

## **APPENDIX 11:        E-MAIL EXCHANGE WITH MR MCNICHOLAS**



## CORRESPONDENCE WITH MR MCNICHOLAS (STDC)

I emailed Mr McNicholas copying in Mr King of Avison Young on 21 November 2019 at 8:28 PM as follows:

*"John Further to my email and my earlier conversation with Michael King I would be grateful if you would confirm this meeting by lunchtime Thursday as otherwise I will [have] insufficient time to make travel arrangements and we stand to lose another 2 weeks. Kind regards"*

I followed this up with an email to Mr McNicholas, copying in Mr King, the following day at 12:17 PM stating:

*"John/Michael*

*I have yet to hear from either of you regarding tomorrow's meeting with John following my previous emails, my conversation with Michael and your team conference call last night. However, I understand that John has availability in Redcar on Friday afternoon and, having checked with Ian, he could be free in the afternoon as well subject to rearranging his diary such that we would be happy to meet tomorrow afternoon in the event that John is unable to make 9AM.*

*We are all busy but hopefully share a common objective of moving discussions forward to narrow down the issues and I therefore look forward to your confirmation of the position."*

Mr McNicholas finally responded at 5:47PM as follows:

*"I have been on leave today.*

*Unfortunately I am unable to meet tomorrow. Such a visit would need to be appropriately planned and properly structured, and my team here would need a degree of time to prepare.*

*We would also need to ensure that the context of the visit is understood and accepted and that expectations are suitably managed."*

Bearing in mind that I had already explained to Mr McNicholas that the purpose of the meeting was for RVA to meet with him and for RVA and me to review the STSC database it appeared to me that Mr McNicholas had, at best, misunderstood my intentions hence I responded on 22 November 2019 as follows:

*"Thank you for your email.*

*At our meeting on Friday 15 November 2019 you offered to meet with RVA Group to give them the benefit of your knowledge. I confirmed that I welcomed and indeed was pressing for the opportunity for such a discussion in an attempt to help both parties move towards a common understanding of the factual position. This arrangement was further confirmed in my email dated 19 November 2019.*

*As I have previously explained, the context is that my advice is being relied upon by 3 banks. You have advised that you consider that you have certain information and knowledge as to the factual position of the site such that, in your opinion, RVA are, without the same information and knowledge, unable to provide my team and therefore the banks, with accurate advice. It stands to reason, therefore, that if our discussions are to move forward, this information must be shared. I would be*

*grateful, therefore, if you would confirm, in writing, exactly what you are offering and provide some dates for a meeting so that I can check availability.*

*You also confirmed at our meeting that the RVA team would be able to view the OR records on the STDC/STSC database and I was given the clear impression that you would provide unfettered access for viewing. The purpose of our meeting in that regard was also clearly stated in my previous emails but, for clarity, RVA, in the absence of any information from STDC as to what is actually on the database by way of an index or contents summary, need to have an initial review and then return at another date to take detailed notes from the information itself. Until the initial review has taken place we cannot advise with any certainty as to the amount of further time required as we do not know what is on the database. I see no reason why this could not have taken place today as your attendance for this is not required. Notwithstanding this, please provide further dates so, again, I can check the availability of RVA.*

*The burden on STDC in providing access to the database simply comprises a single person in a minivan transporting the RVA team in the morning from Steel House to the STSC/STDC offices and back again in the late afternoon and showing them into the relevant room. This is hardly a burden on STDC or STSC and, in any event, I would remind you that, whilst STDC appear to have custody, control and/or access of/to the database, these records actually belong to the OR who is appointed to act in the best interests of the banks on whose behalf we are appointed, not STDC. I look forward to your assistance in this regard.*

*In the meantime, it would be extremely helpful if you would provide me with a full index of all documents held on the database as that may shorten the process.*

*As an additional point we have yet to receive, via Gowlings, your further response and information in respect of our "Documents Required for CPO Compensation Assessment" dated 25 October 2019. It was evident from our meeting that you had already prepared a response for delivery via Gowlings. In the absence of a substantive response from Gowlings to date on this matter please advise as to when this will be provided so I can suitably manage expectations.*

*I look forward to your confirmation on all these points."*

Mr McNicholas responded on 22 November 2019 as follows:

*"Regarding your email below, there are two principal issues to be considered: (1) the provision of requested documentary information, where permissible and available, and where not previously supplied; and (2) the potential opportunity for representatives from your wider team to visit site to meet with myself (and some of my colleagues) to gain a better understanding of site and, indeed, asset context.*

*As was explained at the meeting in your London office on the 15th, much of the latest information request is information that has been asked for before, that we are not the owners of and have no jurisdiction over, nor do we have it. It will be for the OR to grant access, where the information does exist, and I confirmed to you that I have written to the OR seeking such permission, and await a reply, although I can confirm that the OR has offered to speak with me about the request in the first instance.*

*Some of the information you now request is information that we are able to provide but which has been provided before, on more than one occasion, and I confirm that you advised that you have not necessarily been supplied with all of the information that was sent to Duff & Phelps et al in 2018, nor subsequent to this. In essence, you reported that you may not have a complete picture on what has*

*previously been provided across the past 15 months and that, accordingly, the latest schedule of information was compiled by yourself as a "sweep-up", to make sure you and your team are in receipt of everything that has previously been issued and/or is now available as new information. If this is indeed the case, clearly, the information flow from Mishcon de Reya to your team has not been as effective as perhaps it should have been, which is unfortunate.*

*Regarding your fourth paragraph, my advice regarding the potential availability of information under the OR's jurisdiction, that was made available for viewing during and/or soon after the January 2019 visit to site, was clearly given in the context that it should still be available for inspection and had remained so in the intervening period since January, had your team requested further access. I will therefore check with STSC and confirm that this is, in fact, still the case and advise accordingly on arrangements for follow-up access.*

*On your request for a visit to site today (the 22nd), this was a totally unreasonable request and appears to demonstrate a lack of understanding of the complexities that impact the operation of and access to the site, and the ability to facilitate such a visit. As a prime example, I would need to arrange for STSC personnel to be on hand to assist, and these are people who are fully engaged in intensive site safety and security management activities further to the closure of the steelworks in 2015 and with the ever-declining condition of the assets and the safety hazards such circumstances present; a position compounded by the ongoing major HSE investigation into the fatalities that occurred on the South Bank Coke Ovens complex in September. STSC is, as advised, a BEIS company, and STDC has no automatic call on their time; this needs to be arranged with an appreciable degree of notice, in order that contingency site management measures can be put in place, especially in the current extraordinary circumstances. It seems that today's date was purely a function of RVA's availability, which is only a small component impacting the viability of a meeting date. I will however get back to you on this matter once we have considered the constraints and context impacting any potential visit.*

*Regarding the fifth paragraph of your email, your statement that STDC has custody of the database is incorrect. It is STSC who have custody on behalf of the OR. Additionally, you appear to be blurring the lines between the suggested simplicity of arranging a visit to view information on a computer screen and the aforementioned complexities involved in setting up a visit to meet with me and the wider team. As you rightly state, the OR is appointed to act in the best interests of the Banks, on whose behalf you are appointed. It is for this reason that we have continued to be confused as to why Mishcon de Reya continually press us for OR information when they could simply go to him direct, under directions from the Banks.*

*On your penultimate paragraph regarding the latest information schedule, I record here that we went through this with you, item by item, in some detail, at the meeting of the 15th. We will of course provide our responses and any related further information that can be provided, to Mishcon de Reya, via our appointed solicitors, Gowling. We will aim for the middle of next week for completing this action, albeit you are now apprised of the position regarding all of the items within your schedule and the fact that, for the majority, we have no further information to provide or, in respect of items concerning OR information, are presently unable to assist, pending the planned further dialogue with the OR referenced above."*

In view of the clear misunderstanding by Mr McNicholas I attempted to clarify matters on the 25 November 2019 as follows:

"John

*Thank you for your email.*

*For the avoidance of doubt it is my understanding that Mishcon de Reya have passed everything through to me that has previously been provided to them by STDC. However, you will appreciate that I will not make statements on matters predating my appointment that are outside of my personal knowledge and I cannot speak for Duff and Phelps. If STDC consider that Mishcon de Reya is still requesting documents that were previously issued by STDC for use by Duff and Phelps and that they too are in receipt of, then please identify these and I will check the position.*

*The reference to "sweep-up" is correct to the extent that the Schedule dated 25 October 2019 brings together all the requests for documents into a single schedule so that both STDC and RVA/DWD are clear as to the position in respect of each item and the extent to which STDC/STSC are prepared/able to provide access to documents that have yet to be provided. This was intended to be helpful in dealing with this issue rather than having to refer STDC to each separate request from RVA, DWD and Mishcon de Reya.*

*As I have mentioned several times previously, Karl Dickinson advised that RVA and DWD would be given access to the database during our visit in January 2019. However, on arrival we were advised by Karl that access would be delayed and access was still not available on the conclusion of our visit. At no point subsequent to our leaving site, until our meeting on 15 November 2019, has either STSC or STDC provided any indication, in writing or otherwise, to RVA, DWD or Mishcon de Reya that access to the database was now available even though we have repeatedly requested this information. Clearly, had I been advised by STDC/STSC that the database was now available for viewing I would have made arrangements for viewing well before now and STDC would not have received multiple requests for this information.*

*You will also be fully aware that the purpose of this particular meeting was to review the database and meet with you as a representative of STDC. Access through the wider site was only required to access STSC's offices as that is where you are located. Had you advised that this location would cause you difficulty I would have been open to suggestions for an alternative location. In any event, as evidenced by our meeting in London, I have no objection to meeting with you off-site and would also be happy for the database to be hosted at a suitably accessible alternative venue.*

*The only document requested on the Schedule that had previously been provided to Mishcon de Reya comprised the Arcadis report in respect of SLEMS which I explained had been requested in error due to issues with the size of the document such that the DWD server had rejected it. I have already provided my apologies in this regard. The reference to CH2M Site Remediation Cost Estimate is clearly clarified within the comments as referring to further studies and estimates carried out since provision of the original report and not that report itself. It is therefore factually the case that none of the other documents specifically requested on the Schedule have been previously provided on any occasion contrary to the comments in your email.*

*In addition, as I have explained, I am keen to ensure that my team has access to up to date information such that I simply want to understand whether the documents that had been previously provided, as identified within the Schedule, have been superseded by further reports of which I may not be aware. To this end I look forward to Mishcon de Reya receiving your response, via Gowlings, in order that we can finally establish the precise position on each matter and move forward.*

*In this context, all communication, going forward, is to be directed through Gowlings and Mishcon de Reya and I will not be responding to further direct correspondence from you or Mr King."*

Mr McNicholas finally responded on 26 November 2019 stating:

"Peter

*I note your advice that all future communications shall be through Mishcon de Reya. However, I will take this opportunity to correct you on two fundamental points and route all further communications through Gowling.*

*When we discussed the concept of a visit to meet with me, I advised that it would require a wider team in attendance as I don't possess all of the information. This is the reason why I would require STSC colleagues to be on hand to answer any questions I was unable to. They have a much greater depth of knowledge of the site than me. I'm sure you would agree that a meeting where I was repeatedly advising that I would have to ask others would not make for a good use of your team's time.*

*On the matter of the information that was made available in connection with the January visit, we have checked, and all available information that STSC had the OR's permission to host (which STDC had no influence or control over), was collated and hosted on a cloud-based domain (OneDrive) and pass codes were duly issued to the people your team requested to have access.*

*As previously advised, we will respond this week on the latest information schedule, where, as advised, the majority of the requests relate to OR information that we are unable to provide.*  
*Regards*

*John"*