

Note by Chairman of the Edinburgh Tram Inquiry concerning the participation of members of the public and other witnesses

Introduction

The Inquiry Team is currently engaged in taking detailed statements from many witnesses who are of interest to the Inquiry. As part of that process, a structured approach has been adopted so that witnesses have been placed into particular categories depending upon their role in the tram project. It is more efficient to interview witnesses from the same category at or about the same time.

Currently members of the Inquiry Team are making preparations to interview two different categories of witnesses, namely councillors in the City of Edinburgh Council at relevant periods of time, and members of the public who were affected by the tram project.

Within that second category, members of the public responded to the formal call for evidence issued on 12 May 2015, dealing specifically with how they were affected by the failure of the project to be delivered on time, within budget and to the extent projected. These responses will be an integral part of the evidence which will be considered by me prior to the preparation of my Report. In addition, the Inquiry Team is now contacting some of these members of the public to ascertain whether they are willing to assist by providing more detailed statements.

Issue

Members of the public approached by the Inquiry team are reminded that their contribution to the progress of the Inquiry is invaluable and most people contacted by the Inquiry Team so far have indicated a willingness to assist. Responses have also included a number of views expressed regarding the outcome of the Inquiry in terms of anyone being prosecuted.

Role of the Inquiry

As I explained at the Preliminary Hearing on 6 October 2015 the role of the Inquiry is to investigate why the tram project incurred delays, cost considerably more than originally budgeted and, through reductions in scope, delivered significantly less than was projected. In undertaking that task the terms of reference, which regulate the scope of the Inquiry, require me to inquire into the delivery of the project, from the proposals of the project emerging to its completion, including the procurement and contract preparation, its governance, project management and delivery structures and oversight of the relevant contracts.

The terms of reference also state that I need to examine the consequences of the failure to deliver the project on time, within budget and to the extent projected. Many

of these issues, particularly the consequences of the failures mentioned above, involve the co-operation of members of the public, who had direct experience of them. That co-operation is essential if lessons about avoiding similar consequences can be learned and implemented for future projects of a similar nature. This is not merely an academic exercise. After local government elections in 2017, I understand that the City of Edinburgh Council may consider the possible extension of the tram line from York Place down Leith Walk and beyond.

Possible consequences of Inquiry Report

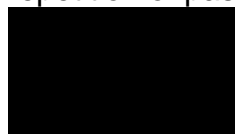
The consequences of the Inquiry Report cannot be determined until it has been written, following an assessment of all evidence submitted to the Inquiry.

Although section 2(1) of the Inquiries Act 2005 (“the Act”) stipulates that an inquiry must not rule on, and has no power to determine, any person’s civil or criminal liability, that does not mean that nobody will be prosecuted as a consequence of their involvement in the project. Any question of prosecution will ultimately be a matter for the Lord Advocate and Crown Office and Procurator Fiscal Service (“COPFS”) and their decision will depend upon the availability of evidence supporting such a decision. As far as I am aware, neither the Lord Advocate nor COPFS has determined that nobody will be prosecuted. Indeed, it might seem to be premature to express such a view without considering the terms of the Inquiry Report which will be written after the conclusion of the evidence sessions in public. Furthermore, any question of civil liability must be determined by an appropriate court, having jurisdiction to do so.

Nor does section 2(1) preclude the Inquiry from determining facts and making recommendations from which criminal and/or civil liability might be inferred. Section 2(2) of the Act makes specific provision to that effect. Moreover, the Inquiries (Scotland) Rules 2007 envisage the possibility of criticism of an individual, including inferred criticism, during the course of proceedings or in the Report of the Inquiry (Rule 12).

Involvement of the public

As I have explained previously I am anxious to take into account the various consequences for the public during the tram project, particularly as any extension to the tram line in any direction will involve some disruption to the public during the construction phase and it is desirable that the promoters of such an extension take into account the public’s past experiences to minimise that disruption. Without the co-operation of the public, where that is requested, the evidence available to me might not suffice to enable me to make recommendations about future projects. In that event, there will be less opportunity to learn from the experience of the Project and businesses and residents in Leith Walk and other areas may experience a repetition of past disruption should the tram line be extended to those areas.



Lord Hardie

18 August 2016