

11 June 2008

STRUT INCIDENT AND WATER INGRESS – RECOVERY OF COST

Background

1. At the meeting of the Corporate Body on 28 May we reported orally on the progress of negotiations aimed at recovering the costs of dealing with the incident in the Chamber on 2 March 2006 and water ingress in the basement Car Park. This paper confirms the Corporate Body's decision to proceed as proposed.

Timing

2. Urgent. In view of the earlier discussion, we are keen to pursue this matter to a conclusion.

Discussion

3. At the time of the incident, the Corporate Body's primary focus was on remedying the defect and on ensuring that Parliamentary business continued in the meantime. Subsequent to that, with Corporate Body agreement, we commissioned expert advice from Atkins into the cause of the failure. We have also taken advice throughout from Shepherd & Wedderburn, our external legal advisers, on the best approach to recovering costs, bearing in mind, in particular, the expense involved in pursuing formal action.

4. The advice we received, previously reported to the Corporate Body, was that the primary cause of failure was poor workmanship by the firm which installed the roof – Cowley – who were a sub-contractor of Laing O'Rourke. There were also a number of points and queries to raise with Arup, the structural engineer. Bearing in mind the amounts of money involved, the clear steer from the Corporate Body was to make as much progress as possible by negotiation.

5. A critical issue for determination as part of those negotiations was the quantum involved. We had been operating on a broad figure of £1m. This was based on accounting records which reflected any cost which appeared to us was related to the incident. However, following the interrogation of those figures as part of the negotiation with Laing O'Rourke in particular, a quantum of £800,000 was established as the basis for negotiation. The difference is principally accounted for by additional work which was carried out to provide firm assurances to ourselves as client over and above that required to rectify the fault. This included doweling work, wind testing and the separate repair of a node. In particular, the Corporate Body took a view at the time that they wanted every connection pinned with a dowel to provide complete assurance and public confidence, notwithstanding the fact that the technical advice was that only a proportion of the struts with a similar connection detail required to be pinned. The other element which was not included in the agreed quantum was some £53,000 of legal fees which had been incurred by our legal advisers. We sought to recover around a third of our legal fees in the agreed

quantum, reflecting the proportion of pre-litigation costs that might be recovered in commercial negotiations.

6. Following several rounds of negotiations over a period of months, we reached agreement with Laing O'Rourke that they would meet £575,000 of the client's cost of dealing with the strut incident. In addition, Arup agreed to waive 50% of the fee for the work which they did in the immediate aftermath of the failure and which was critical to fixing the roof in the Debating Chamber and enabling business to resume – this amounted to £72,000 plus VAT. This equates in total to a recovery of some £647,000. This represents just over 80% of the costs arising directly from the strut incident.

7. In bringing this forward to the Corporate Body for consideration, we took advice both from construction professionals and our external legal advisers. Their view is that this is a "sensible and robust deal" We note, in particular, the consistently given advice that the cost of pursuing this matter through formal proceedings such as court action or adjudication would be very high in relation to the amount of money at stake. Further costs ranging from a minimum of £30-40,000 (on adjudication) to well over £100,000 (in court) may have to be incurred with no guarantee of success and the very real risk that we could end up with considerably less than we had already achieved.

Water Ingress

8. As explained in the previous Corporate Body paper, negotiations with Laing O'Rourke on the recovery of costs incurred in dealing with the water ingress in the basement car park have proceeded in parallel with those on the strut. We have spent around £100,000 in managing the problem. Investigations were not able to confirm conclusively whether the problem was attributable to defective workmanship or traffic over the waterproof membrane in the course of construction. Laing O'Rourke is pursuing an insurance claim in respect of the latter but, in the meantime, agreed to pay £50,000 towards the client's costs on the understanding that, if the client considers that further remedial work may be necessary, Laing O'Rourke could be liable for additional costs.

Practical Implications

9. The Corporate Body's strategy in bringing these negotiations to a conclusion has been based on withholding release of balances held in respect of work under the contracts (retentions). Subject to the Corporate Body confirming their decision to approve the agreements reached at working level, we will release outstanding balances due to Laing O'Rourke and to settle Arup's invoices – after, of course, deduction of the amounts agreed above.

Decision

10 We would be grateful for confirmation of the decision to proceed to conclude the matters with Laing O'Rourke and Arup as advised above.

Clerk/Chief Executive
5 June 2008