Burness Paull has a strong projects practice, with significant experience in acting for both public and private sector clients – stretching back to our involvement in the first PFI project in Scotland to reach financial close. We have worked with SFT since it was first established – on certain projects we were acting for private sector clients; in others, for public sector clients; and in a few instances, we have carried out work for SFT itself in helping to develop or refine new models. We were recently appointed via a tender process to serve as SFT’s external legal advisers. We have therefore had significant contact with SFT in the course of our work as legal advisers active in the projects market.

Our perception – and one which appears to be broadly shared by our private and public sector clients – is that SFT performs an extremely valuable role in the field of public sector infrastructure and housing investment. Given the nature of our work in this field, certain of the areas on which the Committee are seeking evidence are ones where we feel less qualified to comment. We can, however, readily comment on two themes in relation to which we consider that SFT’s contribution has been particularly important – that is to say, innovation and collaboration.

So far as innovation is concerned, we believe that SFT has demonstrated a willingness and capacity to develop new models – specifically designed to address particular challenges in the procurement and/or funding of public infrastructure. In carrying through its work in relation to the NPD model, the hub initiative, and the NHT model, SFT has applied real creativity – developing new approaches which closely match the underlying strategic objectives, while remaining attuned to the realities of the market.

In the context of projects where we have been acting for private sector clients, there were of course elements of the legal framework where we sought an improved position for the private sector partner – but that has always been against the backdrop of a model which was recognised by our private sector client as being technically sound and reasonably well-balanced, as regards its fundamental features. The challenges of introducing innovation at this level, particularly in the context of an economic climate which was far from conducive to private sector confidence, should not be underestimated. We believe that SFT has been highly successful in achieving innovation within the field of public infrastructure.

We are well aware - from our work with other public authorities seeking to develop new models for delivering or financing public infrastructure and/or new models for
service delivery (in settings where SFT was not available to give support) - that there is often a reluctance to depart from well-established approaches, even if the underlying legal principles have been fully validated. That reluctance to break new ground – and a general mindset which equates novelty with risk – has been, and in certain contexts continues to be, a major inhibiting factor in the development of new models across the public sector. The existence of a body such as SFT – which has innovation built in to its fundamental mission, and with the skills and appetite to deliver on that objective – is extremely important in ensuring continuing progress in adapting procurement and financing approaches to suit a challenging, and ever-changing, environment.

As regards collaboration, SFT has made very good progress in encouraging public sector bodies to adopt a more collaborative approach in relation to procurement of public infrastructure – and also in the context of more strategic approaches to asset management. Again, our own experience - in acting for public sector bodies who are seeking to deliver complex projects under a collaborative framework – is that it can be very difficult to break down the traditional barriers to joint working, and develop a real sense of collaborative effort towards a shared goal.

SFT’s introduction of the hub model has been an effective instrument – leaving aside its other benefits – in challenging public sector bodies to collaborate more effectively in relation to the procurement of public infrastructure, and we believe that there are good prospects for that collaborative mindset, built up through the hub initiative, to stimulate collaboration across a wider spread of projects (outwith hub), with consequential benefits in terms of efficiency and best value. The work which SFT has been carrying out in relation to strategic asset management is again very valuable from that perspective.

In addition to the above, SFT has itself demonstrated a collaborative approach in its interactions with both public sector bodies and private sector players in the infrastructure and housing field. The general perception of our public and private sector clients is that SFT is receptive to new ideas, and – equally important – is alive to the need to ensure that approaches which are taken are consistent with market requirements.

In summary, it is our view – based on our interactions, in various capacities (as outlined above) with SFT – that SFT has been highly successful in pursuing innovation, and fostering collaboration, in the context of public infrastructure and housing investment. We would be happy to expand on the above, if that would be of assistance to the Committee.

Yours faithfully

Stephen Phillips, for and on behalf of Burness Paull LLP