

Steven Bell – Supplementary Questions

General

- 1) It is apparent that there is a very large degree of repetition from one month to the next in the Project Directors Report and the Reports to TS. Do you agree? Do you agree that this often makes it difficult to determine precisely what is happening at any time and what are the key elements?
- 2) Almost all the reports to TS noted that reasons for design slippage are being reviewed and recorded each week (see for example, **CEC00983221**, page 27). What was the point in stating this every time. What was done with the information? Was there discussion at the TPB of these reviews, what might be learned from them and what should be done to remedy the situation? Do you agree that it did not appear to be making any difference? Why was nothing else tried? To what extent did design issues continue to have an effect on the progress of works throughout the project?
- 3) The reports to the TPB and the Powerpoint presentations do not appear to provide a complete picture of the outcome of the various adjudications. Do you agree or do you have any comment on this? Do you have any further records of the information that was supplied to the TPB in relation to the adjudications?

TPB Papers for May 09 -- CEC00633071

- 4) In relation to the Infracore works, the Report states,

The project continues to experience problems with slow progress and, in particular, appointment of direct BSC resource and final appointment of the main package contractors. All BSC sub-contractors continue to operate with Limited Letters of Intent whilst awaiting conclusion of the full sub-contracts.

Haymarket viaduct and Carrick Knowe bridge constructions have been on hold due to BSC's sub contractor issues with the A8 underpass delayed through requirement of temporary works redesign. However, work has continued on a number of worksites including Princess Street, Edinburgh Park Bridge, Gogarburn Bridge and the new access road at Verity House with spoil removal from the depot commencing and progressing well during the period (20% of total spoil removed in three weeks). (page 36)

There is no clear statement that this was attributable to the fundamental disagreement in relation to the contract and Notified Departures. Why was this not stated? Were you not aware of it by this time? The Carrick Knowe issues were later to lead to adjudication and seems to be more than 'sub contractor' issues. Would you agree? Did you know this at the time?

- 5) Your report notes that work was continuing on "Princess (*sic*) Street, Edinburgh Park Bridge, Gogarburn Bridge and the new access road at Verity House" (page 36). The first of these were under the PSSA and the others appear to be off-street structures. Is this correct? Was there any concern against the background of the problems on Princes Street that BSC were not undertaking *any* on-street works and that they were so far behind in achieving milestones (table on page 37)? They were supposed to have almost 50% of the work completed and instead had done only 3%. Why is there no statement that the consortium were refusing to undertake on-street works under the contract? If this was not apparent to you at this time, when did it first become clear?
- 6) In relation to some sections it is noted that the problem is that MUDFA works were not finished (page 37). To what extent was that the real problem as opposed to the disinclination of BSC to do on-street works because of the underlying contractual dispute? In relation to works to the west of the city centre, there are several references to re-design of temporary and permanent works. What was the issue here? Do you consider that the contents of this table give an accurate and complete picture of the reasons for lack of progress on the Infracore works?

- 7) Your report refers to an unapproved increase in the AFC to £527.1m to reflect risk. The approved cost estimate remained at £512m (page 14). Why was there an 'approved' and an 'unapproved' figure? What was the purpose or function of each? Why have both? What had to be done before the figure would become approved?

TPB Papers for June 2009 – CEC001021587

- 8) In relation to INFRACO, your report states, "Haymarket viaduct and Carrick Knowe bridge constructions have been on hold due to *BSC's sub contractor issues*". Was this really thought to be the issue at the time? What were the sub-contractor issues and why had they resulted in works being put on hold?

TPB Papers for Early July 09 - CEC00983221

- 9) In your report, the time Schedule Report indicates that many matters have slipped but that recovery can be achieved (page 41). This same table and statement appear month after month although the degree of slippage increases. In this position, and in light of the history, what basis did you have for your statement that there could be recovery? How likely did you consider recovery would be? Do you consider that your report presented a realistic picture?

TPB Papers for Late July 09 - CEC00843272

- 10) In relation to INFRACO, your report states,

The project continues to experience problems with slow progress for INFRACO works and, in particular, the appointment of direct BSC resource and the final appointment of the main package contractors. The BSC subcontractors continue to operate with Limited Letters of Intent whilst awaiting conclusion of the full subcontracts. Finalisation of the agreement of

change- Base Date Design Information (BDDI) and IFC is delaying the commencement of work at Haymarket viaduct, Russell road bridge, Carricknowe bridge, Depot building and Tower place bridge. (page 12)

In your view, does this accurately present the position? Was the issue one of finalising agreement of change or was it more fundamental?

11) Month by month the slippage on the INFRACO works increased. For example, in May, the works were 42.4% behind (CEC00633071), at the start of July they are 47.1% behind (CEC00983221, page 30) whereas by late July, they are 49.3% behind (CEC00843272, page 56)? Does this not indicate that the cause of the delay was not merely something at the start of the INFRACO works but was something still operating?

August 09 - CEC00739552

12) The reasons for INFRACO being behind schedule are stated in your report on page 13. Were all of these actually impeding work or was the issue one of Notified Departures?

13) The figures for MUDFA works note that they are 96.6% complete (page 14). Is this consistent with these works being a reason for delay to INFRACO works? Is this figure accurate? Is it consistent with the volume of works that had to be carried out after this date and both before and after the mediation at Mar Hall? If they are not accurate, how did the error come about?

14) The comment on INFRACO at page 15 states,

The project continues to experience problems with slow progress for INFRACO works and, in particular, the appointment of direct BSC resource and the final appointment of the main package contractors.

The use of the term 'in particular' suggests that this is the main problem. Is that correct?

- 15) The figure on page 14 for MUDFA works completed shows a big jump for the figure given to TS in the previous month (CEC00843272, page55). Why was there such an increase?

November 2009 – CEC00681328

- 16) The Minutes for October included in the papers for this meeting are the first to set out bluntly that BSC refuse to carry out on-street works without a supplementary agreement entitling them to payment on a cost plus basis (page 9). Why had this not been stated in earlier reports?

- 17) In the Minutes for October, you were charged with preparing a quarterly report on betterment contributions for MUDFA. Was this done? Where were the reports sent?

- 18) In the table on page 40 of the November report all the figures showing the cumulative fall behind schedule (the right-hand column) are inaccurate. The same is true of the table in the December Report (CEC00416111, page 52), the January report (CEC00473005, page 53), the February Report (CEC00474418, page 33) and the March report (TIE00894384, page 34). This appears not to have been noticed, commented on or corrected. Is that the position?

December 2009 – CEC00416111

- 19) In this report and the ones for 2010, there are summaries of the outcomes of the DRP process. Do you consider that these provide an accurate and full picture of the outcomes? What further information did you supply in the form of Powerpoint presentations or oral briefing at the TPB meetings? Why did you consider after the Gogarburn and Carrick Knowe decisions that it was too early to establish precedence? Did this change after the Russell Road decision? If not then, when did

you consider that the position has become clear? What did you do to bring it to the attention of the TPB or company board?

February 2010 – CEC00474418

20) In the report to TS, the same reasons are given for overall progress being behind schedule (page 27). Had matters not moved on by this time? For example, was lack of formal subcontracts or re-design of temporary works an issue holding up progress? To what extent was the failure to submit paperwork an issue? Was “Finalisation” of agreement of change really the issue? In your report to the TPB you record that the lack of progress is “symptomatic of the ongoing dispute with BSC regarding agreement on the terms of a supplementary agreement for on-street works and commercial issues off street” (page 11). Was it really a dispute about a supplemental agreement rather than a fundamental disagreement as to the extent of the obligations undertaken in the original contract?

21) Were the Carrick Knowe and Gogarburn decisions still under review as indicated on page 28? What did the review consist of and who was conducting it?

22) In the report to TS on page 27, you state, “There has been no further Infracore works on-street due to a lack of agreement on programme going forward.” Was lack of agreement on programme really the reason that there were no on-street works?

May 2010 - CEC00245907

23) The April Minutes notes that MUDFA works were 94% complete (page 6). Six months earlier in the October minutes they were reported to be 98% complete. Why was it that the percentage complete had gone down over this period?

24) Your May report to TS notes that although 82.6% of INFRACO works should have been done, only 16.1% had been completed (page 35). Despite this the report against milestones still says that recovery is possible (page 51). Why was this said?

Steven Bell – Answers to supplementary questions

- (1) It is apparent that there is a very large degree of repetition from one month to the next in the Project Directors Report and the Reports to TS. Do you agree? Do you agree that this often makes it difficult to determine precisely what is happening at any time and what are the key elements?

A number of issues remained live from one month to the next, and the reports were intended to be readable without having to refer back to all previous reports for context. Whilst certain live issues were repeated in successive reports, they were also supplemented with updated information. Whilst John Ramsay complained about these reports in his evidence to the Inquiry, I do not recall him raising such complaints at the time. When Marshall Poulton became Tram Monitoring Officer he made a point about the timing of the reports, which was addressed, but there were no complaints from CEC about the content, so there was never any suggestion that those for whom the reports were intended had any difficulty in understanding what was happening or what the key elements were, supplemented as they were by the presentations and other information.

The periodic reports were supplemented by presentations to the Tram Project Board, which initially (pre-summer 2007) included Bill Reeve as the Transport Scotland representative. Following Transport Scotland's withdrawal, the arrangement was for CEC to provide monthly information to Transport Scotland, which I understand was normally via Duncan Fraser and latterly Alan Coyle to John Ramsay. There was additionally a Quarterly Review at a senior level between CEC and Transport Scotland.

- (2) Almost all the reports to TS noted that reasons for design slippage are being reviewed and recorded each week (see for example, **CEC00983221**, page 27). What was the point in stating this every time. What was done with the information? Was there discussion at the TPB of these reviews, what might be learned from them and what should be done to remedy the situation? Do you agree that it did not appear to be making any difference? Why was nothing else tried? To what extent did design issues continue to have an effect on the progress of works throughout the project?

TIE was required to monitor and record slippage on the programme, and was similarly required to review what could be done in order to address it. Design slippage was an issue which was frequently discussed at the Board. I do not agree that the reviews "made no difference" or that "nothing else was tried": David Crawley/Tony Glazebrook and Damian Sharp in their respective roles successfully cleared a number of outstanding design issues and blockers in 2007/2008. In addition, matters were escalated in 2007 by Willie Gallagher with Tom O'Neill, Vice President of Parsons Brinkerhoff in the US.

After May 2008, responsibility for progressing the design passed to the contractor and so the reasons for continued slippage in that period were opaque to TIE.

However I do not believe that SDS/Infraco expedited all the issues which they could have done, as is demonstrated by the fact that a large number of outstanding design issues were very suddenly cleared immediately post mediation in 2011. I understand that Damian Sharp has already made this point to the Inquiry.

- (3) The reports to the TPB and the PowerPoint presentations do not appear to provide a complete picture of the outcome of the various adjudications. Do you agree or do you have any comment on this? Do you have any further records of the information that was supplied to the TPB in relation to the adjudications?

I was briefly asked about this issue by Lord Hardie in my oral evidence, and as stated then (Wednesday 27 October, page 48), I accept that some reports could have been amplified to provide further detail. The Lord Dervaird adjudication on Murrayfield underpass would be a good example. However I do recall that there had been issues with information leaking from the TPB papers, and there was a concern about setting out in the papers how painful a decision it was when those papers might fall into the hands of the contractor, thus compromising our commercial and strategic position.

I have also become aware through the Inquiry hearings that amplification was promised on the Russell Road adjudication in one report which was not followed up the following month, and clearly this was an omission which should have been rectified. In all cases however, further detail and discussion was provided at the meetings themselves. At the Board meetings there was no doubt about which adjudications were particularly disappointing for TIE, in the face of the advice we had received (e.g. Dervaird), albeit that had not been explicitly set out in the papers circulated to members in advance.

Any records relating to the adjudications were kept by TIE and other than those provided to me by the Inquiry, I no longer have access to them.

TPB Papers for May 09 —CEC00633071

- (4) In relation to the Infraco works, the Report states,
“The project continues to experience problems with slow progress and, in particular, appointment of direct BSC resource and final appointment of the main package contractors. All BSC sub-contractors continue to operate with Limited Letters of Intent whilst awaiting conclusion of the full sub-contracts. Haymarket viaduct and Carrick Knowe bridge constructions have been on hold due to BSC’s sub contractor issues with the A8 underpass delayed through requirement of temporary works redesign. However, work has continued on a number of worksites including Princess Street, Edinburgh Park Bridge, Gogarburn Bridge and the new access road at Verity House with spoil removal from the depot commencing and progressing well during the period (20% of total spoil removed in three weeks)(page 36).”
There is no clear statement that this was attributable to the fundamental disagreement in relation to the contract and Notified Departures. Why was this not stated? Were you not aware of it by this time? The Carrick Knowe issues were later to lead to adjudication and seems to be more than ‘sub contractor’ issues. Would you agree? Did you know this at the time?

The issues are related. Where a subcontractor had not been properly contracted and issued with instructions by Infracore, they would not be in a position to price any changes to IFC. This would then mean that even though Infracore may have issued an INTC, the estimate which was required to follow from that would not be forthcoming, thus preventing agreement of the change and progression of the work.

In any event, the contractual disagreement was already well established and known to the Board by this time: see for instance page 6 of these papers, the minutes for the previous Board meeting at item 2.8. Further, the PD report in these papers at page 9 sets out that the Project Management Panel (PMP) was discussing the BDDI-IFC issue amongst other things. (The PMP had been set up following the PSSA and included myself, Martin Foerder of Bilfinger and Alfred Brandenburger of Siemens). Moreover, delay caused by the need to agree change is the top issue in this Transport Scotland report (page 33).

Whilst it is correct to say that the issues around Carrick Knowe Bridge later went to adjudication, the same is true for Gogarburn Bridge, and at this time, as the report highlights, work was progressing at that site.

- (5) Your report notes that work was continuing on “Princess (*sic*) Street, Edinburgh Park Bridge, Gogarburn Bridge and the new access road at Verity House” (page 36). The first of these were under the PSSA and the others appear to be off-street structures. Is this correct? Was there any concern against the background of the problems on Princes Street that BSC were not undertaking *any* on-street works and that they were so far behind in achieving milestones (table on page 37)? They were supposed to have almost 50% of the work completed and instead had done only 3%. Why is there no statement that the consortium were refusing to undertake on-street works under the contract? If this was not apparent to you at this time, when did it first become clear?

It is correct that the work on Princes Street was proceeding under the PSSA and that the other areas highlighted are off-street. The other work on-street which was scheduled to be taking place at that time was on Leith Walk, which straddled sections 1B and 1C. The reasons for the delays in those sections are set out in the narrative below the table: In Section 1A, design was awaited to allow utility diversions to be completed, and traffic management was under design and discussion with Forth Ports. In Section 1B and 1C, work had been delayed pending MUDFA completion. In Section 1D, work on Princes Street had commenced but work at Haymarket was delayed due to MUDFA works. As had been noted on page 13, the subcontractor for Leith Walk had been re-deployed to Verity House and Princes Street. Accordingly work was progressing on Princes Street and there was an ongoing attempt to resolve the other issues at the PMP. It is therefore not accurate to suggest that it was a simple issue of the contractor refusing to work on-street at this point in time. The discussions around these issues evolved into negotiations around a potential On Street Supplementary Agreement (OSSA), which is covered further below (and in my original statement).

- (6) In relation to some sections it is noted that the problem is that MUDFA works were not finished (page 37). To what extent was that the real problem as opposed to the disinclination of BSC to do on-street works because of the underlying contractual dispute? In relation to works to the west of the city centre, there are several references to re-design of temporary and permanent works. What was the issue here? Do you consider that the contents of this table give an accurate and complete picture of the reasons for lack of progress on the Infraco works?

The incomplete MUDFA works were certainly an issue (as noted in question 5 above), as there were sections where Infraco was unable to obtain unrestricted access in order to commence work. Re-design of temporary works was between SDS and Infraco and was not an issue for TIE. Re-design of permanent works is highlighted in Section 5 of the route and this would include for instance Russell Road retaining wall, which ultimately went to adjudication.

The table gives an accurate picture; but for a complete picture it must be read in conjunction with the rest of the report, which was also supplemented by oral presentations at the Board meeting. No single paragraph or table in the reports was intended to be read in isolation.

- (7) Your report refers to an unapproved increase in the AFC to £527.1m to reflect risk. The approved cost estimate remained at £512m (page 14). Why was there an 'approved' and an 'unapproved' figure? What was the purpose or function of each? Why have both? What had to be done before the figure would become approved?

The approved figure related to the Project Control Budget (PCB) which had been set at financial close, together with any increases from that budget which had already been approved under the various delegated authorities up to and including the TPB. See also my answer to question 128 in my original statement.

The unapproved figure was effectively a forecast of the additional risk allowance which was thought to be required to cover changes which had been intimated or were anticipated at that time, and was produced in an effort to provide transparent information for the funder of expected potential cost increases.

For a figure to become approved, a change paper needed to be presented and approved in line with the delegated authorities. Dependent on the value those authorities would be up to, and including, the TPB and ultimately CEC.

TPB Papers for June 2009 – CEC001021587

- (8) In relation to INFRACO, your report states, "Haymarket viaduct and Carrick Knowe bridge constructions have been on hold due to *BSC's sub contractor issues*". Was this really thought to be the issue at the time? What were the sub-contractor issues and why had they resulted in works being put on hold?

Haymarket Viaduct from memory was being carried out by the same subcontractor (Graham Construction) as was carrying out the work at Verity House. That subcontractor was working at this time on letters of intent and had not by this stage

been properly subcontracted, leading to issues highlighted above in question 4. I do not recall what the subcontractor issues at Carrick Knowe were at that time, though I expect they were similar.

TPB Papers for Early July 09 -CEC00983221

- (9) In your report, the time Schedule Report indicates that many matters have slipped but that recovery can be achieved (page 41). This same table and statement appear month after month although the degree of slippage increases. In this position, and in light of the history, what basis did you have for your statement that there could be recovery? How likely did you consider recovery would be? Do you consider that your report presented a realistic picture?

The colour coding is absent from this document so I cannot answer the question in specific terms: as can be seen from the key below the table, any statement that recovery can be achieved would apply only to items highlighted in yellow or pink. However, see my answer to question 24 below on the same issue.

In general terms, I would go through the programme with Susan Clark and Tom Hickman each month to identify which items were delayed, and whether the delayed items were on the critical path or not. Where they were not on the critical path, recovery would generally be possible as they would not impact on other parts of the programme. Where items were on the critical path, we would consider whether we could instruct Infraco to accelerate in that area, which would carry an additional cost. Infraco would be asked to produce an estimate for the acceleration, and that cost would be assessed against the potential impact of the delay in question. If we considered that Infraco were culpable for the delay, we would expect them to recover the lost time at their expense. In such cases, Infraco generally disputed their liability as their starting position.

TPB Papers for Late July 09 -CEC00843272

- (10) In relation to INFRACO, your report states, “The project continues to experience problems with slow progress for INFRACO works and, in particular, the appointment of direct BSC resource and the final appointment of the main package contractors. The BSC subcontractors continue to operate with Limited Letters of Intent whilst awaiting conclusion of the full subcontracts. Finalisation of the agreement of change- Base Date Design Information (BDDI) and IFC is delaying the commencement of work at Haymarket viaduct, Russell road bridge, Carricknowe bridge, Depot building and Tower place bridge”. (page 12)
In your view, does this accurately present the position? Was the issue one of finalising agreement of change or was it more fundamental?

I refer to my previous answers, but I should emphasise that finalising agreement of change *was* a fundamental issue, because it was emerging by this time that Infraco and TIE had fundamentally different views on the interpretation of both the entitlement to change and the operation of the change clauses in the contract. It will be seen that the issues around Russell Road bridge and Tower Place bridge (both of

which ultimately ended up at adjudication) are now highlighted as being problems in terms of this issue, in addition to Carrick Knowe as already discussed.

- (11) Month by month the slippage on the INFRACO works increased. For example, in May, the works were 42.4% behind (CEC00633071), at the start of July they are 47.1% behind (CEC00983221, page 30) whereas by late July, they are 49.3% behind (CEC00843272, page 56)? Does this not indicate that the cause of the delay was not merely something at the start of the INFRACO works but was something still operating?

It was never suggested that the cause of the delay was “merely something at the start of the Infraco works”. The dispute over changes was clearly a continuing issue.

August 09 - CEC00739552

- (12) The reasons for INFRACO being behind schedule are stated in your report on page 13. Were all of these actually impeding work or was the issue one of Notified Departures?

Notified Departures arose as the result of differences in facts compared to Schedule Part 4 and gave rise to tie Changes, and the issue around failure to agree changes is the top factor listed on page 13. The other factors listed below all had an impact to some degree, especially the incomplete utility diversions and the design slippage.

- (13) The figures for MUDFA works note that they are 96.6% complete (page 14). Is this consistent with these works being a reason for delay to INFRACO works? Is this figure accurate? Is it consistent with the volume of works that had to be carried out after this date and both before and after the mediation at Mar Hall? If they are not accurate, how did the error come about?

It is explicitly stated in line above the table on page 14 that the completion percentage relates only to the MUDFA works carried out by Carillion, and accordingly excludes the works removed from Carillion (due to their poor performance) and awarded to other contractors in Section 1A and Section 7B. See also question 15 below and question 102 in my original statement.

Additionally, where for instance in Section 1D the works were 96.5% complete (by metreage), the remaining section of the road may not have been dug up, and unforeseen issues could – and often did – arise which extended the scope of the works required. The final metreage for the MUDFA works was 49km, up from an original scope of 27km, which was obviously a very significant increase.

I am unable to comment on the volume of works completed after October 2011 as this took place after my departure from TIE. However I am surprised by the suggestions that there were such a large number of extant utilities issues on sections where MUDFA work had been completed by Carillion, as I was aware of only a small number of issues outstanding. There were sections which were outstanding

awaiting agreed access (Broughton Street) and the final details of the curtailed route to York Place were finalised via Council decision in the Autumn of 2011. I briefly addressed this issue in my oral evidence (Tuesday 24 October page 193-194).

- (14) The comment on INFRACO at page 15 states,
“The project continues to experience problems with slow progress for INFRACO works and, in particular, the appointment of direct BSC resource and the final appointment of the main package contractors.”
The use of the term ‘in particular’ suggests that this is the main problem. Is that correct?

The words “in particular” were supposed to cover the issues highlighted in the remainder of this paragraph i.e. to include not only the subcontractor issues but also the slow provision of estimates hindering the agreement of changes in the various locations outlined. Reviewing this now, I would accept that this paragraph could have been clearer.

- (15) The figure on page 14 for MUDFA works completed shows a big jump for the figure given to TS in the previous month (CEC00843272, page55). Why was there such an increase?

With reference to question 13 above, the table in this month’s report makes explicit that the completion percentage does not include the work removed from Carillion under the MUDFA contract. So in Section 1A, the completion is recorded as 100% (up from 43%) because the balance of those works had been removed from MUDFA and awarded to Clancy Dowcra. Similarly, the works in Section 7B (previously 0%) do not appear in the latter table because those works were removed from Carillion and awarded to Farrans. See also my answer to questions 102 and 104 in my original statement.

November 2009 – CEC00681328

- (16) The Minutes for October included in the papers for this meeting are the first to set out bluntly that BSC refuse to carry out on-street works without a supplementary agreement entitling them to payment on a cost plus basis (page 9). Why had this not been stated in earlier reports?

The position had evolved and negotiations were ongoing. For instance, in the minutes for the TPB meeting in August, the overview which I presented had included details that BSC were *resisting* a supplementary agreement at that time pending resolution of the wider contractual matters (CEC00848246, page 6). Works on Princes Street had progressed under the PSSA. Negotiations over an OSSA ultimately broke down because Infraco sought more relaxed terms than had been agreed in the PSSA. This was not acceptable to TIE, particularly in relation to TIE vetting actual demonstrable costs submitted for payment by BSC. By way of example, TIE had discovered a situation where a sub contractor’s staff billed for time at Princes Street

under the PSSA whilst their timesheet actually showed them working at their Managing Director's house. See also my answer to question 100 in my original statement.

- (17) In the Minutes for October, you were charged with preparing a quarterly report on betterment contributions for MUDFA. Was this done? Where there (sic) the reports sent?

I believe that betterment was addressed in the financial reports each period, but I note from these minutes that the quarterly reports were to be sent to Donald McGougan. In question 118 of my original statement, there is reference to an email I sent to Donald McGougan and Alan Coyle (TIE00682917) which attached a table (TIE00682918) setting out the then current position on betterment. As this email post dates these minutes by six months, I assume that is the second such quarterly report.

- (18) In the table on page 40 of the November report all the figures showing the cumulative fall behind schedule (the right-hand column) are inaccurate. The same is true of the table in the December Report (CEC00416111, page 52), the January report (CEC00473005, page 53), the February Report (CEC00474418, page 33) and the March report (TIE00894384, page 34). This appears not to have been noticed, commented on or corrected. Is that the position?

I agree that the error in the cumulative delta column appears not to have been picked up. Generally discussion at the meetings tended to focus on the progress in the period (the left hand side of the table) and more importantly, the narrative. However the error should still have been picked up.

December 2009 – CEC00416111

- (19) In this report and the ones for 2010, there are summaries of the outcomes of the DRP process. Do you consider that these provide an accurate and full picture of the outcomes? What further information did you supply in the form of PowerPoint presentations or oral briefing at the TPB meetings? Why did you consider after the Gogarburn and Carrick Knowe decisions that it was too early to establish precedence? Did this change after the Russell Road decision? If not then, when did you consider that the position has become clear? What did you do to bring it to the attention of the TPB or company board?

I refer firstly to my answer to question 3 above and my previous oral evidence. Gogarburn and Carrick Knowe were too early to establish precedence because not only were they from a single adjudicator (Hunter), they related to specific features of those particular structures. When a different adjudicator (Wilson) came to a different view in relation to Russell Road, that clearly demonstrated alternative views between different experienced adjudicators and hence impacted on TIE's strategy, which was informed by advice from the legal teams (DLA and McGrigors).

The issue was discussed at the TPB in detail. Please see also my answer to question 105 in my original statement.

February 2010 – CEC00474418

- (20) In the report to TS, the same reasons are given for overall progress being behind schedule (page 27). Had matters not moved on by this time? For example, was lack of formal subcontracts or re-design of temporary works an issue holding up progress? To what extent was the failure to submit paperwork an issue? Was “Finalisation” of agreement of change really the issue? In your report to the TPB you record that the lack of progress is “symptomatic of the ongoing dispute with BSC regarding agreement on the terms of a supplementary agreement for on-street works and commercial issues off street” (page 11). Was it really a dispute about a supplemental agreement rather than a fundamental disagreement as to the extent of the obligations undertaken in the original contract?

I do not recall to what extent lack of subcontracts or re-design of temporary works were still significant factors causing delay by this time. Information and analysis from Susan Clark and Tom Hickman would have helped form my view in relation to programming issues, so they may have a more detailed recollection.

The failure to submit paperwork was significant because, where it related to estimates, it prevented changes from being agreed. Where it related to method statements, it may have prevented work from commencing. For instance where work came in contact with the rail corridor, high risk method statements required to be approved by Network Rail as well as TIE before work could commence.

Agreement of change was a fundamental issue; the first question was whether any change gave rise to an entitlement to additional time and costs, and agreement could not be finalised until a reasonable estimate had been provided, which in many cases was lacking; Infraco frequently provided significantly excessive estimates or none at all.

The Infraco’s position ultimately was that it could not work on street under the original contract and therefore required an OSSA; TIE did not agree with that position but nevertheless was prepared to discuss the possibility of an OSSA if that proved to be a reasonable method to progress the works having regard to time and costs. As indicated above, the reason discussions broke down was that Infraco sought to agree an OSSA on more favourable terms to Infraco than had been in place under the PSSA.

- (21) Were the Carrick Knowe and Gogarburn decisions still under review as indicated on page 28? What did the review consist of and who was conducting it?

As noted in question 19, Carrick Knowe and Gogarburn were under review in the sense that the contrary decision in Russell Road had caused TIE to consider whether

those earlier decisions should be challenged, a process which included TIE's legal advisers as well as external experts and consultants.

- (22) In the report to TS on page 27, your state, "There has been no further Infraco works on-street due to a lack of agreement on programme going forward." Was lack of agreement on programme really the reason that there were no on-street works?

Where there were issues for instance with incomplete MUDFA works, there required to be agreement as to when Infraco would be given access to the sites in order to commence work (and hence a programme issue), quite apart from the question of how that work was then going to be paid, whether under an OSSA or under the original contract.

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- (23) The April Minutes notes that MUDFA works were 94% complete (page 6). Six months earlier in the October minutes they were reported to be 98% complete. Why was it that the percentage complete had gone down over this period?

The reason is clearly stated in the minutes: the scope had increased by this time to 46km, which was 170% of the original scope. The 94% completion figure is explicitly stated to relate to the revised (i.e. increased) scope.

- (24) Your May report to TS notes that although 82.6% of INFRACO works should have been done, only 16.1% had been completed (page 35). Despite this the report against milestones still says that recovery is possible (page 51). Why was this said?

I accept that the colour coding system adopted here may not be immediately obvious. The left hand column gives the original programme date. The right hand column gives the date as currently forecast. The tram was originally programmed to be Open for Revenue Service in July 2011, as can be seen at the bottom of the table. The current forecast date at the time of this report was February 2013. The fact that this item is highlighted in pink (significant slippage but expect recovery can be achieved) is not a statement that the original programme date of July 2011 can be achieved, but rather that it is believed that, with appropriate mitigation, improvement on the forecast date of February 2013 could be achieved.

Some of the confusion may stem from the fact that this table includes both commencement dates and completion dates. So for instance there are two entries for Edinburgh Park viaduct. The originally programmed commencement date for that structure was 6 August 08. From the right hand column, work actually commenced 3 weeks later, 1 September 08. The latter entry is coded in pink because it was thought that some recovery was possible on that work (being completed). This is further reflected lower down the table which shows the programmed completion date for Edinburgh Park viaduct was May 2009 but the forecast date for completion was June 2010. This was significant slippage but by the time of this report the work was

almost complete. Where an item was not on the critical path, then delay to that item may not necessarily impact on the sectional completion dates or the overall programme.

It can be seen that not all items were considered to be recoverable at this time, for instance the delivery of all IFC drawings and the granting of all consents and approvals. Accordingly it was not thought that the forecast date given in the right hand column could be improved upon, and they are therefore marked in red.