an email from me to Bill Reeve (TRS00017238) on 14 September 2009 I referred to total costs of £700 million, albeit that was for the full line. At that time BBS were suggesting that Transport Scotland take over the project or that personnel be seconded to assist TIE. I said that the contractual relationship between TIE and BBS appeared to have broken down and that we had to await the outcomes of the dispute resolution process. I stated that *“if there are some quick decisions coming out of the dispute resolution then we may get a feel for where the burden of responsibility for contract failure lies to date. That might be the point for us to become involved if Ministers decided that was necessary”*. Mr Reeve said *“he needs to see the result of the first few disputes to see where the balance of truth really lies”*. The context to this exchange was that I had had a meeting with Richard Walker and Scott McFadzen ostensibly to talk about other contracts, not the tram. Richard Walker was the Managing Director of Bilfinger Berger responsible for the tram delivery, but he was also the MD for Bilfinger Berger’s other contracts for which I did have direct responsibility, such as the £300 million M80 PPP project. Scott McFadzen was Bilfinger Berger’s Senior Contracts Manager. The meeting was to discuss the M80, GARL and other contracts, but Bilfinger’s concerns about the management of the tram project dominated much of the meeting (which I made clear I had nothing to do with at that time). In my email I was explicitly not stating the rights and wrongs of it, but simply relaying the contractor’s perspective. I had no idea if their view was right or wrong, and I said so in my email. They had stated that there were 400 disputes, were scathing of the personnel in TIE, the value of disputed work, their overheads were running at £1.2 million, and the MUDFA works were two year’s late. Bilfinger had stated to me that the contract was let before the design ground conditions and key quantities were established and that in their view TIE signed up to a contract where these were conditional, and the contract was therefore not a fixed price contract. I conveyed that Bilfinger felt that the only practical way forward was for Transport Scotland to take over the project. I gave my view that the contract appeared to have broken down, and I don’t think I was subsequently proved wrong in that.

45. I think much of the problems with the contract rested on who was responsible for design development. I think one of the key issues here was that Bilfinger said *"the contract was signed on the basis that the design was not developed, the ground conditions were not known and key quantities still had to be established"*, therefore they were saying it could not have been a fixed price contract and they said that the contract they signed up to made that clear. My understanding is that many of the dispute resolutions were around whether design development was the responsibility of the Council or the contractor, notwithstanding that the contractor had full control over the design. If the adjudications ruled in TIE's favour then the contractor should get on with it and they would have to bear the cost of that. If the conclusion was that the client was to blame then the adjudicator was agreeing, effectively, with the contractor.
46. I was not making a judgement on this or offering a view, I was just relaying the contractor's view to give another perspective, because clearly we were up to that point only getting TIE's view, which was that the fault lay with the contractor. Two extremes were in play here and if the dispute resolutions came down in favour of the contractor then significant issues were at stake.
47. In an email dated 22 December 2009 (**TRS00017326**), it is stated that Transport Scotland was aware that dispute resolution procedure (DRP) decisions had gone against TIE by December 2009, that the relationship between BBS and TIE had deteriorated, and that the impact of all this on final costs would be 'unquantifiable'. Transport Scotland's costs were always quantified, as we had limited our risk through the £500 million cap. I think it was Richard Jeffrey who said it would be 'unquantifiable'. If DRP decisions were going against TIE it goes back to the email I have already referred to where I made the point about where the balance of responsibility is. TIE, nevertheless, were still of the view that they were winning the DRP cases, but they were winning on quantum rather than principle (i.e. the decisions were going against them but they were getting the sums claimed reduced significantly). As funder, our reaction was that we had limited our exposure to the cost to £500 million and that we had a grant arrangement in place that

regulated the delivery of the project. So the funding problem lies with the Council.

48. It is put to me that two adjudication decisions had been issued in November 2009 and another one in January 2010 and in all three adjudications TIE were unsuccessful. Transport Scotland's role continued to be one of ensuring that the grant payments were being properly made. The grant agreement did not stipulate that payments would only be made if the contract was being managed well. It said that grant payments would be made for payments made in relation to the project, up to a limit of £500m. If the terms of the grant were being met then the payments were made to CEC.
49. Transport Scotland was not doing anything. We were asking TIE what it was doing about the situation. When things got to a head at the end of 2009, Ministers asked officials to have a high level meeting with David Mackay and Richard Jeffrey from TIE. The meeting was in the early part of 2010. I then became involved in informal meetings over 2010 with Richard Jeffrey to track TIE's approach to resolving the contract difficulties. David Mackay and Richard Jeffrey said that although the adjudication decisions had gone against TIE, they were justified in having them because they were bringing the contractors' claims down. Their position was that if they had just accepted the claims from the contractor, the money would have run out. Richard Jeffrey and David Mackay were still adamant that the contractor was not performing to the contract. They had twin track strategies for both reaching an agreement to take matters forward and for terminating the contract. TS did take action, we became closer to TIE and we continued with the formal oversight of the grant arrangements. I kept in touch with Richard Jeffrey on an informal basis just to get a feel for how the contractual strategy was playing out. TIE thought they had a strategy for resolving the disputes, and it was not for us to say that they were wrong. We had to let that play out.
50. The meetings with Richard Jeffrey were perfectly amicable. He would state what he was trying to do. I would offer constructive challenge but I was not in a position to tell him what to do. They were not minuted meetings; they were

just informal catch-up meetings to allow me to keep Transport Scotland's board and Ministers appraised.

51. In my exchange of emails with David Middleton from October 2010 (TRS00012495) it is stated that John Swinney felt angry and let down when he was told in March 2010 that cost estimates would be exceeded. The emails say that *"David Mackay and Richard Jeffrey led Mr Swinney to believe they were in control and would deliver but ultimately they did not"*. I would observe that it was David Middleton who was saying that John Swinney was angry with David Mackay and Richard Jeffrey. My email is reflecting that we knew there were problems, we did not stand back, we were putting money in, we were legitimately having to pay these grant payments, we had protections in place in terms of a cap and ultimately a claw back, but we were concerned about the reputation of Scotland and the capital city being damaged. When I say, 'we' I mean the Scottish Government and Ministers in particular. David Mackay and Richard Jeffrey were two senior people from TIE and TIE was set up to deliver the tram. TIE was a big organisation, an organisation with experts and they were telling Mr Swinney they had all this under control, that they had a strategy which was founded on robust legal advice. That strategy ultimately proved to be unsuccessful and led to construction effectively coming to a halt at the end of 2010. It is not really for me to say why this strategy was unsuccessful
52. I do not know why David Mackay left TIE.
53. I would agree with the assertion put to me that TIE's approach closed off the possibility of collaborative working with contractors. TIE was locked into 400 disputes with the contractors; there were numerous acrimonious exchanges between the contractor and TIE, David Mackay was quoted in the press as saying the contractor was delinquent. David Mackay and Richard Jeffrey came in at the beginning of 2010 and said, to Mr Swinney, that they were in control, they had legal advice that supported their contractual position and that they were confident that if the contractor continued to fail to perform then TIE would be entitled to terminate the contract on the grounds of breach of

contract. TIE were trying to reach a settlement with the contractor and on the other hand, the mood music coming from TIE through 2010 was that if the contractor does not start to perform to what TIE expected from the contract then they were going to terminate. This was not conducive to collaborative working, but that was TIE's strategy. It was their contract.

54. I am referred to an email dated 12 March 2010 which indicates that Mr Swinney was keen that Transport Scotland should stay close to TIE (TRS00010651). This was early on in 2010 when we were still getting assurances from TIE that they had control of the situation, although they were starting to signal that the delivery date was at risk. Transport Scotland did not take over the project in the end - we never took over the project. We agreed to work with the Council, the Council took the project back off TIE and delivered it directly and we assisted the Council in that delivery, but the contract remained with CEC. Ministers' interests were in protecting their investment. There were also concerns about the reputational damage of a major infrastructure project publicly and visibly playing out so badly in Scotland's capital city. I think all of this is consistent with that.
55. It is put to me that TIE formally reported to CEC on 10 June 2010 that the project could not be delivered within budget (TSI00000004). I am told that Bill Reeve then informed Ministers of this on 10 June and said *"This means that CEC is no longer able to comply with one of the conditions of the grant letter through which they are funded by Scottish Government. However, the possibility of this circumstance has been anticipated in previous briefings"*. It is put to me that Bill Reeve suggests that a Cure Notice will probably not have much practical effect. I cannot comment on the advice given by another colleague.
56. I was not responsible for the grant arrangements but I don't think I was ever of the view that the project had breached grant conditions. A Cure Notice would ask CEC what actions they were proposing to take. The practical reality was that the Council was contractually committed to the project and could not simply terminate it on the grounds that the costs were going to exceed the

12 March
2010 should
be 11 March
2010

budget. Scottish Ministers already had protection in place through the grant conditions which enabled grant money to be clawed back in the event that the project was not completed. I was not involved in the discussions at this point but I did look at the grant subsequently and we did not take the view at that point that the grant should be suspended. So the grant ran to its expiry date, which was March 2011, recognising as well that CEC were trying to work towards a mediated settlement with the contractor to complete the project. An interim grant arrangement was put in place subsequently to allow work to recommence between the mediation and the formal renegotiated contract which was to commence in the late summer.

57. On 21 June 2010, John Swinney and Stewart Stevenson attended a meeting where it was suggested by Richard Jeffrey that Mr Swinney conducted most of the meeting, questioning TIE personnel (**CEC00263295**). This document is Richard Jeffrey's view of the meeting. I see from the document that I attended this meeting, but I do not recall this meeting specifically. I remember a number of meetings with Mr Swinney. Mr Swinney was always professional and civil. His purpose was to seek advice, and to get a better understanding on how what was becoming a significant issue for Scotland and for Edinburgh Council was going to be resolved.
58. I provided further advice to Mr Swinney in an email dated September 2010 (**TRS00010940**), noting that the contract was not going well. This email describes what essentially was the deal that was eventually done. The contractor was saying that they could give a fixed price for the line from the airport to Haymarket. They were not offering at that point to build it to St Andrew Square. We were giving the latest update to Mr Swinney on TIE's twin track approach. TIE were trying to reach a deal on "Project Carlisle" (which was a curtailed project to take the line it into St Andrew Square) but, at the same time, working on a process to terminate the contract. There was no action required by Transport Scotland in light of this email because it was for TIE to come back and say that they had successfully negotiated Project Carlisle or that they were going to terminate.

59. I am referred to a number of documents which refer to awareness of the scope for criticism of Transport Scotland emerging in 2010 (**TRS00018048**, **TRS00018049**, **TRS00011064** and **TRS00018059**). I think there are a number of issues here. It was clear by this point that the cost was going to be more than £545 million. The grant fixed the amount of money in terms of the total quantum of £500 million but it didn't say, nor could it say, that if a particular pipe cost twice as much, you are not getting the funds for it, only what you said it would cost originally. Under the grant we could not withhold payment just because we thought the Council had written a poor contract. The grant protected Scottish Ministers in respect of the total exposure to £500 million. A lot of the money that was spent was on land, design, development, supervision, total on-costs and the trams themselves. The civil engineering element of the project was where most of the cost overruns were occurring. Ultimately, grant payments could not be withheld because the contract was not performing well. The grant payments were linked to the expenditure that CEC had properly incurred on the project.
60. I am not sure what could have been done better. We were not just signing cheques. We only made grant payments in relation to work properly done. The fact that that work cost more was as a result of the management and construct of the contract.
61. I am referred to **TRS00011064**, dated 6 October 2010, in which Bill Reeve stated that: *"we should be clear that the decision to distance Transport Scotland from active governance was taken by the current Ministers"*. Our relationship was clear – it was through the grant and we were not party to the contract.
62. I am referred to a memo from me to Ministers (**TRS00011010**) on 28 October 2010, in which I advised them to waive the 30 day notice period in the event that CEC moved to terminate the tram contract. CEC are not talking about terminating the project, they are talking about terminating the contract with Bilfinger Berger. There is a requirement in the grant that if they intended to do

that, they had to get our approval. We understood the background to the Council potentially wishing to terminate and there was little to be gained in exercising the right to 30 days' notice which would simply add further unnecessary delay.

63. The context around this and the intentions of Transport Scotland and the Scottish Ministers are set out in that email. Until we knew exactly what we wanted to do, the grant arrangements allowed us some protection by allowing us to suspend payments. There was no need to invoke the option of reclaiming grant paid out because the project was still deliverable. Also, Ministers always had the protection that the grant payment obligations ran out in March 2011.
64. Mr Swinney met with BB and Siemens on 8 November 2010 (**TRS00011248**). At this point TIE could not get an agreement on Project Carlisle, the contractor had basically downed tools and there was no work on site other than care and maintenance. The contractor believed that TIE wanted to terminate their contract. I'm not sure exactly when but TIE eventually got legal advice that they had no basis to terminate the contract on breach. So, therefore, terminating would have to be negotiated which could open TIE up to compensation claims from the contractor. The contractor had approached me through an intermediary. I cannot remember who the intermediary's name was. They were looking to have a discussion with Mr Swinney about the fact that the contract had stalled and, in their view, TIE were incapable of taking it forward. In their view there needed to be some sort of mediated settlement. In and around this point it became clear that the contractor was saying that they were not prepared to work with TIE anymore because of the loss of trust. The contractors also mooted the idea that Transport Scotland should take over the management of the project from TIE.
65. In the email David Middleton mentions John Howison. He was a former Chief Road Engineer who retired but was working as a consultant to Transport Scotland. At that point he was working on the new Forth Crossing contract. I suspect at this time David MacKay had left. On reading this email again I think

we were talking about two different things. I am talking about a meeting with the contractor and I believe David Middleton is referring to the fact that David Mackay has resigned his position and proffering the possibility of Mr Howison as a potential replacement. In the email, all I am telling David is that I am going to be meeting with John Swinney in the next week or two.

66. I did attend the meeting with Mr Swinney as mentioned in the email. The meeting was in Mr Swinney's office. When David said "this may be insane" he is referring to the suggestion of getting John Howison involved in relation to the Chairman role. That has nothing to do with the original email which I sent which is just keeping David in the loop about the fact that John Swinney has agreed to meet the contractor and that I am going to be with him. David acknowledged that and used the opportunity to suggest a possible role for John Howison, probably because it had been in the press that morning.
67. In the meeting with Mr Swinney, BBS talked about their dissatisfaction with the way the contract was going. Jochen Keysberg (the Managing Director of Bilfinger Berger) and the most senior person in Siemens UK came to explain to John Swinney why the contract had stalled, why they thought that the strategy that TIE were adopting had no basis in the contract and why it was not a sensible way forward. They indicated that they no longer wished to build the whole project and they no longer wished to work with TIE, but were committed to completing the project, albeit a curtailed one. I think it was clear then to Mr Swinney that some sort of negotiation or mediation was going to be required to break the deadlock. Whether that was discussed at that meeting I cannot recall but that would certainly not be an unreasonable thing for Mr Swinney to have concluded after it.
68. On 30 November 2010, I advised Ministers that they could intervene if public funding was in jeopardy. I stated that the grant agreement contains provision to enable Scottish Ministers to take action to protect public funds where the project is in jeopardy. This does not indicate that action should have been taken by Ministers at an earlier stage in the project when Transport Scotland became aware that things were not going well. There is a difference between

things not going well, which is quite self-evident, and a risk of the project not being completed. At no time did the Council suggest that they were not intent on completing the project and taking the grant away would have probably jeopardised their ability to deliver the project given the level of funding. To withdraw would also put at risk the money the Scottish Government had already invested in it. The object on entering the agreement was to complete the project.

69. I am referred to a letter dated 13 October 2010, in which BBS wrote to CEC **(TRS00011188)**, stating that they did not want to terminate the contract and that they did not think TIE was acting in the best interests of the client. I think that is consistent with the message they brought to Mr Swinney. This wasn't addressed to me but it doesn't come as a surprise.
70. On 9 November 2010, **(TRS00011282)**, BBS said it wanted Transport Scotland to take over the project. I, however, advised Ministers that we should not get in the middle of a contractual dispute between two parties because it could exacerbate the problem and result in further delays and costs to the project and potentially confuse where liability for the cost overruns lay,.
71. With regards to my statement: *"if we are to believe BB's line that what is needed is for us to take over then maybe there is a window of opportunity for a small team to sit down with BB over the next two or three weeks to see if a deal could be hammered out for a fixed price to get some sort of service running to the city centre. Essentially a pre-condition to us taking over is BB to agree to terms otherwise we stay out"*. What I was talking about was some sort of mediation exercise where we might be able to facilitate the process. At this point we were already talking about project costs heading towards something over £600 million. We were not saying we were going to meet that, that we were going to increase the grant contribution. This is probably after the meeting I had with Mr Swinney. It was not an attractive option for us to step in and it was not pursued. It was simply looking at options of what we might do if we were asked.

72. In reference to why BBS wanted Transport Scotland to intervene and take over, I think they have made that clear in the letter they sent to the Council. As I have already explained, at the meeting with Mr Swinney (although there were no notes taken) it was made quite clear that they were not confident of TIE's capability to continue to manage this project.
73. By December 2010 we were already considering that mediation was going to be the only effective way forward. I do not know when exchanges started on this but there was a train of thought starting around that time within Government and within the Council about mediation. That is ultimately what happened.
74. I am referred to an email from David Middleton to me on 18 February 2011 **(TRS00016880)** in which David discusses trying to get lines consistent for the Parliamentary Accounts Committee about why Transport Scotland withdrew from governance and whether it had oversight of issues going wrong. I was not involved in the decision making process at the time but I believe there were perfectly sound and reasonable project management reasons for the decision that was taken. I did not know where the papers were because I was not involved in this and I do not know if anybody came looking for them. I have previously explained why I think the decision made sense.
75. It is put to me that when Audit Scotland reported in 2011, they recommended that the Scottish Government should consider whether Transport Scotland should use its expertise in managing major transport projects and to be more involved. The Scottish Government did involve TS in the project later in 2011 for the reasons I gave earlier in this statement.
76. The Funders' Oversight Group (FOG), was a meeting that my colleague Sharon Fairweather the Director of Finance went to. I think she only went once. Once we got involved from September 2011 onwards we had a different regime for reporting and managing costs.

Transport Scotland re-engagement

77. Transport Scotland's decision to re-engage with the tram project was made after the Council rejected their own officials' recommendation to take the tramline into St Andrew Square and decided that it should be terminated at Haymarket. At that point Ministers' withdrew any further grant funding and there is a letter to that effect from me to Sue Bruce. Ministers agreed that Transport Scotland should provide assistance and become involved in the project but the contract remained with the Council.
78. The announcement regarding that was made on 11 September 2011 by Alex Neil. It would involve me being part of Sue Bruce's senior management group. There was a small team from my Directorate headed up by a senior project manager/engineer with a small team of about three who worked alongside the Council team to offer them assistance. Our involvement would also include work around the Edinburgh Gateway station. It goes back to the governance point. You need to have people working as part of the delivery team, so you understand what it is really happening on a day to day basis. I could not do that alone, but I had a team that could assist. I wanted to have the team joined at the hip supporting the Council. It was a collaborative approach, helping the Council where we could, particularly with things like adding some Ministerial weight to getting cooperation with the service and utilities companies, which was going to be key to being able to deliver this project on time. The Transport Scotland team consisted of about four or five and we ran it for two or three years.
79. The decision to intervene in the project was based on advice I gave to Ministers on how Transport Scotland could take a more direct role while at the same time leaving the contract clearly with CEC. Ministers did not want to commit the remaining £72 million in grant money and then have it at risk. They wanted to assist the Council to get this done. Having got to a point where, after the outcome of the mediation and the renegotiation the price had gone from £500 million to over £700 million and we were then going to commit a

further £72 million, there was a desire by Ministers to see a collaborative approach. That was why the decision to involve Transport Scotland was reached.

80. We managed to intervene successfully because CEC agreed and supported TS's involvement. Clearly, you cannot impose this. If TS wanted to impose it then it would have had to take it over and that would have probably taken a year at least. The clock was ticking because of the delay that was imposed by the Council going back on what had been agreed at mediation, which had added several million pounds to the final cost and ate into the contingency.
81. With regards to the benefits that Transport Scotland brought to the project, I think that we brought a collaborative approach. We brought a joint endeavour; a "shoulder to the wheel" I think is how it was described. We also provided help around how we managed the contractual risk and interface with what separately Transport Scotland was trying to do at the Edinburgh Gateway. The project was then delivered within the revised budget and revised timescale.
82. I am referred to a September 2011 Cabinet paper (**TRS00031263**) which suggested that, as part of the agreement to release further grant payments, the Scottish Government would require CEC to agree that Transport Scotland should assume a greater role in the management of the project. I am asked whether this tactic could not have been employed earlier in the project. It would not have worked, in my view, to try to put this arrangement in place whilst TIE were still managing the project and whilst they were still embroiled in a contractual dispute.
83. I would reiterate that under the new grant conditions signed in January 2012 Transport Scotland did not take over the project. I've clarified what the role of Transport Scotland was to be. Transport Scotland was not seconded; but worked alongside the team. There was a Memorandum of Understanding which gave us the power of veto, which was something that Ministers stipulated. In other words, if SG disagreed with a material decision that we

believed would fundamentally undermine the project we could intervene. It was never exercised but it was an important further protection of Scottish Ministers interests in the project.

84. In reference to the memo of understanding (**TSI00000001**) which stated that “Ministers would be represented by a Project Director”, that was me, but the title was terminology for the purposes of this agreement – it did not mean I had direct management responsibility for the delivery of the tram project. It stated: *“The Council will assume the Project Director into formal project governance arrangements at a date and position to be determined by Ministers. Ministers will deploy such Transport Scotland officials as it was considered necessary in consultation with the Council and the Council will assume those officials into those arrangements accordingly. Council will meet reasonable costs. The Ministers will recover costs by deducting them from the grant payments. The agreement did not allow the Ministers to direct the Council to act in any way that would cause it or TIE to breach any of its contractual or statutory obligations”*. While I was Project Director by way of definition within the agreement, it was CEC’s project and I had no authority to directly manage the contract. The person in CEC who fulfilled the Project Director role was Colin Smith. The Transport Scotland staff were co-located in the site offices which were at Gogar. The staff were not seconded, they were there as Transport Scotland officials working as part of a co-located team.
85. An agreement was signed between CEC and Transport Scotland on 17 January 2012. That did not mean that Transport Scotland had taken over the project. The so called Mar Hall agreement, which was the basis of the renegotiated tram contract, excluded any provisions for the Edinburgh Gateway project which nevertheless still had to be accommodated within the tram project.
86. Under the new grant conditions signed in January 2012, I did become Project Director on behalf of Transport Scotland. There was also a Project Director in place to deliver the project for CEC. I can see why that terminology is in

retrospect quite confusing. I had no direct relationship with the contractor and could not issue an instruction to the contractor. I did have the power to issue an instruction to the Council. If my team saw that something was happening with the contract which I thought was prejudicial to Ministers' interests in the overall delivery of the project, then I had the power to issue an instruction. CEC had to consider it, although there was provision for them to challenge that. Effectively, and I think it was described by Alex Neil in this way at the time; we would have a power of veto. It was there for major issues such as the Council reversing its decision and deciding to stop the line at Haymarket. This power was never exercised.

87. Transport Scotland employees were to take a collaborative approach working with CEC staff. It was not a formal secondment but they were working with the Council officials.
88. This did not mean that Transport Scotland had taken over the project. What it did give us was the ability to exercise a greater degree of scrutiny over the Council in *their* management of the project. To that extent it gave us a bit more visibility than we had under the previous grant monitoring arrangements. It gave us the ability to say 'we do not think you should do that'. It did not mean that they needed to immediately stop, but it allowed us, at least, to have a discussion and give us more influence.
89. I do not consider that it would have been helpful if Transport Scotland had maintained or taken a more direct role in the tram project earlier, because the project management structures under the TIE set-up would not have allowed us to do that then.

Involvement of politicians

90. I am referred to an email dated 20 June 2007 (**TRS00004463**), in which Damian Sharp of Transport Scotland comments adversely on John Swinney's response to Audit Scotland's review of trams. This would be before the

Parliamentary debate. The Cabinet Secretary's view was quite clear, that the incoming Government wished to stop the tram and Edinburgh Airport Rail Link. It was a manifesto commitment and it was the basis that they brought forward the motion to Parliament the following week. The report was quite critical of how TIE were managing EARL, as distinct from the tram. John Swinney does not say anything positive or negative about the tram, he's silent on the tram, presumably for good reasons, but it was not me who advised him. That's Damian's view not mine. I know I was copied in but I have no comment on this.

Grant letter conditions

91. My view of the grant letter was that it was consistent with the general grant letters you would expect to see for this form of funding. I do not feel that the grant letter could have been better drafted to give Transport Scotland more protection and more power to take action when things were going awry. The grant letter protected the grant payments and protected Ministers' positions in terms of those payments. The point is that the grant is not a mechanism for controlling any of the contracts and I do not think it can ever be. It has to be reasonable in terms of what you are trying to do. In principle the grant is a mechanism to provide a body with money to enable it to deliver something it wants to deliver, not what you want it to deliver. You are agreeing to fund it, and when you give them the money, they must use it for that purpose. Having agreed to subsidise the project to the tune of £500 million, then what the grant letter does is ensure that that money is protected. That money was protected. The grant letter was robust and the funding had a cap. Some grant letters do not have a cap but just agree a percentage. The grant letter protected the Scottish Ministers in that the Council could not use it for anything other than what was specified within the grant terms. I would reiterate the last sentence of the third bullet point which is "*a grant is not a mechanism for controlling contracts; it's a mechanism for directing money to support a Council in delivering a project*".

Mar Hall Mediation

92. Mediation talks were arranged for March 2011. I attended the mediation. In the run up to mediation there was a general agreement that Transport Scotland should participate or be there.
93. The mediation was not undertaken by Transport Scotland, the mediation was between the Council and the contractors. Clearly the Council were still being heavily advised by TIE, and TIE had a major role in providing information. It was agreed with Ministers that I would attend the mediation exercise. Initially, it was thought I would probably attend in an observational role. We were acutely aware that I could not make any contractual commitments on behalf of the Council in the mediation, that was not my role. Subsequently Sue Bruce requested that I take a more active role in the mediation in terms of the face to face negotiations with the senior parties from Bilfinger Berger and Siemens. This was on the basis that any subsequent agreement was between CEC and the contractor, and not Scottish Ministers. It was understood that if there was going to be agreement, the cost was going to go up and the project was going to take longer to deliver. That was known before we went into the mediation. The original completion date to have the trams operational was summer 2011. By the time of the mediation exercise which took place in March 2011 the construction was significantly behind schedule and the Council had already indicated that costs were likely to go up and that the completion date would not be achieved. That had already been accepted by the Council and reported in the Audit Scotland interim report. This was therefore a mediation to get the project going and get it completed. It was absolutely clear that whatever the final settlement was, the Ministers contribution would remain capped at £500 million. So on that basis I was part of the three person negotiation team. Sue Bruce was in the lead, plus Vic Emery (the new Chairman of TEL) and me.
94. The main objective of Transport Scotland participating in the mediation was to underline Ministers' desire to see a resolution to the project and to participate

in any way we could to help achieve that. Paraphrasing the official line from the Scottish Government, Ministers were supportive of the attempts to resolve this through mediation. They were supportive of me being involved in the process, subject to there being clarity as to my role, to the project remaining CEC's, and to the grant not increasing beyond £500 million, irrespective of whatever final figure was negotiated.

95. I am referred to **TRS00011304**, which mentions "Project Resolution". I cannot confirm what "Project Resolution" was. It was TIE's practice to give codenames to various project initiatives aimed at resolving the contractual dispute. The Council had instructed TIE that there was going to be mediation and they were the party that had to support that mediation process as they had all the information. TIE did not initiate the mediation; the mediation was initiated by the Council. It may well have been the name they gave to the Mar Hall mediation. This is the first time I have seen the name and I think it probably disappeared as quickly as it came up.
96. Mediation talks took place at Mar Hall between 8 and 12 March 2011. There were a lot of people present, from all the parties to the dispute. The negotiations however were led by from the client side by Sue Bruce and Vic Emery, supported by me. On the contractor side Joachim Keysberg, of Bilfinger Berger, led negotiations. There was another representative from CAF who eventually left the mediation because they were carved out from the agreement. CAF were the Spanish firm who manufactured the trams. Richard Jeffrey was there supported by a number of his team who were providing information and essentially number crunching. . Quite a number of the TIE personnel were there feeding information to Sue Bruce, Vic Emery and me. Similarly, the contractors had teams of people there.
97. These mediations usually start with everybody airing their grievances without any sort of opinions or judgements being made, and then you look at where you are and where you want to be. It then breaks off into sub-groups but eventually this is distilled into an agreement as to what can actually work and

what cannot work. The mediator is there to help broker a mutually agreed deal and to help break any log jams in the process.

98. I cannot remember who the mediator was. He was a trained mediator who had done a lot of international mediation. I think his background was a lawyer. The Council commissioned him but I do not know if Bilfinger contributed to the cost or not. I do not know what the arrangements were but it would have to have been done in agreement with all the parties because there is no point bringing in a mediator who is in any way unacceptable to any of the parties.
99. I was present at the mediation. My role was to work with the Council in seeking a resolution to allow the project to resume. At that point TIE were also promoting an option to terminate the contract with Bilfinger Berger, and then seek a new contract with a different contractor to finish the project. There were still discussions as to whether or not the project should finish at Haymarket, as the risks associated with the airport to Haymarket section were less than going along Princes Street. Quite a lot of issues came out about problems the contractor faced with going from Haymarket along Princes Street, even though on the face of it, it just looked like joining the gap between Haymarket and Lothian Road because the track was already there. There were issues around the defects already in Princes Street. We were trying to find a way to renegotiate the contract to provide as much certainty as to cost and delivery. It was very much a collaborative effort focussed on getting a deal that worked for everybody and delivering this project with greater degree of certainty.
100. The negotiation that took place between the parties during the mediation included a series of offers and counter-offers. One of the issues was that Bilfinger were not prepared to offer a fixed price to go from Haymarket into St Andrew Square because of the amount of uncertainty that still existed with the utilities. That puzzled us to begin with because the view was that the MUDFA contract had cleared all these utilities. We could not see why that would that be an issue until it was explained that the MUDFA contract had been designed on the basis of an outline design which ended up being incompatible

with the contractors' design. It had not taken into account things like the foundation bases for the poles that hold the overhead wires up. There were a number of quite significant issues. The contractor said that they had lost a lot of money in the initial phases of the contract when they were ready but the services were not clear. The mediation was about trying to understand some of those risks that the contractor had, and then how you could work round some of their concerns and still get them to commit to building the line into St Andrew Square. Their preference, initially, was to build it to Haymarket and then walk away and let another contractor build the rest, but that meant that there would be two contractors working at the same time which would have presented other risks.

101. I do not think CEC's position changed over the course of the mediation. They went in with the objective of getting an agreement to build the tram to St Andrew Square, and they got that. They would have had a range of outcomes in terms of how long that would take, and how much it would cost, and some of that would inevitably have to be a compromise on what was negotiated, but their prime objective was achieved.
102. BBS's position changed over the course of the mediation in relation to their initial view that they did not want to build the line into St Andrew Square from Haymarket.
103. The outcome of the mediation was set out in a Heads of Terms. Although I was present I did not sign it because I was not party to that contract. I think it set out the revised price of £776 million and a basic timescale. It also showed agreement for an immediate resumption of work and a release of £40 million or thereabouts, which then was backed up by our interim grant letter which we extended over the period to support that limited payment. So there was an immediate resumption of work whilst the detailed terms of the new contract were hammered out. It was this agreement that the Council officials put to the Council meeting in August. At that point the Council voted against the proposal of taking the project into St Andrew Square.

104. Generally Transport Scotland viewed the outcome of the mediation as positive. While the result was a curtailed project to be delivered three years later than planned, there was clarity as to how the project was going to be taken forward and confidence in a better contractual structure to secure it. There was real leadership; there was a real desire to make it work and a real commitment from all parties, but with nobody under any illusions that it was going to be easy.
105. With regards to what the parties envisaged would happen after the mediation the Council's change of mind in terms of how far the line would be taken was clearly a set-back. The final contract terms were complete and signed around September 2011.
106. I am referred to a Minute of Variation dated 20 May and 10 June 2011, Minute of Variation 4, which varied the Infraco contract to allow certain priority works to take place (**BFB00096810**). This is the interim arrangement that I was talking about and the purpose of the agreement was that it got works started immediately after the mediation. It was entered into in advance of the main settlement agreement. It was about going in and sorting out Princes Street and getting the work started in advance of the final agreement being signed.
107. I am referred to an email from Richard Jeffrey to Vic Emery on 27 April 2011 (**TIE00686805**) in which Richard said that the deal agreed at Mar Hall was the result of a decision by Sue Bruce, Vic Emery and me. I am asked whether Richard Jeffrey was not happy with the agreement reached at Mar Hall and with MoV4. I would say that, as this was still a TIE project, he was just asking what to do in the interim. I think he is saying, 'if that's the deal you want, how do you want me to handle it'.
108. A deal was reached at Mar Hall for £776 million and it is suggested to me that BBS had offered months before to complete the truncated line for £660 million. I never saw a £660 million deal. I know it was alluded to a couple of times in some of the correspondence that Richard Jeffrey gave us when they were looking at what a deal might look like. The £776 million was at least a

handshake deal, £660 million was just a number and I think at the time, if you go back to some of the correspondence we saw from Richard, he was advising that it was not a fixed price settlement. I do not know if they are comparable, I do not know how robust the £660 million figure was.

109. It is put to me that at Mar Hall the parties had envisaged that a full settlement agreement would be entered into by 30 June 2011 and that a Memorandum of Understanding was entered into on 24 August 2011 to extend the timescale for the conclusion of these negotiations until 31 August 2011. I do not know why the timescale for the conclusion of negotiations was extended until 31 August 2011.
110. On 25 August 2011, CEC voted to build the line to Haymarket. I am asked for my view but it does not really matter what my view on this decision was. The Cabinet Secretary took a very firm view on it and I issued a letter to Sue Bruce conveying Mr Swinney's decision that the government would not provide further grant payments. We did not say you cannot do it, we just said there would be no further grant payments.
111. The implications for the Council's grant funding from Transport Scotland of that decision were set out in a letter from me to Sue Bruce.
112. At a special meeting of the Council on 2 September 2011 members were provided with a report by Sue Bruce (**CEC01891495**). After a vote, the Council agreed to build a tramline from the airport to St Andrew Square/York Place. With regards as to why that meeting was called and why members changed their minds and agreed that a line should be built to St Andrew Square/York Place, I cannot really comment, but I would say that the arguments that Sue Bruce and her team have put forward are there to see. Our position is quite clear there, in paragraph 5 it is stated that "the Council received a letter from Transport Scotland to TIE", which was attached. I think it is that letter in which I said that Ministers were not prepared to make any further payments and would not extend the existing grant, but the door was left open for the Council to make further proposals consistent with the basis of

the original agreement. One might draw the conclusion that was why it changed its decision, but it is not for me to say why the Council did what it did.

113. It is put to me that on 2 September 2011 parties entered into a second Memorandum of Understanding to extend the timescale for entering into a settlement agreement until 14 September 2011. The memorandum recorded that "Infraco has an entitlement to additional costs and time as a result of the full Council meeting decision", i.e. the decision on 25 August 2011 to stop the tramline at Haymarket. On or about 12 September 2011, Alastair Maclean sent a letter to me which noted that the Council had twice reversed its previous decision and this had caused an increase in cost and uncertainty for the Consortium (**CEC02082652**). I do not recall the two occasions on which the Council had reversed its previous decision.
114. I cannot remember what the purpose of the second Memorandum of Understanding was. I think it was based on the fact that CEC's decision to curtail the project caused them to have to go back in and look at the agreement. It disrupted the negotiations. It increased the costs to the contractor and the contractor was able to justify those increased costs because time is money for a contractor. Ultimately they had reversed their position and he was explaining what the details meant in terms of the overall cost. My recollection was that it did not change the overall headline figure; it just ate into the contingency.
115. On 15 September 2011 a full and final Settlement Agreement was entered into between TIE, CEC and the consortium (**BFB00005464**). I do not know what the main changes made to the Infraco contract by the Settlement Agreement were because I was not party to it. It was led by the Council, they signed the contract and they employed a firm of London solicitors, possibly Linklaters, to advise them on it. There were a number of legal firms involved in drafting the revised agreement and they would be much better able to say what the changes were.

116. Following the Settlement Agreement, the line from the airport to York Place was completed within the revised programme and budget. As to why, following the Settlement Agreement, the line to York Place was completed within the revised programme and budget, my view is that it was because it reflected a clear understanding of the risks and contractual positions of both parties going into the Settlement Agreement. Both parties knew exactly what they had to do and there was clarity. There was very tight project management delivered from the very top by CEC and their team.

Utility works

117. The Notes from the Joint Project Forum on 12 December 2011 at Section 4.1 state *“Ainslie McLaughlin outlined two major issues raised by the utility companies in their discussions with Alex Neil MSP and Transport Scotland which would aid them in cooperating more efficiently with tram works. The utility companies had identified the requirement for as-built drawings from the original MUDFA contract and for as much advanced warning as possible on programmed works”*. I am asked whether there were any problems regarding co-operation between the utility companies and TIE/CEC or the contractors during the project. We recognised immediately when the revised agreement was signed in September 2011, that the ability to get a speedy response from the utilities companies was going to be crucial to successfully completing the project on time. Effectively what the client was trying to do was to work just immediately ahead of the contractor and clear all those utilities out, effectively ‘just in time delivery’. A week waiting for the utilities to turn up was just not going to work, it was too critical; the logistics were really quite complex. Coordinating services is always a challenge on big construction projects particularly when you are working on roads. To tackle this utility company problem we acted under the auspices of the Cabinet Secretary stressing the project’s importance and our desire for cooperation. He did not have any direct influence over all of them, apart from Scottish Water as they are part of the public sector, but he was asking for cooperation in this joint effort. I think all I was then doing was reporting back saying that we have done our bit, that

the utilities were on board and the utilities were asking for as much advance notice as possible, which is not unreasonable. Then what it needed was a lot of coordination thereafter.

118. In a memo from Campbell Docherty to Ministers dated 9 September 2011 (**TRS00012306**) one of the key messages in Annex A is that *“The risk to the public purse represented by the sheer amount of utilities that still require to be moved or indeed moved again, despite the MUDFA works four years ago, is simply unacceptable, estimated at up to 700 separate utilities conflicts, and a clear failure of the previous management of the project”*. Two things were wrong with the MUDFA contract. One, they started it too late, and two, which was absolutely the most crucial thing that caused the problem, is that they did it on the basis of a design that was not confirmed or committed. They did the utilities work on the basis of their design and not the contractors’ design and they gave the contractor control over what that design was to be. The whole thing became quite contentious. There was nothing wrong with the concept of MUDFA, it makes sense to de-risk but it makes no sense moving pipes and cables if you have not moved them to the right place and you then have to come along and do the work again. In some instances the same utilities were moved three times.

119. I am referred to a report from Turner & Townsend (**TRS00009925**), regarding excavation depths on the reconstruction of the road at Haymarket on 7 October 2011. The report stated that *“The depth of construction currently proposed would require the relocation of significant numbers of services which were previously diverted under the MUDFA contracts”*. It was recommended that the road excavation depth be reduced so as not to interfere with the utilities. This was one of the issues that was really about coordination between the Council’s various departments. The Planning Department and the Roads Department were asking for things that were imposing further risks. I have no particular view on this but it was part of what my team was trying to do: to try and identify where the principal risks were that were going to potentially delay the revised timetable or add cost to it.

7 October
2011 should
be 6 October
2011

120. I do not know if the question of excavation depths was the reason for moving the utilities for a second time or whether there were other reasons for needing to move utilities again. I had the impression that the MUDFA contract was a good idea but was less effective ultimately because much of it was done too late and it was not properly planned. Frankly, it beggars belief that they would spend that money and not then be sure where they had cleared the services from, and not even be in a position to say that it was sufficient for the contractor to put the foundations in.
121. I am referred to an email from Scottish Water to me on 15 November 2011 (**TRS00013025**) about problems with putting water pipes back in after the tram works had finished. I have no comment on this. It was just one of the myriad of things that you have to deal with when you're trying to get things done. It was resolved I have no doubt, and did not compromise the ultimate delivery.
122. I am referred to an email on 10 November 2011 (**TRS00009989**) where Graham Porteous made me aware of a problem with Scottish Water not allowing the use of a pipe joint detail required under MUDFA because its previous use was poorly managed and the workmanship had been shoddy. I have no idea what this was about, I think it was just some of the detailed issues that we were dealing with at the time. This was early days and I think Graham was just keeping me up to date with some of the issues that they were working on, so that I was briefed going into the weekly meetings that I had, just to make sure that the Project Team were on top of it. Graham was leading the small team that was co-located there and he was my eyes and ears on the ground.

Edinburgh Gateway Station/Gogar Interchange

123. I am referred to **CEC00263295**, which notes that there was a discussion about the Gogar Interchange with CEC and TIE. I can confirm that this was not part of the tram project but was part of the rail improvements work. The relevance

of the Gogar Interchange was that under the original contract, it was a variation which was going to be delivered at the same time as the tram contract.

124. Transport Scotland and Ministers wanted this to be a condition of Project Carlisle because at the time Ministers were of the view that these should be delivered simultaneously.

125. Project Carlisle never saw the light of day so the risks of making it such a part became irrelevant. It had to be taken out of the Mar Hall agreement because it was just too complex, but it still had to be accommodated. There was an opportunity to revisit the programme for the Edinburgh Gateway Station and its programming. What concerned me was that we could not have a contractor trying to build the station at the same time as a contractor was trying to complete the tram because it was then relying on the tram contractor being finished by a certain time, and then the station contractor coming in for a certain time. It would have been a nightmare to coordinate contractually; it was just rife with potential problems. Both contractors would be dependent on one another for access, and it would have increased our risk exposure and increased the potential for claims of compensation. We de-risked this issue by agreeing to re-programme the station delivery so that the station delivery would not start until the site was completely finished, but there still needed to be some accommodation works carried out by the tram contractors so that the station contractor would not then have to come in and dig up the tram tracks. The works required were a £4 million or £5 million retaining wall, as a temporary solution to make sure that we did not have to come in and dig that out again. This took quite a lot of the time to unpick and get sorted so that we could protect the Gateway Station contract as well as the tram contract, and I think there was a successful outcome. We advised Ministers of that, and the Gateway Station is planned to open at the end of 2016.

126. I note that in a brief to the Cabinet Secretary about the Edinburgh Gateway Station (**TRS00029691**) on 23 February 2012, it is stated that there was to be an additional cost to instruct BBS to redesign the tram track to accommodate

the Edinburgh Gateway Station, and this would cost about £5 million. This was all about not doing the two things simultaneously for the risks that I have already identified and I recommended that we did not proceed with this variation to the tram contract on that basis.

127. The decision to incorporate works for Edinburgh Gateway in the tram project was made after the Infraco contract close in May 2008. It's quite a complex story. This was really done to protect the follow-on contract. It was already lost in the main contract. This was a variation that Scottish Ministers asked for after the EARL project was pulled because the EARL project would have provided the train link into the airport. It was decided that as part of the Edinburgh/Glasgow improvements that the Gateway Station would have a tram stop. So the thought was that we would just have needed an added variation of £10 million to £15 million so that they would amend the layout of the tram track. Network Rail would then come in and build the railway station and two contractors would work around each other. With the best will in the world, even in a really well run contract, that would be a nightmare to manage. Given this contract's history of difficulties, and the fact it had already gone back three years, we had already lost the advantage of trying to get them done simultaneously. It was jeopardising the delivery of the 2014 timetable. So this was a sensible way I think of de-risking the project, it was about getting some accommodation works in at a cost of £5 million rather than trying to coordinate Network Rail and the Council into building both of them at the same time.
128. The presence of Transport Scotland on the Tram Project Board ensured the inclusion of Edinburgh Gateway works in the Infraco contract before it was signed.

Infraco

129. On 29 May 2016, **TRS00015522** identifies that there was an issue with the cracking and re-laying of track on Shandwick Place and Haymarket. This did not cause the price to increase or result in a cost to the public sector. This was a quality defect that was the responsibility of the contractor. They had put in some defective works and they had had to remedy it at their own cost.

29 May 2016
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Governance

General

130. In the period prior to March 2011 my views on the governance arrangements for the tram project (including whether each of the relevant bodies were able to exercise effective governance and control over the project) were that they ought to have worked. The Council understood that it was a big project they had to deliver, that they did not have the capability in-house and that they needed a significant amount of intelligent client expertise. They adopted an arm's length model and created TIE (which was similar to what Transport for London did with Crossrail), so it did not have the same pay restrictions that Councils and public sector bodies have to attract people with expertise and experience in delivering these big projects. They had assembled a team with experience of delivering projects from across the rest of the UK. They also had the benefit of going to visit Dublin and Manchester and learn from those tram projects. They understood the need to separate and de-risk the utilities and the concept of MUDFA was a good idea in that respect.
131. Audit Scotland thought that the governance was in order, so that begs the question of what went wrong? In my view this shows that governance is not all that is required. You need good governance, leadership, a clear sense of direction and the right people. On the face of it, it looked like the tram project had all those elements, but somewhere along the line they lost focus. The focus was on the tram and the systems but what let this project down was

some pretty basic civil engineering. There was a bit of low tech engineering which involved, at its most basic, digging a hole in the ground, putting in a concrete foundation, sticking some rail lines on and filling it back in, but that proved to be really difficult in terms of logistics and planning. On top of that there were the contractual arrangements. I cannot understand why TIE were still talking about a fixed price lump sum project when it was quite evident, even before the disputes resolution, that the contract was not a fixed price contract. The situation was exacerbated by the fact that TIE and BBS were interpreting the contract differently, and they continued to clash. I think TIE just became focussed on their belief that the contractor was wrong and they were right. What I am saying is that governance alone does not deliver a successful project, even with textbook governance arrangements in place. Parties going into a contract need to know the risks and who is carrying them. What happens if anything goes wrong needs to be stated in the contract. I think if they had asked that question beforehand, (and they may well have done – I do not know) some light might have been shed on some of the issues and enabled checks and balances to be put in place.

132. I did not have any concerns in relation to the governance arrangements at that time, in fact it looked textbook. There was plenty of governance. It was not as if there was not a project manager or a project board. My concerns were about why the project was not going right. Clearly, however, there was something wrong because the governance did not pick up the issues and when it started to go wrong they did not know how to sort it.
133. The roles and responsibilities of each of the bodies involved in the delivery and governance of the project were sufficiently clear and Audit Scotland agreed with this. It was quite clear that it was a City of Edinburgh Council contract, it was quite clear that TIE were the project managers, it was quite clear what the contractor had to do.
134. I am asked if there was an issue with the same individuals sitting on more than one body or organisation and whether this adversely affected the independence, subjectivity and effectiveness of the governance

arrangements. I was not aware that there was an issue. I did not sit down and study their governance as I was not asked to do so, so I cannot really comment.

135. CEC and their delivery arm, TIE, were ultimately responsible for ensuring that the tram project was delivered within time and within budget.
136. I am referred to a report to the Council on 25 August 2011 (**TRS00011725**), in which it is noted that *"The existing governance arrangements for the tram project are complex and have not been effective"* and that there was a need to revise the overall arrangements *"to ensure effectiveness, accountability, probity and integrity going forward"*. All this report said, I think, was that the previous arrangements had not worked. That was self-evident because TIE had failed to deliver the project. The report stated that the Council are winding up TIE because it had not worked. It would appear that they had no confidence in TIE as an organisation to deliver the revised arrangements agreed at Mar Hall. The contractor had made it clear that they had no confidence in TIE. This was a critical project for the Council and it was taken back in-house and managed by the Chief Executive.
137. It was brought back in to the highest level in the Council because of the previous failures and the criticality for the Council's budget and reputation. Having renegotiated the contract, the worst thing possible would have been for it to be further delayed with further cost overruns, so it was very tightly managed with a more traditional client approach.
138. The new governance allowed for short reporting lines with a very quick escalation of problems to executive level. It was very tightly managed. There were collaborative meetings with the contractor; there was a joint forum in place and weekly meetings with the project delivery team and senior Council management. There were monthly meetings with the contractor, where they were able to share joint problems and try and get on top of issues and there were quarterly meetings with the principals. I think it was called the Principals Meeting, where Jochen Keysberg from BSC came across from Germany just

to add weight to try to resolve any issues that might be emerging and not let it fester into a contractual dispute. While there were no contractual disputes during this time, that does not mean to say there were not disagreements, but they were all resolved very quickly, which is consistent with a collaborative contract management approach. It was very much focussed on getting it done and getting it done on time.

Transport Scotland

139. As regards whether the role of Transport Scotland in the governance and oversight changed following the September 2011 settlement agreement, I would refer to my previous comments where I have explained my views on the new governance structure. We were then working with CEC and able to resolve any issues. One example was the Gateway station and de-risking that. It was really just about keeping everything tight and getting any issues arising resolved quickly, so it was all about short communication lines and getting everybody together who needed to be together to resolve issues. Bear in mind that it was still a big project to get the project finished, lasting three years and costing £200 million.

Concessionary travel scheme

140. I am asked why Transport Scotland did not commit to including the tram in the concessionary travel scheme. It was not for Transport Scotland to commit or otherwise, but was a policy decision for the Scottish Ministers. It may well have been included in the STAG guidance but the Council decided to support its own concessionary fare scheme so that pensioners etc. could still get concessionary fares, but it was not paid as part of the National Scheme.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 49 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. 

Date of signing.....17 May 2011.....