

QUESTIONS FOR NEIL SCALES

Introduction

1. Could you please set out your main qualifications and vocational experience?
2. Prior to the Edinburgh Tram Project, what, if any experience, did you have in delivering major infrastructure projects including tram or light rail projects?
3. We understand that you were a Non-Executive Director of Tie Ltd (Tie) between 22 January 2007 and 12 May 2011 and that you were a Non-Executive Director of Transport for Edinburgh Limited (TEL) between 18 December 2009 and 12 May 2011. What were your main duties and responsibilities in these roles?
4. It would be helpful if you could explain the circumstances surrounding your appointment e.g. were you asked to become a director of these companies or did you apply to become a director of these companies? If the latter, what prompted your application e.g. did you see an advert for these directorships?

Governance and project management

5. It would be helpful if you could briefly explain your understanding of the role of each of CEC, Transport Scotland, Tie, TEL and the Tram Project Board in the tram project (both before and after the award of the Infraco contract in May 2008)?
6. What did you understand the relationship to be between Tie and TEL? What was the relationship between these companies and Tram Project Board (TPB)?
7. Did you sit on or attend the Tram Project Board (TPB)? If you attended only some of the meetings, who or what determined on which occasions you would attend? Papers were prepared for meetings of the TPB. Were you provided with these and, if so, were you given them for all meetings or only some? If you had attended a TPB meeting, were you able to review the minutes of that meeting and/or follow up what was being done in relation to issues raised. Did you sit on or attend any sub-committees of the TPB?
8. Which body or organisation do you consider was in charge of the tram project (again, both before and after the award of the Infraco contract in May 2008)?

Were changes made to this over time and, if so, why? Did these changes affect your role and how you performed it?

9. Which individual did you consider was the Senior Responsible Owner for the project and what did you understand this role to entail?
10. Were you content with the volume, quantity and timing of the information provided to you as a non-executive director? Did you consider that you were properly informed in relation to the decisions that you required to take? Do you consider that you were able adequately to perform your challenge function as a non-executive director?

Procurement strategy

11. What was your understanding in early 2007 of the main aims and objectives of the procurement strategy for the tram project and how these aims and objectives would be met?

Award of the Infraco contract in May 2008

12. At the time of seeking Council approval for the Final Business Case (December 2007) and of the award of the Infraco contract (May 2008), what was your understanding of each of the following matters (including the basis of your understanding):
 - (1) The extent to which design was complete and all approvals and consents had been obtained and how risks arising from this were allocated between the parties?
 - (2) Which party bore the risks arising from any further delay in completing design or obtaining outstanding approvals and consents?
 - (3) The extent to which there had been or continued to be difficulties or delays in completing the utility diversion works?
 - (4) The risks that arose to Tie/CEC if the utility diversion works were not finished before the Infraco works commenced (and the likelihood of these risks materialising)?
 - (5) The extent to which the Infraco contract was for a fixed price and the extent to which the price was likely to change after contract award?
 - (6) The extent to which the Infraco price was based on a number of pricing assumptions, some of which were known not to be accurate and which

would result in a Notified Departure or Departures (with consequent price increases) shortly after contract close?

13. At the two dates referred to, how did the agreements proposed give effect to the procurement strategy for the project?
14. Did your understanding of the above matters change in any way after the award of the Infraco contract award and, if so, when and why?
15. In the period from December 2007 to May 2008 was there any discussion in either Tie or TEL as to whether the procurement process should be halted? If so, what factors were said to justify a halt and what factors justified pressing on? What was the role of the non-executive directors in relation to this? What was your view? As a non-executive director, what was your view of the increases in price demanded by the contractors between December 2007 and contract signature in May 2008?
16. How was the decision taken in May 2008 that the company should enter into the construction contracts? In January 2008, an Approvals Committee consisting of David Mackay, Neil Renilson and Willie Gallagher was formed (see **CEC01246826** – Paper for TPB Meeting on 13 February, pages 8 and 35-40). What was it intended that they should determine and what work did you consider would be undertaken by the Committee to satisfy itself of the matters falling within its remit? What role did you as a Non-executive director have in relation to this?

Events following Infraco contract award

17. What was your understanding of the main reason or reasons for the dispute that arose between Tie and the infrastructure consortium?
18. A dispute arose in or around February 2009 in relation to the works at Princes Street. What was your understanding of the main cause or causes of the Princes Street dispute?
19. The Princes Street dispute was resolved by parties entering into the Princes Street Supplemental Agreement. To what extent, if at all, was approval sought from the Tie Board or TEL board to enter into that agreement? What was your understanding of, and views on, the agreement?
20. Following a decision in July 2009 as to what strategy to adopt, Tie engaged the contractual dispute resolution procedures in relation to the disputes with

the contractors. What role did you and the other non-executive directors play in relation to this decision? Did you favour this approach and what was the basis for your view? What did you understand to be the matters that were in dispute? Why were these matters taken to adjudication? Was there discussion of what the position would be and what strategy would be adopted if the decisions went against Tie? There were a number of adjudication decisions in late 2009 and 2010. What were your views at the time on the extent to which these decisions favoured Tie or the infrastructure consortium? Did there come a time (and, if so, when) when you considered that the adjudication decisions did not support Tie's position in the dispute? If so, did that cause you any concern or change of strategy on the part of Tie? What information were you given about the outcome of the adjudications? Were you given – or did you ask to be given – copies of the decisions in those adjudications?

21. What was the strategy adopted in 2010 and what was it intended that it should achieve?
22. Had Tie or TEL taken legal advice in relation to the matters that were in dispute? If so, from whom had it been taken? Where you shown that advice or provided with a summary of it?
23. What were your views on the settlement agreed at the Mar Hall mediation in March 2011 with the infrastructure consortium? What role, if any, did the Tie or TEL board play in discussing or approving the settlement?
24. Why did you cease to be a director of Tie and TEL?

General

25. Did you have any concerns, at any stage, in relation to the performance of any of the bodies or organisations involved in the delivery of the tram project (or in relation to any of the senior employees or directors in these organisations)?
26. Did you have any concerns, at any stage, in relation to the reporting to the Tie or TEL Boards or reporting by those boards to other bodies?

Concluding comments

27. What do you consider were the main reasons why the tram project was not delivered on time and within budget?
28. Do you have any comments on how the cost and time overruns in the Edinburgh tram project might have been avoided?
29. Are there any other comments you would like to make that fall within the Inquiry's terms of reference and that are not covered by your answers to the above questions?

RESPONSES TO QUESTIONS

1. My qualifications are as follows:

Ordinary National Certificate (ONC) – Engineering, 1975
Higher National Certificate (HNC) - Electrical and Electronic Engineering, 1977
Bachelor of Science (BSc) – Engineering, Sunderland University 1981
Master of Science (MSc) - Control Engineering and Corporate Systems, Sunderland University 1984
Diploma of Management Studies (DMS) - with Distinction, Sunderland University, 1986
Master of Business Administration (MBA) – Open University, 1992

Chartered Engineer
Fellow – Institution of Engineering Technology
Fellow – Institution of Mechanical Engineers
Fellow – Institution of Civil Engineers
Fellow – Chartered Institute of Transport
Fellow – Society of Operations Engineers
Fellow – Royal Society of Arts

Order of the British Empire (OBE) for services to Public Transport, 2005

2. Extensive experience in dealing major projects in the United Kingdom and also in the European Union and as a World Bank consultant. Past project director for Manchester Metrolink and experience with Tyne and Wear Metro System.
3. Without access to records or files for reference, the main duties of a Non-Executive Director was as far as I was concerned, to review Board Papers, contribute proactively to Board Discussion given my experience and expertise.
4. The role was advertised nationally and I applied. There followed a fairly standard recruitment process including an interview in Edinburgh. Without access to records or files, I can't recall the members of the panel save they included Tie representatives together with representatives for the Council and maybe the recruitment consultant.
5. My understanding and recollection was Tie was set up as a company independent of City of Edinburgh Council to deliver a number of infrastructure projects for council.

Transport for Scotland had a senior representative on the Tie Board and was a significant financial contributor. My recollection is that Transport for Edinburgh Limited in its current form of buses and trams was set up after I resigned, save the Chief Executive Officer of Edinburgh Buses attended Board meetings.

My recollection was that Edinburgh Buses were to be the operator of the Trams when construction had been completed. This would allow efficient integration of bus and tram services.

I cannot be definitive about the relationship after the award of the Infraco contract.

However, the bundle of documents forwarded to me dated 23 January 2009 details the Board Committee membership.

6. Tie was an initiative of the City of Edinburgh Council. My understanding was the Lothian Regional Transport Buses, a forerunner of Transport for Edinburgh Limited in its now current arrangements, was a key partner.
7. The Board minutes will show which Tram Project Board meetings I attended, and also which sub committees I would or would not have attended. After 10 years or so I cannot recall all of the meetings I attended, but the Company Secretary will, I am sure have copies and will have furnished these to the Inquiry.
8. The tram was supposed to be under the control of Tie. I can recall the City of Edinburgh Council and Transport for Scotland often attempted to intervene in Board decisions.
9. The Senior Responsible Owner was the Chief Executive Officer of Tie in my view as this organisation had been formed to deliver the Tram Project.
10. In the early days, yes. Latterly towards the end of my tenure no. I resigned and a copy of my resignation letter will be on file.
11. I cannot recall the details given the passage of the time and have no records or file for reference. In my opinion the procurement of the vehicles (trams) was well done. The movement of certain underground apparatus to allow the tram path to operate unimpeded did not seem to be well executed or managed.

The civil engineering contractor, I recall, was particularly difficult and dealing with them was troublesome. They did not seem to be committed to delivery milestones, were remote and did not appear to be engaging appropriate subcontractors and key staffs.
12. The questions here are particularly detailed and I cannot recall the specifics.
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15. My recollection is there was considerable debate about the contractor on various non-performance items and milestones. The Non-Executive Director's role was to support the management. I thought the price increases demanded by the contractor were not well founded and I recall a lot of frustration at the time about increased costs and a contractor

who promised much and appeared to miss key deadlines.

16. I cannot recall the details other than the sub-committee under item 4 had specific and detailed conditions to fulfil before the award of the contract.
17. The overriding recollection was the infrastructure consortium did not have adequate or sufficient resources mobilised on time to meet deadlines. Nor did they seem to have local sub-contractors in place to undertake the works.
18. I cannot recall the details. Save the trackworks had to be completed before a particular holiday period and the consequential effect on the retail sector would have been significant.
19. My recollection of the Supplemental Agreement was it was a pragmatic way to avoid a retail disaster. The optics were, I recall, discussed at the Board, but it appeared to me the contactors used the upcoming holiday period as a lever to obtain commercial advantage.
20. The other Non-Executive Directors can speak for themselves. But I do recall the decisions to go to adjunction were not taken lightly and were subject to considerable debate including a significant risk analysis including specialist advice. My role was to help minimise risks to Tie and question management on their strategy. We were, I recall advised of the adjudication outcome, but I cannot recall if I sighted the documents in detail. This matter should be detailed in the Board minutes.
21. The adjudication process was, in my view, almost a last resort to bring the contractor to a reasonable position.
22. To the best of my knowledge yes. I believe it may have been DLA Piper. The Board papers will show whether or not the advice was tabled. I can remember the legal advisors briefing the Board.
23. I cannot recall the detail, but again the Board papers will help here.
24. See my resignation letter.
25. I was concerned that City of Edinburgh Council wanted to intervene directly in the business of Tie, this was not what Tie was set up for and also, in my view interfering with the *raison d'être*.

Similarly Transport for Scotland's input was not, at some times, as supportive as it could be. (This was not the Non-Executive Director's position).
26. See 25 above. As the project became embroiled in contractual disputes, City of Edinburgh Council and Transport for Scotland became more intrusive.

27. The utilities relocation contract did not seem to be managed as closely as it could have been. The civil engineering contractor was very difficult.

28. In my view the project would have benefited from early contractor involvement and more preparation in relocating the underground works. The public consultation and tram procurement were sound. Changes in Tie personnel, a change in the City of Edinburgh Council Chief Executive Officer and direct interventions by Transport for Scotland were not positive for the project. "Too many cooks". As a Non-Executive Director there was little I could do to assist management in this regard, other than the debate at Board level.

29. The diffusion of role clarity as the project progressed together with changes in key personnel in stakeholder's organisations did not help particularly when the project was constructed in the glare of publicity with a sometime hostile press.

These responses are provided with my best recollection of events some of what were over 10 years ago.