



Chapter 10

Early 2000 and the Establishment of the Holyrood Progress Group

Concerns about the SPCB

10.1 In a private letter to Mr Mustard written in December 1999,⁵⁴⁶ Mrs Doig expressed her doubts about the SPCB as a client. The SPCB meeting of 1 February 2000 brought her concerns to a head. The Design Team was present. Her briefing for the meeting⁵⁴⁷ had included what she considered to be essential background information and advice on whether the emerging proposal met the concerns of statutory authorities, client requirements, key design features, and quality concerns. She had suggested points which SPCB members would wish to consider when viewing the prototype of the external features of the MSP room and had provided detail on design issues on Queensberry House alerting them to the need to consider how the feasibility design treated that building. In preparing for the meeting, she and Mr Grice had recognised the difficulty of obtaining what she described as “a joined up client view” as there was going to be a tour of Queensberry House for SPCB members, the meeting itself, and then a viewing outside the prototype MSP room. Her briefing had indicated that Project Team officials wished to have private time with the SPCB. She must be given credit for her forthright approach and for recognition of the ‘knowledge vacuum’, into which she saw MSPs as having stepped. In fact she and her colleagues were requested to leave at the same time as the

⁵⁴⁶ CB/5/026–028 - E-mail from Mrs Barbara Doig to Mr Martin Mustard, 8 December 1999

⁵⁴⁷ CB/2/177-180 - Briefing Paper from the Project Team to the SPCB, 1 February 2000

Design Team and were not in attendance when the SPCB decided that the Design Team should continue to develop the feasibility design.⁵⁴⁸

- 10.2 Mrs Doig was concerned that she and her colleagues had not had the opportunity to provide a private supplementary oral briefing to the SPCB. As Project Sponsor she lacked confidence that the SPCB had made its decisions in the full knowledge and understanding of matters which affected the client position and of the possible cost and programme implications. She discussed the situation with Mr Grice to whom she also wrote formally on 7 February 2000 saying:

“I am concerned that despite staff’s best endeavours to brief the SPCB on the nature of the Body’s client responsibilities for the Holyrood building and the issues they must consider about its design and construction, members (both individually - with one or two exceptions – and collectively) are not performing at the level required to obtain what should be Scotland’s most prestigious building.

I am unconvinced that the Body understands the importance and elements of its role, the complexity of procuring under considerable media pressure a building with so many external interests, and the implications of its decisions. For the most part members appear unwilling to devote the time required to read the material provided, discuss the matter in depth, receive advice and give an appropriate amount of instruction. Individual members’ attendance is patchy across meetings and in any single meeting there is a variety of starting and finishing times. Members change their views between meetings and have difficulty recalling factual information and previous presentations and decisions accurately.

Until last week I was hopeful that these matters were resulting in an effective SPCB client input. However, the SPCB meeting on 1 February was unhelpful. This was a very important meeting.

.....

In the event the SPCB did not seriously challenge the Design Team and in the absence of clearly expressed corporate views and decisions left the way open for the Design Team to interpret the meeting’s proceedings as total support for their proposals.”⁵⁴⁹

- 10.3 In my opinion, she was correct to be concerned. When her comments were put to Andrew Welsh, in evidence, he responded:

⁵⁴⁸ CB/2/181-183 - Minutes of SPCB Meeting of 1 February 2000, Para 12

⁵⁴⁹ CB/5/055-057 – Minute from Mrs Barbara Doig to Mr Paul Grice, 7 February 2000

“Mr Welsh: My response to it is, first of all, that when it comes to issues of not performing to the level, I just thoroughly disagree with her. The level of our decisions were highly dependent on the information on which they were based, and she was one of the primary sources for that information. I think this shows that the situation had been reached that the frustration of the Corporate Body is obviously being mirrored by her frustration.

If she felt that we were not understanding, it was surely her duty as the primary source of information to make sure that we understood. If she thinks we were too thick to understand that, then it was her duty to explain to us where exactly she thought we were going wrong. And, equally, that complaint: she should have had a meeting with the Corporate Body to say that and to clear the air. That never happened.”⁵⁵⁰

- 10.4 This short exchange sums up for me the gulf of misunderstanding, and, I regret to say, mistrust, which quickly grew up between the Project Team and the SPCB. I cannot say whether this was because of personalities or the issues with which they ought to have been concerned. It is easy now to say that Mrs Doig should have done more, but given her rank and status, I doubt that she could have done. She could, however, have enlisted the help of members of the professional team, especially DLE.
- 10.5 Mrs Doig’s opinions were not, however, wholly shared by Mr Grice. Speaking of the 1 February meeting in evidence,⁵⁵¹ he did share her concern that the Project Team had been denied an opportunity to get into the “nitty-gritty” with the SPCB. He accepted that it “was not a well-handled meeting, specifically because Mrs Doig had not been invited to stay behind for a private discussion”. What he did not share was her general view that the SPCB was not performing at a sufficient level. He also pointed out that her concerns were to an extent historical and that steps were in hand to improve matters.
- 10.6 In response to her concerns Mr Grice did arrange for Mrs Doig and Dr Gibbons to attend the SPCB meeting on 8 February 2000⁵⁵² at which she was able to check members’ views on the Architect’s presentation and alert them to potential programme and cost implications. The SPCB again requested a report on the cost and programme implications of the feasibility design. It was noted that the minute of the meeting records that “Actual costs could not be known until the building was completed”, hinting at least some awareness of the implications of construction management. I am doubtful, though, that the collective understanding was in any way complete.

⁵⁵⁰ Evidence of Andrew Welsh on 11 February 2004, Paras 356 to 357

⁵⁵¹ Evidence of Mr Paul Grice on 10 February 2004, Para 72 *et seq*

⁵⁵² CB/2/186-187 - Minutes of SPCB Meeting of 8 February 2000

- 10.7 The minute of the next meeting of the SPCB on 15 February does not record any discussion of costs except to the extent that Mr Grice cautioned that the SPCB “might not be able to sanction the costs associated with elements of the design which they considered to be excessively detailed or poor value for money.” In the apparent absence of such discussion it is surprising that the minute also records that the “Corporate Body agreed that the Design Team should be instructed to proceed with the building on the basis of the feasibility study proposals.” The minute further recorded that it should be stressed to the Design Team and to Bovis “that their design effort and works programme should be geared towards a fast track delivery with an aim for completion by summer 2002”.
- 10.8 In the course of Sir David Steel’s evidence the following exchange about the understanding of the SPCB with regard to costs in the early part of 2000 took place:
- “Mr Campbell QC:** For public consumption, then, at January 2000 ...
- Sir David Steel:** We are still on £109 million.
- Mr Campbell QC:** ... You must have known that that was not real.
- Sir David Steel:** We had been warned that cost increases were in the pipeline. And we knew, of course, from our own decisions — even allowing for the savings — that it was likely that the extra was going to exceed the savings.
- Mr Campbell QC:** Did you have a sense of by how much or by what sort of percentage?
- Sir David Steel:** No.
- Mr Campbell QC:** Not at all?
- Sir David Steel:** No”.⁵⁵³
- 10.9 Notwithstanding these remarks, I have considerable sympathy for the position of Sir David Steel and the SPCB at this time. They had been told that the budget/cost of the new building was £62 million and its gross area was about 23,000m². On a ‘back of an envelope’ calculation increasing the size of the Parliament building to about 30,000m² to meet their needs left them comfortably under £100 million, but prior to that most uncomfortable of meetings with Mrs Doig in the spring of 2000, subsequently described as the Dutch Auction meeting, I have found in all that has been presented before the Inquiry that not even the single clang of a warning bell on costs was sounded before that meeting.
- 10.10 The SPCB had hoped to be in a position by mid February 2000 to report comprehensively to MSPs on the reasons for the increase in the Parliament’s space requirements, on Queensberry House, on programme and on the latest estimates of Project costs. Members wished to finalise the terms of a report at the SPCB meeting on 22 February 2000. Prior to that meeting

⁵⁵³ Evidence of Sir David Steel on 4 February 2004, Paras 871 to 877

Mrs Doig circulated a further detailed paper which contained a range of cost estimates for the Project.⁵⁵⁴ Mrs Doig explained in evidence⁵⁵⁵ that in prior discussions with Mr Grice they had agreed that the SPCB had to be given some figures at this stage. She said Mr Grice instructed her to present the best estimates that she could do in the time available. Mrs Doig's paper emphasised that "Cost estimates are simply estimates" and stated that actual costs could not be known until all works were completed and a final figure would also be affected by the construction management procurement route and, in particular, whether programme was met.

- 10.11 Mrs Doig presented the SPCB with three different approaches, the first of which proceeded by the application of a rate of £3,500 to £4,000 per m² to a building of 30-32,000m² and produced a construction cost in the range of £105 to £128 million. She reached that figure having "Includ(ed) the original level of risk allowances." That means, as I see it, that she has added back the £27 million most of which had earlier been considered to be capable of being "managed out".⁵⁵⁶
- 10.12 Mrs Doig's second approach proceeded on the basis of the original budget of £62 million in June 1999, to which she added £7 million in respect of additional costs for Queensberry House and a range of £24.5 to £28 million for an additional 7,000m² of space, calculated as above, producing a construction cost in the range £93.5 to £99 million. Adding the same "original" risk allowance of £27 million resulted in a range of £120.5 to £128 million for construction cost.
- 10.13 Mrs Doig's third approach claimed to represent the outcome of a costing exercise carried out by DLE on 14 February 2000, including the impact of the Value Engineering exercise and the feasibility study, and referred to a cost estimate of £125 million. The report concluded with the statement that further work was required to affirm the detail of DLE's estimate. None of these estimates referred to the cost base of March 1998, nor to the need to make allowance for inflation.
- 10.14 However unsatisfactory they may now appear to be, these figures produced by Mrs Doig for the meeting on 22 February 2000 gave the SPCB its first indication of the likely level of construction cost for the Project as it then stood. The reaction was one of shock and alarm. In evidence Andrew Welsh described what happened when the SPCB interrogated Mrs Doig on her figures as a "Dutch Auction". In fact members put progressively higher figures of up to £160 million to her and asked if she could guarantee construction cost within that figure. This she could not do. Mrs Doig explained that in her paper she was trying to give a "fair figure" and that her range from £100 million to £150 million was an indication of the "ballpark" the

⁵⁵⁴ CB/2/197-201 – Paper from the Project Team to the SPCB, 22 February 2000

⁵⁵⁵ Evidence of Mrs Barbara Doig on 12 February 2004, Para 401

⁵⁵⁶ Auditor General for Scotland's Report of September 2000, Annex B

Project was getting into. She said she was given no opportunity to explain the basis of her estimates. There was an acknowledgment of the impossibility of her position from George Reid, then Deputy Presiding Officer and in attendance at the meeting, that “It was, perhaps, never possible for Mrs Doig, at that point, to produce the sort of information I was asking for.”⁵⁵⁷ It is clear to me that by this point Mrs Doig no longer enjoyed the confidence of the SPCB.

- 10.15 The “Dutch Auction” in terms of which guarantees were being sought from Mrs Doig suggests a fundamental failure on the part of the SPCB, even by this time, to understand the nature of construction management under which no “guarantees” are possible. Notwithstanding my earlier expression of sympathy for their position, the SPCB are open to criticism for having failed to take the initiative at a much earlier stage to force the issue on costs; for example by asking for a meeting with their cost consultants, DLE. I sense that the management style of the SPCB was essentially reactive, in that it appears to have relied heavily on the information put before it rather than taking a proactive approach. I have no direct evidence to support such an assertion, but it is open to question whether the members of the SPCB had grasped the detail of Mrs Doig’s paper for this pivotal meeting where she pointed out (albeit obliquely) the uncertainties arising from construction management.
- 10.16 The minute of the SPCB meeting on 22 February 2000⁵⁵⁸ blandly recorded that the “meeting noted the implications of the revised cost estimate” and that the SPCB stated its aim for the building to be completed “by the summer of 2002 with occupation as soon as possible thereafter”. The minute further recorded that various strategies were discussed for presenting cost figures in the impending report to MSPs to be reflected in a draft for further consideration. The minute conveys none of the sense of crisis engendered by this meeting and of which those present spoke in evidence to the Inquiry.
- 10.17 Such was the sense of crisis that the members met in private the following day. At that meeting it was agreed that an independent assessment on costs and timetable was required and that this should preferably be available in 3 to 4 weeks time with a view to a Parliamentary Debate. The note of that meeting records:

‘It was felt by the SPCB that they appeared to lack any cost control and was (sic) in need of an efficient professional project manager to take the scheme forward. They discussed how the “mess” could have happened and what could be done to try and

⁵⁵⁷ Evidence of George Reid on 2 April 2004, Para 47

⁵⁵⁸ CB/2/203-204 - Minutes of SPCB Meeting of 22 February 2000

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bring it back on track. They considered there must be a strengthening of the management structure with robust on-going advice.⁵⁵⁹

10.18 Mr Grice was instructed to take the matter forward and to report back to the SPCB. On 24 February 2000 Sir David Steel made a statement to Parliament confirming the commissioning of an independent report. Mr Grice sought advice from the RIAS and on 25 February the appointment of Mr John Spencely was confirmed.

Mr Spencely's Methodology

10.19 Mr Spencely accepted the invitation from the SPCB to conduct an independent assessment of the Holyrood Project by 27 March 2000. The original terms of reference for the report were agreed with Mr Grice, and later supplemented.

10.20 Mr Spencely informed the Inquiry that the terms of reference were framed to reflect the view that: "The Project appeared to be in difficulty, and the SPCB wanted to know where it stood."⁵⁶⁰ The short length of time allowed for completion of the investigation would have been an influencing factor as to how far-reaching the remit was and it would suggest that time was the prime concern.

10.21 With the help of two colleagues, Mr Spencely interviewed members of the Project Team, Enric Miralles, the consultants, Dr Gibbons and Mr Grice. It was agreed with interviewees that information given in confidence would not be personally attributed. Mr Spencely told the Inquiry that he felt that four weeks was sufficient time to fulfil his remit. In effect he completed his report and presented his findings to the SPCB on 24 March 2000, within the four week target. On any view, this was a most significant achievement.

10.22 The Spencely Report was published on 30 March 2000 and MSPs were afforded the opportunity to question Mr Spencely on its content on that date. Although the contents of the Report were central to a debate in Parliament, the report was not examined by any parliamentary Committee. Mr Spencely found that surprising. I agree.

Was a 'Pause' Recommended?

10.23 Within the Spencely Report there is no specific recommendation for a two month pause in the Project to enable a costed design to be achieved. However, in evidence Mr Spencely explained that the eight week pause was implicit within paragraph 5.4 of his Report:

'It is clearly imperative that the Brief is frozen now and that the Design Team proceeds immediately to produce a Scheme Design including a cost plan to a Brief

⁵⁵⁹ CB/2/204A-B – Minutes of SPCB Private Meeting of 23 February 2000

⁵⁶⁰ Evidence of Mr John Spencely on 17 February 2004, Para 32

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and a budget approved by the client, so that approval may be given to proceed with the Project by 8 June 2000.⁵⁶¹

- 10.24 There has been some uncertainty amongst witnesses as to whether SPCB members were aware that Mr Spencely was recommending a pause. During a discussion of the Report's findings at the SPCB meeting on 28 March, Dr Gibbons advised that: "Detailed design and construction would continue to run in parallel and there was no reason for a pause until 8 June."⁵⁶² There is also reference to Mr Spencely recommending one option as: "the cessation of all project activity for a period of three months" in the SPCB's report to Parliament, Paper 99.⁵⁶³
- 10.25 Therefore it would appear that despite the absence of an express recommendation for a pause within the Spencely Report, SPCB members understood that a pause was a possibility, and rejected it on the advice of Dr Gibbons.
- 10.26 During the debate, MSPs also appeared to understand that a pause was being advised by Mr Spencely. Mike Russell said: "Mr Spencely says that there should be a pause to allow us to get a plan." However, neither the principal motion nor Gordon Jackson's amendment suggested a pause. Donald Gorrie's motion would only have allowed for a pause alongside a reopening of site selection issues. For many MSPs, this was unpalatable.
- 10.27 Mr Spencely agreed in examination that he had not highlighted the need for a pause in his Report, for example by placing a recommendation to that effect in a list of conclusions. I found his evidence on this point to be somewhat uncertain, but on balance I prefer the view that he was suggesting that a pause would have been beneficial, but that the political imperative of speed intervened to make that a practical impossibility. I am unable to speculate as to whether a pause would indeed have been beneficial.

Reaction of the Consultants

- 10.28 In evidence, Sir David Steel told of the strong exception to much of the Spencely report expressed by EMBT/RMJM Ltd, Bovis and DLE. These concerns appear to have been voiced at a meeting which the consultants held with Project Management on 27 March. The concerns were not made public and there is no agreed record of their extent. I cannot therefore offer a view on their validity but I recognise the difficult position in which this disagreement must have placed the SPCB. I can speculate that the conflict of opinion between the consultants and Mr Spencely was perhaps reflected in the terms of the motion, which instead of endorsing the report, merely asked the Parliament to note it.

⁵⁶¹ Mr Spencely's Report 'Review of the current estimate of time to delivery and occupation', Para 5.4

⁵⁶² CB/2/230-232 -Minutes of SPCB Meeting of 28 March 2000

⁵⁶³ CB/2/660-709 - SPCB Report on the Holyrood Project - Session 1 (2000) SP Paper 99, Para 24

The SPCB Report on Mr Spencely's Investigation

- 10.29 The SPCB considered Mr Spencely's Report on 28 March 2000⁵⁶⁴ and at its meeting of 4 April 2000 authorised Sir David Steel to speak on its behalf in the debate on 5 April. They agreed that the terms of the motion to be debated would ask Parliament simply to note, rather than endorse, all of the findings of the Spencely Report, as apart from the need for parliamentary agreement to continue the Project within a budget of £195 million, SPCB members were unable to unanimously agree its contents. The effect of this decision was that MSPs were not afforded the opportunity of voting on the recommendations in the Spencely Report itself.
- 10.30 The SPCB's own report to MSPs⁵⁶⁵ is unfailingly optimistic about all the aspects of the Project criticised by Spencely. It conveyed no sense of crisis and asserted that the Project could be delivered for a total budget of £195million. It rehearsed the history of the £62 million/£89 million construction cost estimate and the treatment of risk,⁵⁶⁶ and variously attributed responsibility to Simpson & Brown and Historic Scotland⁵⁶⁷ for issues around Queensberry House. It did not relate the stated budget of £109 million to the estimates being provided by DLE at that time, which showed a construction cost alone of £119.82 million; it dismissed the inclusion of inflation in any overall cost estimate, and apparently adopted Spencely's broad brush estimate of 15 -20% savings on his estimated total cost of £230.86 million⁵⁶⁸ without saying whether it had taken advice from the professional teams or the Project Team. I can find no written communication from DLE to the SPCB, nor any evidence in Mr Fisher's testimony which says, in terms, that "cost reductions consistent with a final cost of £195 million can be achieved without reducing the fundamental quality, in line with Mr Spencely's observations."⁵⁶⁹
- 10.31 However, I believe that I understand at least where the other strand of the figure of £195 million came from, namely a report⁵⁷⁰ written after the meeting held in Barcelona on 20 March 2000. That meeting is referred to in the header of Cost Check 11. It reads "This document has been produced to report on the Cost review held in Barcelona on 20 March 2000....This will form the basis of the forthcoming Stage D Cost Plan programmed for mid-June 2000 following Design Stage D being reached at end April 2000 with Structural Stage D being reached at end May 2000. Therefore on the basis of the March Stage D report published by EMBT/RMJM and the Architect's plans received on 11 February 2000 and team discussions in Barcelona on 20 March 2000, the estimate for all construction work being proposed is £119,823,914."

⁵⁶⁴ CB/2/230-232 – Minutes of SPCB Meeting of 28 March 2000

⁵⁶⁵ CB/2/234A-I – Report on the Holyrood Project, SP Paper 99, Session 1, 2000

⁵⁶⁶ *ibid*, Para 10

⁵⁶⁷ *ibid*, Para 12.2

⁵⁶⁸ Report of Mr John Spencely, 'Total Current Budget Requirements', Para 4.5.1

⁵⁶⁹ CB/2/234N – Report on the Holyrood Project, SP Paper 99, Para 29

⁵⁷⁰ DL/1/169-172 – Letter from Ms Carol Thorburn to Mr Mick Duncan, Feasibility Estimate (Cost Check Issue 11) at 20 March 2000

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10.32 If I subtract the “contingency” figures in Cost Check 11 described as “Contingency permitted by client - £5,213,405” and “Design reserve permitted by client - £5,213,405” or £10,426,810 in all, the overall construction cost total of £119,823,914 is reduced to £109,397,104, or, say, £109 million. That is close to the client’s target figure of £108,000,000 referred to by Mr Grice in his letter to the consultants of 9 May 2000⁵⁷¹ which is expressed as “excluding contingencies”. The difference between £108 and £195 million (i.e. £87 million) is detailed in the tables which comprised Annex 3 to the SPCB’s report to MSPs.

The Parliamentary Debate of 5 April 2000

10.33 Following the SPCB’s consideration of the Spencely Report a parliamentary debate was held on 5 April 2000. Sir David Steel, on behalf of the SPCB, lodged and spoke to a motion on the Holyrood Project. The text of the motion was as follows:

“That the Parliament notes:

- a. the attached report of the SPCB on the Holyrood Project (SP Paper 99) together with:
- b. the report by John Spencely attached as Annexe 1;
- c. the photographs incorporated as Annexe 2 which are available from the Scottish Parliament Document Supply Centre;
- d. the revised budget of £195 million set out in Annexe 3.”

10.34 An amendment lodged by Gordon Jackson asked the Parliament to direct the SPCB to establish a progress group, to report to it with a remit of finalising the design and completing the Project by the end of 2002 within a budget of £195 million. It remained silent on the other recommendations of the Spencely Report. Donald Gorrie also lodged an amendment proposing that time should be taken to review the Holyrood option, to gather information on costs and design and compare these with similar information for other sites. After a spirited debate Parliament accepted Gordon Jackson’s amendment. I have no cause to question the judgment of Mr Spencely, an experienced architect in his own right, but to inexperienced MSPs there was, even at this relatively late stage, no clear comprehension of the consequences of following the construction management route.

Genesis of the Holyrood Progress Group (HPG)

10.35 The resolution passed by the Parliament on 5 April 2000 gave the SPCB a mandate to proceed with the Project and in particular to establish a progress group to work with it to finalise the design and complete the Project by the end of 2002 within a total budget of £195 million. This is in accord with Mr Spencely’s recommendation⁵⁷² which questioned whether the SPCB had “the time and expertise” to perform the client role on a day to day basis. He did not reflect on

⁵⁷¹ DL/1/178-179 –Letter from Mr Paul Grice to Mr Alan Mack, 9 May 2000

⁵⁷² Mr Spencely’s Report ‘Management Recommendations’, Para 9.4.2

the SPCB's capability to carry out the task of acting as "the client" in a project of such complexity.

10.36 Asked in evidence whether he had formed a view as to whether the SPCB was in fact able to give the Project enough time, Mr Spencely said he had been "told by them that they could not". His impression was supported by the evidence of George Reid, who at that time attended SPCB meetings in his capacity as Deputy Presiding Officer. He described the SPCB's workload as "absolutely devastating" and said that there "was an infinity of work to be done on top of which there was the building."⁵⁷³

10.37 In relation to the functions of his suggested "Progressing Group" Mr Spencely's evidence was as follows:

"I expected the Progressing Group to operate as the Client – receiving reports and recommendations "upwards" from the Project Sponsor and acting on the latter – to accept, modify or reject; and receiving and sifting requests for variations to the Brief "downwards" from MSPs and Parliamentary staff; all in the light of the Budget and the Programme; and to control Budget expenditure and Programme by making the appropriate management decisions".⁵⁷⁴

10.38 Mr Spencely envisaged a group "... able to pay attention to the documents that they were provided with, and understand them" and in a position to manage with authority and put into effect the client's requirements after crystallising them, but not to micro-manage. He envisaged it saying to "people higher up in the chain", (presumably a reference to MSPs), "No, you cannot have what you want, because we do not have the money or we do not have the time.... The Project Sponsor, without being a member of it would work hand in glove with the Progress Group and would attend all its deliberations, and be the friend of the Progress Group — be its trusted lieutenant."⁵⁷⁵

10.39 The SPCB's paper informed the subsequent debate on 5 April 2000 and said:"...we accept the case for a group which has the time and expertise available to it in taking forward the Project. The SPCB cannot – indeed does not wish - to divest itself of ultimate responsibility for Holyrood. But, we would wish to remit day-to-day responsibility for the Project to a progressing group."⁵⁷⁶

10.40 During the debate Sir David Steel confirmed the SPCB's acceptance of what he described as Mr Spencely's recommendation that "either a professional individual or a progress-chasing group, including professionals, should watch over the project on a day-by-day basis and report

⁵⁷³ Evidence of George Reid on 2 February 2004, Para 19

⁵⁷⁴ WS/35/001-004 - Mr John Spencely's Witness Statement, Para 25

⁵⁷⁵ Evidence of Mr John Spencely on 17 February 2004, Para 389 *et seq*

⁵⁷⁶ CB/2/660-709 - SPCB Report on the Holyrood Project – Session 1 (2000) SP Paper 99

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to us.” Donald Gorrie’s unsuccessful amendment included approval (of) “the SPCB’s proposal for a progressing group to take on day to day responsibility for the project of creating the Parliament’s new home”. In moving his successful amendment Gordon Jackson said he envisaged that a “project group of suitably qualified professionals will oversee the whole enterprise”.

10.41 I have no difficulty in agreeing with Mr Spencely’s view that the resources of the SPCB were insufficient to enable it to give the Project the time and attention which it demanded but for which it had to compete with the many other demands of the new Parliament. Against the background of the SPCB’s limited powers of delegation, the recommendation to establish a Progressing Committee was a sensible one. Unfortunately, however, in terms of both the debate itself and the papers which informed it, mixed messages were sent out as to the precise role envisaged for the HPG, as it subsequently came to be known. Mr Spencely’s Report proposed no more than that the Group should “support” the SPCB in the delivery of the Project. However, in his evidence to the Inquiry he came closer to suggesting that he had in mind a managerial rather than a supportive role. The SPCB’s paper stating its wish to “remit day-to-day responsibility” to the Group clearly envisaged a managerial role. Sir David Steel said that the Group should “watch over the project on a day-by-day basis and report to” the SPCB. The final text of Gordon Jackson’s amendment envisaged a Group to “work with” the SPCB.

Formation of the HPG

10.42 The HPG met officially for the first time on 28 June 2000.⁵⁷⁷ The first Convener was Lewis Macdonald and the first MSP members were Linda Fabiani, Deputy Convener, and Tavish Scott. It had been suggested that George Reid might become the Convener but without the endorsement of the SNP party group he was unable to accept. It had also been envisaged that each of the four main political parties would be represented but the Conservative Party did not nominate a member, after becoming aware that no Minister would be serving on the Group. There have, since its inception, been two changes in the MSP membership of the HPG. In November 2000 Jamie Stone succeeded Tavish Scott and in April 2001 John Home Robertson succeeded Lewis Macdonald as Convener. The two independent members of the HPG were Mr Andrew Wright, Architect, and Mr David Manson, Chartered Quantity Surveyor, both of whom were eminent within their respective professions and whose CVs are set out in their written statements to the Inquiry.⁵⁷⁸

⁵⁷⁷ CB/4/006–007A - Minutes of HPG Meeting of 28 June 2000

⁵⁷⁸ Witness Statements from Mr Andrew Wright (WS/39/001–034) and Mr David Manson (WS/40/001–034)

- 10.43 The Scottish Executive was asked to nominate a Minister as a member. It was concluded that it would be constitutionally inappropriate for a Minister to be involved on the ground that this might be perceived to blur the SPCB's statutory responsibility for the Project. It was agreed, however, that Mr Gordon, who had previous involvement with the Project as a member of the architectural selection panel and as Project Owner for a period, and Dr Gibbons should both join the HPG in an advisory and non-voting capacity. Although not formally representing the Executive, Mr Gordon did report back to Ministers on the deliberations and decisions of the HPG. His reports over the period from August 2000 to August 2003⁵⁷⁹ have been made available to the Inquiry and give valuable insight into the workings of the HPG. To support the HPG, Ms Sarah Davidson, a civil servant on secondment to the Parliament, was appointed as its Secretary.
- 10.44 To coincide with the setting up of the HPG it was decided and agreed that the Project Sponsor role would be split between a Project Director, and a Financial Controller, Mr Giffillan. Mrs Doig in fact left the Project Team in May 2000 and the Project Director role was filled on an interim basis by Dr Gibbons pending the appointment of Mr Alan Ezzi as Project Director in November 2000.
- 10.45 I have to question this arrangement with Dr Gibbons, which to my mind raises substantial issues of governance. I find it difficult to understand that Dr Gibbons could properly act as both the de facto leader of the Holyrood Project Team and sit as a member (even a non-voting member) of the body whose role effectively was to oversee him and his Team. There was no evidence that he abused his position, but it unsettled others and it is another example of the blurred lines of communication that have plagued this Project.

Memorandum of Understanding

- 10.46 The SPCB had identified at an early stage that a Memorandum of Understanding would be necessary to define not only the HPG's remit but also its relationship with the SPCB and the Parliament. The Memorandum went through various drafts and the final version⁵⁸⁰ was approved by the SPCB on 8 June 2000⁵⁸¹ at a meeting attended by prospective members of the HPG.
- 10.47 A significant legal obstacle to the setting up of the HPG existed in the wording of section 21 of, and Schedule 2 to, the Scotland Act 1998 which constituted the SPCB and defined its powers and which only permitted it to delegate functions to the Presiding Officer or the Clerk. In other words the SPCB had no power to delegate any executive authority to the HPG. This obstacle

⁵⁷⁹ SE/9/222-388 – Reports from Mr Robert Gordon to Ministers

⁵⁸⁰ CB/5/049-054 - Memorandum of Understanding between the SPCB and the HPG, 8 June 2000

⁵⁸¹ CB/2/288F-I – Minute of the SPCB/HPG meeting of 20 June 2000

was circumvented by an ingenious Scheme of Delegation set out in Clause 4 of the Memorandum of Understanding which stated:

‘The SPCB has delegated its function to complete the Holyrood project to the Clerk who ...in his day-to-day management of the Project....will seek the advice and assistance of the HPG and is expected to act on this advice. If, exceptionally the Clerk considers that any advice is inappropriate and should not be implemented, he will refer the matter to the SPCB.’⁵⁸²

10.48 The HPG’s remit was set out in these terms:

‘The HPG is the principal advisory body to both the SPCB and the Clerk in the management of the Holyrood Building Project. It will be a source of political liaison with the Parliament and provide high level authoritative advice on technical, professional and administrative issues relating to the project.....it will work with the (SPCB) to fulfil the terms of the resolution of the Parliament, namely to finalise the design to complete the project by the end of 2002 within a budget of £195 million; and to report on progress. In particular its remit will include:

- ‘To advise the Clerk on all issues relating to the progress of the Project
- To monitor and report periodically to the SPCB on progress made towards achieving the targets prescribed by the Parliament
- To be available for consultation by the Clerk and the SPCB on any aspect of the Project
- To promote good communications with MSPs and the public and to optimise presentation of the Project
- To make recommendations on matters within its remit
- To take formal minutes of its meetings and to inform the SPCB of key decisions / recommendations.’⁵⁸³

10.49 While the carefully crafted Memorandum of Understanding emphasised the purely advisory role of the HPG, it is interesting to note that the wording of the minute of the meeting of 8 June is strongly suggestive of a more hands-on managerial role. Paragraph 14 refers to the concern of the SPCB that it should not be taken by surprise by any “decision of the Progress Group”. Paragraph 15 said that after stage D “day to day responsibility” would be undertaken by the HPG. Paragraph 17 explained that members of the HPG needed the “reassurance and confidence” of the SPCB to enable it to “sign off any decisions, since responsibility to achieve budget and the timetable target would be with (it).” The use of such language suggests to me that the intention at the time was that the HPG would de facto be a decision making body.

⁵⁸² CB/5/049-054 - Memorandum of Understanding between the SPCB and the HPG, 8 June 2000

⁵⁸³ *ibid*

10.50 Sir David Steel, asked in evidence how deep the HPG could go in problem solving, said: “As far as we were concerned, they were welcome to go as far as they wanted”.⁵⁸⁴ Mr Grice understood the HPG was “to engage to quite a degree of detail and to engage with big decisions”.⁵⁸⁵ When asked about the decisions the HPG might take, his response was that they might take “day-to-day decisions on the project; in other words to keep the project moving” and they “would be able to take decisions — allowing the SPCB to focus on the big issues” of cost, programme and the overall quality and concept. He went on “...we had to come up with a mechanism respecting the legal position in the Scotland Act, which effectively — and I say the word carefully — effectively allowed them to make decisions. They made decisions effectively through my delegated authority, and in turn of course the Project Sponsor’s position acting under my delegated authority.”

10.51 Lewis Macdonald, the first Convener, referred in his written statement to the agreement of the Memorandum as giving the HPG the “green light (it) required in order to take full control of the progress of the Project.” He also said:

“From my point of view as Convener of HPG, it was absolutely essential that we controlled the development of the Project, the decision-making process and communications. HPG was set up to make management of the Project better focused and better understood. Had we not taken the degree of control we did, I believe the effect would have been to increase rather than reduce the potential for confusion and indecision.”⁵⁸⁶

10.52 He sought in his oral evidence to qualify his written statement to the effect when he used the phrase “full control of the progress of the Project”,⁵⁸⁷ it did not imply ownership or executive control. What it did imply was “that the day-to-day progress of the Project in terms of day-to-day management was something on which the Clerk should expect to take our advice as a very clear direction from us to him on behalf of the Parliament.” The point was clarified by Lewis Macdonald in two exchanges. The first was as follows:

“Mr Campbell QC: So unless Mr Grice was being given advice which flew in the face of something of which he was aware, either legally or politically or whatever, you would expect him to take your advice and treat it, in effect, as a decision?

Mr Macdonald: That is correct.”⁵⁸⁸

10.53 The second exchange went:

⁵⁸⁴ Evidence of Sir David Steel on 4 February 2004, Para 261 *et seq*

⁵⁸⁵ Evidence of Mr Paul Grice on 10 February 2004, Para 424

⁵⁸⁶ WS/38/001 – 012 - Lewis Macdonald’s Witness Statement, 3 March 2004, Para 11

⁵⁸⁷ Evidence of Lewis Macdonald on 3 March 2004, Para 65

⁵⁸⁸ *ibid*, Para 66

“Mr Campbell QC: .. You came into this as a group and you are quite clear in this statement you are taking decisions. All right, you are taking them in the name of the SPCB, but you are taking decisions. Do you accept that you, at the time, assumed, perhaps not instantly, but over time, responsibility so that you actually owned the decisions that were taken; you were taking responsibility for these decisions and having to face up to them if they turned out not to be correct?

Mr Macdonald: We were certainly taking responsibility for the decisions. We felt that was the only correct way to act. However, clearly the purpose of those decisions was to provide the appropriate advice to the Clerk; he in turn being accountable to the SPCB. So in a legal sense, of course, ownership of the decisions, as of the whole Project, continued with the SPCB, but in day-to-day terms, and certainly in terms of our perception of the importance of the decisions we made — our perception and that of everybody, I think, ultimately involved in the Project — was that those were critical decisions and that the HPG had the responsibility for taking those decisions, and decisions taken there would be expected to be put into force.”⁵⁸⁹

- 10.54 Mr Grice gave evidence as to his perception of the role of the HPG⁵⁹⁰ during the course of which he confirmed his intention that it should be the body in control. He thought that there had been “a pretty clear line of control and command with the HPG effectively sitting at the top of that in terms of the day-to-day management of the Project.” The HPG was there “to monitor cost and programme and to lead the decisions on major issues”. His view was that “the clear will of Parliament was that another group should oversee the day-to-day management of the Project”. The wording of the Memorandum was to give the HPG as clear a power over that as possible.
- 10.55 Any doubts as to the day to day management responsibilities being assumed by the HPG were dispelled in terms of the HPG’s own newsletter No 1 issued in July 2000 in which it was reported: “As of 20 June 2000, day to day management (my emphasis) of the new Parliament Project has passed to the Holyrood Project Group.”⁵⁹¹
- 10.56 All this evidence tends to confirm my impression that it was intended from the outset that the HPG would be a de facto decision making body with “hands on” management responsibility. The scheme of delegation set out in the Memorandum of Understanding represented an ingenious solution to the constraints imposed by section 21 of the Scotland Act. At the time this arrangement was set up, no-one was interested in questioning its legality and even now that would appear to be the case. However, to the extent that the HPG assumed a decision making role when under statute decision making power could not be delegated to it, leads me to a conclusion that s. 21 of the Scotland Act might be reviewed as regards the powers of the

⁵⁸⁹ *ibid*, Para 112 *et seq*

⁵⁹⁰ Evidence of Mr Paul Grice on 1 April 2004, Paras 3 to 19

⁵⁹¹ CB/6/186–189 – HPG Newsletter No.1, 1 July 2000

SPCB to delegate. To be fair to him Mr Grice appears to have grasped this. In his evidence he said:

“Say, for example, (the SPCB) had had a power under the Scotland Act to delegate to other bodies or persons — and that is hypothetical — but in all probability I would have recommended establishing a proper sub-group with proper functional delegated responsibility. That would have been much clearer.”⁵⁹²

He also said:

“I think that had the Corporate Body the power to give executive delegation to the Progress Group, I am certain it would have done; and certainly, that would have been my recommendation, but that option was not open to us.”

Training for HPG Members

10.57 No formal training was provided for the non professional members of the HPG. They did not, for example, have the benefit of a briefing paper such as that prepared for the assistance of the SPCB at handover in May 1999. The steering brief provided to Lewis Macdonald as Convener was concerned with procedural matters. On the other hand there was available to the HPG material such as the Spencely Report. Linda Fabiani, in her written statement to the Inquiry, said:

‘The HPG members did not receive any specific training for the task. Although I had the advantage of some familiarity with construction procurement I had no prior familiarity with construction management and there was an immense amount to learn. It inevitably took a matter of some months to get on top of the complexities of the whole project which were so much greater than I had envisaged.’⁵⁹³

10.58 Mr Gordon in his evidence said that over the summer of 2000, both the professionals and MSPs, spent time getting themselves up to speed and that “by the autumn of 2000 it had got firmly into stride”.⁵⁹⁴ This observation has to be treated with some caution, as at the time of the Inquiry at least one member of the HPG had not wholly grasped the range of Bovis’ responsibilities as Construction Manager.⁵⁹⁵

⁵⁹² Evidence of Mr Paul Grice on 10 February 2004, Para 454

⁵⁹³ MS/22/001-024A - Linda Fabiani’s Witness Statement, 8 March 2004, Para 5.4

⁵⁹⁴ Evidence of Mr Robert Gordon on 23 March 2004, Paras 80 and 92

⁵⁹⁵ Evidence of Jamie Stone on 9 March 2004, Para 96 *et seq*

10.59 Mr Wright and Mr Manson, the two independent professional members of the HPG both brought to its deliberations the benefit of their very extensive professional experience. They were notably influential but I continue to find it odd that they were full but non-voting members of the HPG. I would have expected the more conventional arrangement that they, along with Mr Gordon and Dr Gibbons, were “in attendance”. If that had been the arrangement, sharply deteriorating relationships with the likes of Mr Ezzi might have been avoided.