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5 **IN THE COMPETITION**  
6 **APPEAL TRIBUNAL**

Case No: 1298/5/7/18

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8  
9 Salisbury Square House  
10 8 Salisbury Square  
11 London EC4Y 8AP  
12 (Remote Hearing)

Wednesday 13 October 2021

15 Before:  
16 Andrew Lenon QC  
17 Jane Burgess  
18 Michael Cutting  
19 (Sitting as a Tribunal in England and Wales)

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21  
22 **BETWEEN:**

23  
24 Achilles Information Limited **Claimant**  
25 v  
26 Network Rail Infrastructure Limited **Defendant**

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29  
30 **A P P E A R A N C E S**

31  
32 Phillip Woolfe (On behalf of Achilles)  
33 David Went (On behalf of Network Rail)

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(10.30 am)

**MR KENNETH BLACKLEY (cont.)**

**Cross-examination by MR WOOLFE (cont.)**

**MR WOOLFE:** Good morning, Mr Blackley.

**A.** Good morning.

**Q.** Can I ask that the witness be handed volume D. It need not be open but have it to one hand with the statement in and also G10, which is where we are going to start the document this morning. Within G10 if you open tab 523. You will recall we saw this e-mail yesterday. This is the e-mail from Mr Sharp to you on 16th October.

Actually can you open at the same time -- leave that open but open up the witness bundle, volume D, tab 9, which is your fourth statement, at paragraph 34. This is in response to Ms Ferrier's evidence about the fact you consulted with RSSB on the new standard.

In paragraph 33 you refer to a letter of 24th March, which we will see later on. At subheading 4 you say:

"Network Rail liaised primary with Richard Sharp, a consultant for RSSB at the time during the preparation of the draft standard, in order to progress the draft as quickly as possible."

When we see, looking back at the e-mail, this from Richard Sharp at RDPA Ltd, that's Mr Sharp's consultancy company. Is that right?

**A.** It is, yes.

**Q.** Thank you. Is that a company that, in fact, acts as consultant for RSSB?

**A.** I should know the answer to that. I'm not sure what the arrangement was between the members of that company and their contractual relationship with

1 RSSB.

2 **Q.** Okay, but it is through that company that he was acting as consultant for RSSB  
3 in liaising with you about this?

4 **A.** That wasn't established at the time. When I first asked for the support of the  
5 RSSB, the person I spoke with was a person called Damon Snell. I asked for  
6 support to make documents available to me so I could ask questions and they  
7 made Richard Sharp available to me. There was no discussion as to whether  
8 that was in the context of him working as an RSSB consultant or the separate  
9 company.

10 **Q.** Okay, but Richard Sharp had been employed by the RSSB for quite some period,  
11 hadn't he?

12 **A.** Yes.

13 **Q.** Was he still employed by the RSSB in an employment capacity as well?

14 **A.** Yes.

15 **Q.** So you were not sure whether he was acting as an external consultant or  
16 internally for RSSB at this stage?

17 **A.** I don't think I had ever come across RDPA Ltd at that point in time. I had only  
18 engaged with both Richard Sharp and Don Clarke in their capacity as acting  
19 on behalf of RSSB.

20 **Q.** Okay. Well, if you turn over the page, he sends you the API. If we turn to the  
21 next tab to volume G10, which is 524, we see the first draft that you receive.  
22 Sorry. Let's just check. Was this the first time you saw the API?

23 **A.** Back in October '19, yes, it would have been.

24 **Q.** Okay. If we turn the page to page 4949, we see the version history. Although  
25 there are no dates on this, the two versions, version 0.1, initial draft issued by  
26 Rachel Civval. I think we saw she's somebody who worked in the software

1 field for Altius?

2 **A.** For Altius, yes.

3 **Q.** Do you know Rachel Civval at all?

4 **A.** No.

5 **Q.** Version 0 .2 we can see:

6 "Edited in line with comments from Richard Sharp."

7 The edits presumably made by Rachel Civval, and the comments by Richard Sharp.

8 Richard Sharp is not a software engineer or anything like that, is he, to your  
9 knowledge?

10 **A.** No.

11 **Q.** So he wouldn't be providing technical comments about the drafting of code and  
12 the like?

13 **A.** I don't believe so.

14 **Q.** Or how this would work at a sort of technical architecture level. He wouldn't be  
15 commenting on that. Do you know what comments he made on the draft?

16 **A.** No.

17 **Q.** Did you think it was appropriate for you to ask when you received this?

18 **A.** It didn't occur to me to go into it. What Richard Sharp had been asked to do was  
19 liaise with Altius to produce the specification for the API.

20 **Q.** We can see he made some comments on it at some point.

21 Now I take you to page 4965. I am sorry. Could you start on page 4951 perhaps for  
22 the tribunal's benefit. 4951. Overview background.

23 "The development of APIs is required between the RISQS portal and approved  
24 suppliers assurance providers."

25 So at this stage the idea is something that links alternative suppliers assurance  
26 providers can provide information into the RISQS portal. That is how this

1 would work?

2 **A.** That's correct.

3 **Q.** That is what the next paragraph says.

4 With that, can you turn to page 4965? This is in a section starting on 4964 headed  
5 "Verification Change". There seem to be a series of fields or aspects of data  
6 on page 4964, starting with "Audit ID". We turn over the page. There is  
7 a message time stamp, supplier ID, supplier name, verification status and  
8 expiry date. You see a series of headings. "Supplier ID", it says in it:

9 "This is the supplier's RISQS ID, which is an RISQS identifier used to identify  
10 a specific supplier."

11 Can you see that on the page?

12 **A.** Yes.

13 **Q.** So it seems to be a sort of aspect of this API that it is a required field that each  
14 supplier has a RISQS ID. Yes?

15 **A.** Yes.

16 **Q.** Did you read this API specification when you received this in October?

17 **A.** I certainly read it. Most of it was code, which didn't mean anything to me.

18 **Q.** So did you note this particular requirement at the time in October?

19 **A.** I couldn't say whether I specifically would have known the fact there was  
20 a RISQS ID, but the idea of having a unique identification number wasn't  
21 a surprise to me.

22 **Q.** Okay. You say a unique ID number, but a unique ID number doesn't have to be  
23 a RISQS number?

24 **A.** No, that's correct. We did subsequently discuss this. We actually had meetings  
25 between RSSB, Altius, Achilles and Network Rail.

26 **Q.** So each supplier in a sense in the portal would need to have a unique identifier

1 associated with it, so there is no confusion between companies with similar  
2 names?

3 **A.** That is correct. There appears to be, now reading it, there was an assumption  
4 made at the time that number could be the RISQS ID number, because  
5 historically that's what Altius had used for providing to RSSB RISQS.

6 **Q.** You could, for example, have used the Companies House number?

7 **A.** That was an option discussed at the meetings.

8 **Q.** If we go to tab G30, and we did briefly look at part of this e-mail yesterday, and  
9 I was going to carry on with this. G30, page 5141, at the bottom of the page.  
10 G10, tab 530. Yes? You will see an e-mail at the top of the page dated  
11 23rd October, forwarding an e-mail of 17th October at the bottom. Yesterday  
12 I think we looked at the 17th October one, which is the e-mail where you  
13 referenced drawing analogy between getting it done in 7 days and the Brexit  
14 deal?

15 **A.** Yes.

16 **Q.** Which you said was somewhat tongue in cheek. That e-mail at the bottom you  
17 sent to, amongst other people, to a John Winnifrith of Network Rail. Who is  
18 Mr Winnifrith?

19 **A.** He is a senior standards control manager at Network Rail.

20 **Q.** The actual e-mail at the top of that page, 23rd October -- having said it would be  
21 done in seven days, this is some six days later, you send this e-mail to  
22 Mr Winnifrith from you. You say:

23 "John, both Richard Sharp and myself are available Thursday afternoon to discuss  
24 your comments relating to Milton Keynes and their arrangements for sending  
25 a meeting invite."

26 So am I right to understand that you and Richard Sharp had a meeting with John

1 Winnifrith at this date?

2 **A.** Yes.

3 **Q.** So Mr Sharp had been at the options meeting the day before the tribunal handed  
4 down its order in this matter on the 11th. He was at that meeting, where you  
5 first started discussing how the standard would work, and then he was  
6 responsible for providing the API and made comments on it. Yes?

7 **A.** Yes.

8 **Q.** And now you are having a meeting with him about the NR302 standard on  
9 23rd October. Yes?

10 **A.** Yes.

11 **Q.** The API is going to be an API between Altius' system and Achilles' system, isn't  
12 it?

13 **A.** It's any approved supplier assurance provider feeding into the Altius system,  
14 which at that point in time was exactly the same system they used for RSSB  
15 RISQS.

16 **Q.** So I can see that that API, although it needs to be there, the APS is not itself  
17 a Network Rail document as such, is it?

18 **A.** No.

19 **Q.** But the Network Rail standard, the NR302 standard, that's a Network Rail  
20 document, isn't it?

21 **A.** That is correct.

22 **Q.** Is it appropriate for you to be discussing the content of a Network Rail standard  
23 with somebody who is not in Network Rail at an early stage in the drafting?

24 **A.** The difficulty with this, preparing this standard at the point of time we are talking  
25 about is that within Network Rail, whilst Network Rail may have a high level  
26 standard that previously existed, Network Rail have never really had the detail

1 ever since the inception of supplier qualification system, which started in 1997  
2 all the way through to the present day.

3 When Achilles first started it, Network Rail had relied upon Achilles to provide the  
4 system between 1997 and 2014, and then from 2014 to 2018 we had relied  
5 upon RISQS providing the detail with Achilles' support. Then from 2018,  
6 1st May, it then was RSSB RISQS with the support of Altius and Capita. So  
7 all the way through that process, for all those years, the detail resided in the  
8 company providing the service to us.

9 **Q.** Okay. Well, you say it relied on RISQS providing the detail between 2014 and  
10 2018. It was actually Achilles providing the service at that point, wasn't it?

11 **A.** It was in the back office, behind RSSB RISQS it was Achilles providing the  
12 service.

13 **Q.** We are going to look at that later on. It is not accepted by us that that is  
14 a characterisation of it. We will come to that.

15 Okay. I am not sure you quite answered my question. I asked you whether it was  
16 appropriate for you to be discussing with somebody outside Network Rail  
17 a draft standard at an early stage in its inception and was it appropriate for  
18 you to be doing that?

19 **A.** I believe it was, because I was trying to get the best possible information from --  
20 I will call it the original source. The original source at this point in time was  
21 from RSSB RISQS.

22 **Q.** The original source of what?

23 **A.** The detail behind how the scheme operated actually resided at that point in time  
24 with RSSB RISQS.

25 **Q.** Okay. But if you were going to discuss it with outsiders, if I can use that term,  
26 this is a standard that's going to allow for multiple different assurance

1 providers in the market, isn't it?

2 **A.** It is, yes.

3 **Q.** Including both RISQS and Achilles?

4 **A.** RISQS, Achilles and anybody else that comes along subsequently.

5 **Q.** So if it was appropriate to be discussing it with RSSB at this point, who own  
6 RISQS, it would be appropriate to discuss it with Achilles as well, wouldn't it?

7 **A.** The arrangement I had with Richard Sharp was that everything we discussed in  
8 the preparation of this, the information he was providing to me was  
9 confidential. He wasn't allowed to go back and discuss it with RSSB RISQS.  
10 There was no confidentiality, you know, undertaking agreement put in place,  
11 but that was a discussion we had at the outset, that whatever we were  
12 discussing, he wasn't allowed to take that back and actually share it with  
13 RSSB.

14 **Q.** Okay but I think you said he was still employed by RSSB at that point?

15 **A.** He was a consult at RSSB. Every time I had an interaction with him he typically  
16 was in RSSB's offices.

17 **Q.** But he couldn't wipe the information from his mind, could he?

18 **A.** No, he couldn't.

19 **Q.** If you go now to tab 545 in this bundle. There should be a letter at page 5219.  
20 Tab 545. It is a letter of 18th February signed by you to Ms Ferrier at Achilles.  
21 This is the letter where you send the standard to her, I believe. You say in the  
22 second paragraph, following judgment you have been working to develop the  
23 new standard.

24 "The development involves a number of stages. There is a standard drafted by a  
25 working group. The working draft is circulated more widely with internal  
26 stakeholders."

1 Then you say:

2 "It was circulated for stakeholder review in mid January."

3 You see that. By 31st January. Then at the bottom of the paragraph, starting "New  
4 standard", in the last sentence you say:

5 "While the consultation process is an internal Network Rail procedure and not  
6 a public market stakeholder consultation, the RSSB also provided input, given  
7 its role as administrator of the RISQS scheme."

8 So you suggest there that RSSB had input at the consultation phase, but you don't  
9 mention anything about Richard Sharp or RSSB providing input at this stage  
10 of drafting, do you?

11 **A.** No.

12 **Q.** Okay. Over the page, you say you are making a copy of the draft standard --  
13 sorry. Perhaps pause. The paragraph that splits the page, you say you will  
14 only implement the standard should the appeal of the judgment be  
15 unsuccessful. So you are sending this to Achilles even though the  
16 proceedings have not finished?

17 **A.** Yes.

18 **Q.** So you accept that it is possible to discuss this with Achilles before the final  
19 judgment from the Court of Appeal?

20 **A.** I felt it was appropriate to make available in a reasonable timescale. So rather  
21 than just sit on, it I didn't see any harm in sharing it with Achilles.

22 **Q.** So in autumn, the reason you were not sharing it with Achilles was not because  
23 the proceedings were still going on, was it?

24 **A.** No, I think it was because the standard still had not reached a suitable level to  
25 share.

26 **Q.** But you were sharing it with Richard Sharp at that point?

1 **A.** I was taking advice from Richard Sharp in the drafting of the standard and  
2 because of that process, yes, he had access to various drafts.

3 **Q.** Okay. The last sentence that starts on the page:  
4 "The standard is to be formally published on the next quarterly publication date,  
5 6th June 2020."  
6 Presumably, this was too late for 6th March 2020?

7 **A.** I believe so, yes.

8 **Q.** "However, standards may be available to preview up to three months earlier, and  
9 currently it is our aim to put the standard up for preview during March 2020,  
10 so that implementation of the (inaudible) is not delayed. Subject to Achilles'  
11 compliance with the standard, Achilles should be able to compete for supplier  
12 assurance services in advance of 6th June 2020."  
13 In fact, you were also willing to contemplate competition on the basis of a draft  
14 standard, weren't you?

15 **A.** Whereabouts do you read that?

16 **Q.** Look at the page, the top paragraph on page 5220. You say at the very top  
17 paragraph:  
18 "However, standards may be available to preview up to three months earlier, and it is  
19 currently our aim to put the standards up for a preview during March 2020."  
20 **A.** Yes. What I envisaged by previewing the standard was it allowed Achilles to  
21 effectively prepare to submit an application to become an approved supplier  
22 assurance provider, so they could start that process as early as possible.

23 **Q.** So the process of applying and getting authorised could overlap with the notice  
24 period before the standard --

25 **A.** Before the standard went live in June.

26 **Q.** So in a sense Network Rail's publication dates wouldn't be a cause of delay?

1 **A.** I don't believe so.

2 **Q.** Okay. That was the intention at that point. So you say you are making a copy of  
3 the draft standard available outside non-publication timetable, and you allow  
4 them to apply. You also enclose the next couple of paragraphs:

5 "Network Rail has also been working to develop specifications for an API. I enclose  
6 a copy of the Sentinel API functional spec, version 2.0."

7 So you attached at that stage both the draft standard and API.

8 Now, that's the first time you sent the standard and the API to Achilles, isn't it?

9 **A.** It is, yes.

10 **Q.** That's their first opportunity to see them or comment on them. You are not  
11 inviting Achilles' comments on the standard, are you?

12 **A.** No.

13 **Q.** But you recall we saw yesterday the tribunal's indication at the handing down of  
14 the order that you should allow Achilles to comment at the stage when it is still  
15 in draft and still being changed?

16 **A.** Yes, I was not aware of that requirement.

17 **Q.** You were also aware of the indication you should act in a non-discriminatory way  
18 as between supplier assurance providers?

19 **A.** Absolutely. This is why we have gone to the effort and activity of actually  
20 preparing the standard the way we did. I think you will find later on, when we  
21 come to other evidence, that even though Richard Sharp was involved, I was  
22 actually quite clear that this is Network Rail's standard, and whilst he can offer  
23 comment and information providing in drafts, Network Rail were making the  
24 decision as to the content of that standard.

25 Actually, the content of the standard did not really suit RSSB at the end of the day.

26 I don't know whether I should call it a complaint, but they certainly expressed

1 that the standard was not entirely to their liking, that it was going to cost them  
2 time and money to comply with it. At that point it was irrelevant to me,  
3 because I wanted the standard to be a level playing field so that whether it  
4 was RSSB RISQS or Achilles Link Up, or any other assured supplier that  
5 came along, we had something to measure them all against.

6 **Q.** When did they express that view to you?

7 **A.** I am going to guess here at the timescale. I would guess it would probably be  
8 the summer, after the publication of the standard, between the point --  
9 probably between June and the implementation of it, when they were actually  
10 wrestling with the fact that they were having to change their systems to  
11 comply with the new standard.

12 **Q.** They had the opportunity to comment, didn't they, in January 2020?

13 **A.** Richard Sharp was involved.

14 **Q.** Well, you say in this letter in addition to Richard Sharp's involvement in October,  
15 on both 5219 , third paragraph up, starting "The new standard was circulated  
16 for stakeholder review", in that paragraph at the bottom, the last sentence in  
17 that paragraph, starting:

18 "While the consultation process is an internal Network Rail procedure and not a  
19 public market stakeholder consultation, the RSSB also provided input, given  
20 its role as an administrator of the scheme."

21 You are saying there that not just Richard Sharp but the RSSB provided input in that  
22 consultation phase?

23 **A.** I think that is Richard Sharp.

24 **Q.** In his capacity wearing his RSSB hat, he is giving input?

25 **A.** As far as I am concerned, in his capacity as Richard Sharp, but effectively he  
26 was lent to me in the process, in order for me to obtain information that

1           resided with RSSB.

2 **Q.** But when you wrote in this letter, were you referring to input given in October or  
3           input given during the consultation phase in January?

4 **A.** Richard Sharp was primarily involved at working group stage. He wasn't one of  
5           the Network Rail stakeholders who would have commented.

6 **Q.** Okay. This suggests to me that there was also (inaudible) to RSSB in January.  
7           Is that right?

8 **A.** There was no other comment from RSSB other than Richard Sharp.

9 **Q.** That wasn't my question. Did you circulate this for comment in January to  
10          RSSB?

11 **A.** No.

12 **Q.** Your letter indicates that you did engage with RSSB during the consultation  
13          process. Okay. Now their response is over the page at tab 546. They  
14          respond pretty quickly. You write to them on 18th February and they write  
15          back on the 28th, having had a chance to review this, ten days later.

16 They raise three areas of concern. There is a fourth one but it doesn't really raise  
17          concern. I am not going to go into massive detail. We can see where you get  
18          from on each of these on due course. They raise concerns about a conflict of  
19          interest. They raise concerns about engaging the RSSB. You will see the  
20          second paragraph, under heading 1:

21 "We are not surprised that RSSB can participate in the stakeholder consultations."

22 You see Achilles thought, as per your letter, you had sent it to RSSB in January.

23 "There is an obvious potential conflict for RSSB helping to develop the rules on  
24          which RSSB will compete." And so forth.

25 It is assuming -- it notes concern. It doesn't reject the standard on that basis, does  
26          it? It simply notes a concern?

1 **A.** Yes.

2 **Q.** More substantively, heading 2, which says "Section 5 Introduction", Miss Ferrier  
3 raises some concerns about the drafting of the standard. Over the page -- it's  
4 a slightly complicated letter. It notes concerns raised. It is stated more clearly  
5 in some later letters so we can see how it goes. That is the second concern.  
6 The third concern is something about management system consultancy and  
7 impartiality, where they think that certain parts of the standard are somewhat  
8 muddled. Okay.

9 Now, your response is I think at tab 559. I apologise. Their letter was on 28th  
10 February. Your response is 24th March. It is almost a month later. That's  
11 right, isn't it?

12 **A.** Yes.

13 **Q.** That's not an especially quick response, is it?

14 **A.** I am not sure what else was going on at the time.

15 **Q.** To be fair there was a lot going on in March 2020. I think we can understand the  
16 nature of things. Perhaps that is somewhat unfair at that point.

17 Now you respond on the RSSB involvement in the consultation and you say in the  
18 paragraph there:

19 "The RSSB's involvement was confined to technical support by a single experienced  
20 individual."

21 You said you reverted to specific tasks. You say:

22 "... making some soft copies available, supporting the drafting where requested and  
23 liaising with Altius."

24 You don't name Richard Sharp there, do you?

25 **A.** No.

26 **Q.** But you do refer to the RSSB's involvement. Is the single experienced individual

1 -- that's who you're talking about there, Richard Sharp?

2 **A.** Yes.

3 **Q.** Now section 5, Introduction, you reject Achilles' complaint and you see Achilles'  
4 complaint was about inappropriate prioritisation and emphasis. You can see  
5 the nature of your response.

6 Then section 6 -- over the page, heading 3, section 6.4, Management System  
7 Consultancy, I think essentially what happens there is you clarify the wording  
8 in the standard that Achilles was concerned about. Do you recall this?

9 **A.** Yes, that is me addressing that point.

10 **Q.** Am I right in thinking the concern about managing systems consultancy, that  
11 more or less stops at this point. There is a clarification and that doesn't delay  
12 matters any further. Does that fit with your recollection?

13 **A.** Yes. It certainly didn't -- I am not sure it went on any longer but it certainly  
14 dwindled out.

15 **Q.** It didn't delay the implementation of the standard in any way?

16 **A.** No, I don't believe so.

17 **Q.** The first point we saw, the concerns about the conflict of interest, that didn't delay  
18 the implementation of the standard in any way, did it?

19 **A.** No.

20 **Q.** So it was really the section 5 point that was your heading 2, that did go on a little  
21 bit longer, didn't it?

22 **A.** The main thing that seemed to take over at this point was the use of the RSSB  
23 Altius platform. That's the thing that came to the fore.

24 **Q.** I was going to ask you in a moment. In fact, it is the API issue, that really causes  
25 delay, isn't it?

26 **A.** From my (inaudible) yes. That was the one the one that was the longstanding

1 issue through the process.

2 **Q.** Tab 561, to finish off on this point about the drafting of section 5 of the standard.

3 They respond on 31st March, a week after your letter. This really does just  
4 focus on the section 5 point. I think this sets out the concern most clearly  
5 under section 5. So referring to your drafting of the standard:

6 "The present colour coding, amber to show Network Rail does mandate RISQS for  
7 direct contractors and green to indicate Network Rail cannot mandate RISQS  
8 further down the supply chain, is inherently contradictory and does not reflect  
9 fair and accurate implementation of the legal position set out by the CAT."

10 Your explanation is that the latter is categorised as a note and any notes to  
11 accompany the standard are always colour coded green.

12 "Network Rail's house drafting style cannot be allowed to overrule a clear  
13 explanation of the legal position."

14 Then you can see Miss Ferrier sets out her view of what the proceedings have  
15 established. At the bottom of that page --

16 **A.** Can I just check what tab you are?

17 **Q.** 561. Perhaps to clarify, when I say a tab number, please always do turn to it  
18 because I want you to look at the document when I am asking you about it?

19 **A.** Yes.

20 **Q.** Do you remember this letter?

21 **A.** I do, yes.

22 **Q.** Okay. So I was just reading under section 5. If you turn over the page and you  
23 will see the first full paragraph on that page starting:

24 "Simple terms."

25 This sets out the concern:

26 "In simple terms, an internal Network Rail operative having regard to the standard for

1 the purposes of supplier assurance will understand from the standard as you  
2 have drafted it that they must use RISQS for any direct contract", and her  
3 concern is that they may think they have option whether to mandate RISQS  
4 further down the supply chain.

5 That's her concern. She attaches to the draft -- you see annex 1, suggested text.

6 Yes?

7 **A.** Yes.

8 **Q.** Am I right in thinking that's the text that ultimately was adopted in the standard?

9 **A.** I am not sure. I need to check. I didn't think that changed in the standard. The  
10 problem I had was I had to consult with John Winifreth, who is a stickler for  
11 every Network Rail protocol, so I did take Katie's letter and discuss it with  
12 John Winifreth, but I wasn't allowed to --

13 **Q.** In which case I may have led you astray on that point. I am sorry. That's the  
14 suggestion anyway. I think we are at the same point on this. This is six weeks  
15 after the standard as first been sent to Achilles, isn't it? That's not a great  
16 deal of time and delay in the process, is it?

17 **A.** I think my expectation around that time was that this matter would be drawn to  
18 a conclusion relatively quickly, such that Achilles would feel able to then apply  
19 to become a provider.

20 **Q.** I am putting to you a simple point. You sent this to Achilles on 18th February,  
21 and essentially the correspondence more or less is concluded on it, on this  
22 issue about the drafting of the standard, by roughly the end of March?

23 **A.** Yes. It then moved on to the point I suspect you will come to.

24 **Q.** We are agreed it is the API issue that really causes delay.

25 You can put away bundle G10 now. Can you be given bundle G11? The API had  
26 been sent to Achilles in February, we have established. That was the same

1 version as previously in October. There were no changes to the API between  
2 October and February, were there?

3 **A.** No.

4 **Q.** Okay. Then if you go to tab 601, this is an e-mail from Miss Ferrier to you dated  
5 16th October 2020?

6 **A.** From myself to Katie Ferrier.

7 **Q.** Sorry. Sorry. Over the page, 5645, there is an e-mail from Miss Ferrier to you  
8 dated 16th April. Yes? Then your one is your reply to her?

9 **A.** Yes.

10 **Q.** This was about a meeting that had been scheduled to discuss the API, hadn't it?

11 **A.** Correct.

12 **Q.** Miss Ferrier sets out her concerns, which is she had seen from the invite to the  
13 meeting that there were two Construction Line attendees scheduled to attend  
14 the meeting and so forth. They had Construction Line e-mail addresses. She  
15 says:

16 "As you are no doubt aware Construction Line and Altius are two brands operating  
17 under a single owner, Supplier Assessment Services, which is owned by  
18 a private equity firm. Given that this company, Altius brand, is already  
19 supplying supplier assurance service in the rail industry, we would like to  
20 understand the role of the Construction Line attendees", and so on. Are they  
21 Altius in their capacity. Are they (inaudible) new supplier assurance provider  
22 to compete", and so on.

23 There are certain confidential matters they want to discuss as to how -- next  
24 paragraph:

25 "How Network Raild /Altius will ensure ..."

26 You can see in the bottom paragraph of that page she has raised concerns about

1           whether or not Altius can ensure, if you look at the bottom paragraph of the  
2           page. Yes?

3   **A.** Yes.

4   **Q.** "A confidential matter we'd like to discuss, for example how Network Rail or  
5           Altius will ensure that and any supplier data submitted by Achilles is not  
6           accessible to other buyers on the platform."

7   She said:

8   "We had expected to discuss it with just Network Rail."

9   You respond, if you turn back to the previous page, and you say why you had  
10          requested Altius to join the call. Then, under the numbered points, short  
11          paragraph, you say:

12   "It was only recently when I asked for email addresses to issue the meeting invite for  
13          tomorrow that I noticed it had Constriction Line e-mail addresses. It is my  
14          understanding that the only reason they are there is to represent Altius.  
15          I regard them as part of the Altius team for and on behalf of Altius."

16   You don't see the distinction between Altius and Construction Line?

17   **A.** I saw the point Katie was raising, and I understand why she raised it, but at the  
18          same time if part of the Altius business, and presumably this existed when the  
19          design system for RSSB, they used these technical experts for the  
20          development of the system, then it was the expertise of the technical experts  
21          I was after at that meeting, which I guess we will come on to discuss.

22   **Q.** If you turn over the page to 5645 again, top of the page:

23   "I would not be happy if the Construction Line attended the meeting for any other  
24          reason than to respond to legitimate Achilles questions. As far as I am  
25          concerned, the individual representing Altius is part of the Altius brand and  
26          therefore not a conflict of interest."

1 Yes?

2 **A.** Yes.

3 **Q.** So you think a conflict of interest can be solved by sort of changing the hat that  
4 you are wearing in a particular meeting?

5 **A.** No. I wanted to have an open discussion during the meeting about what the  
6 concerns were and how we could overcome them. The purpose of the  
7 meeting was, given that we were trying to get this solution in place quickly,  
8 getting the right technical experts in place to have an open discussion to  
9 facilitate the solution seemed an eminently sensible way forward.

10 **Q.** You saw it as quite an open and collaborate environment. That's your view.  
11 Okay. If you go over to the next tab, 602, this is the meeting dated 17th April.  
12 We have seen this. Actually, I think it was mentioned in a different part of the  
13 bundle, but it is the same meeting note. We can jump to point 1.2. These are  
14 Network Rail minutes. Did you prepare these minutes or did somebody else?

15 **A.** No, I did.

16 **Q.** Network Rail, 1.2. First question at the meeting:

17 "Does the supplier have to register on RISQS first?"

18 An obvious concern jumped out from Achilles.

19 "Answer: During the discussion" -- this is your recording of what was said -- "it was  
20 stated by Altius and Phil Bower ..."

21 I think he is Network Rail?

22 **A.** He is a Network Rail employer.

23 **Q.** So this is Network Rail saying this, not just Altius:

24 "... the supplier would be required to complete a simple registration on the RISQS  
25 board to generate RISQS' ID. MC", which is Mark Chamberlain of Achilles,  
26 "asked what this meant. "It was confirmed by LS", so by Len Simmons, who

1 is from Altius, "that each supplier would need or would have to create  
2 a RISQS account, comprising user name and password ..."

3 This is something that suppliers would do:

4 "... would have to accept some terms and conditions and, once registered, identify  
5 within RISQS who their chosen approved supplier assurance provider is. It  
6 was stated that a supplier could not have multiple providers because the  
7 Exigo/RISQS platform would not know which one to accept/to overwrite the  
8 other. MC stated this was essentially requiring the supplier to join RISQS."

9 That's right, isn't it? If you were requiring a supplier to log in, accept terms and  
10 conditions, you are requiring then to become a member of RISQS, weren't  
11 you?

12 **A.** This wasn't the case, that those terms and conditions were the RISQS terms and  
13 conditions that RSSB publish. This was about certain terms and conditions  
14 which didn't exist at this point in time, just for the purpose of getting the  
15 RISQS number on the system. You say the terms and conditions didn't exist  
16 at this time. Clearly both Network Rail and Altius had formed a plan that there  
17 would be this requirement to log into the RISQS portal, get a RISQS  
18 username and password and sign up to some terms and conditions which we  
19 don't have a copy of.

20 **A.** There was no plan, you know, in advance. This was a discussion at the meeting  
21 where someone -- I believe it was Altius -- proposed that they saw the way  
22 this would work would be if we created the RISQS ID first, and from the  
23 RISQS ID the supplier chose which supplier assurance provider they wished  
24 to go down.

25 **Q.** This is something stated by both Altius and by at least Phil Bower of Network  
26 Rail. We saw that Mark Chamberlain was concerned about this was

1 essentially requiring suppliers to join RISQS. Katie Ferrier raised concerns.

2 This is the top of page 5649.

3 "It would be confusing for the supplier to have to create a RISQS account."

4 Then she raises the suggestion that either Achilles could handle the RISQS account  
5 or that there could be some automated process where RISQS issue Achilles  
6 a number of IDs and the data is provided.

7 So what they are concerned with is commercially, if they have to go out to the market  
8 and any supplier they want to use, they say: "Oh, you have to go away, sign  
9 into this RISQS portal and then you can come back to us", they are concerned  
10 that doesn't allow them to compete on fair terms. Is that fair?

11 **A.** I understand the point.

12 **Q.** That's a legitimate point, isn't it?

13 **A.** Yes.

14 **Q.** In response to this:

15 "Altius raised concerns regarding GDPR and the need for the supplier to accept  
16 RISQS terms and conditions."

17 So Altius seem to be suggesting that suppliers need to sign up to RISQS terms and  
18 conditions.:

19 "KF gave assurances that the contracts that Achilles have with suppliers who choose  
20 them would cover any such concerns."

21 That's the GDPR issue.

22 Then I think some emphasis was placed on this by my learned friend yesterday in  
23 questioning Miss Ferrier. I think you were here for that:

24 "KB stated that the supplier would not be required to accept RISQS terms and  
25 conditions, and the approved supplier assurance provider could request  
26 a unique ID to be allocated. A simple pro forma would be completed by either

1 the supplier or the approved supplier assurance provider."

2 So this was something you came up with on the spot?

3 **A.** Yes. The whole purpose of this meeting, as I said, was to have the experts in the  
4 room to openly auctioneer, if you like, to suggest ways that we can solve  
5 problems.

6 **Q.** You were sort of brainstorming that as a solution?

7 **A.** Yes. Essentially, I am agreeing with Katie. I am thinking Katie is right. It is not  
8 acceptable to require someone who is working for Achilles to have to sign up  
9 to RISQS terms and conditions. That's going too far. So there needs to be  
10 some kind of back step from that.

11 **Q.** I see. So you came up with this idea. Then Altius, the last sentence in that long  
12 paragraph:

13 "Altius reiterated the need for data integrity."

14 You don't record in the meeting notes that Altius agreed with that suggestion?

15 **A.** I don't, no. I don't know.

16 **Q.** There is no record in the meeting about Altius having agreed with your  
17 suggestion?

18 **A.** I don't know whether they did at that point in time.

19 **Q.** But you were taking a minute of it. It is quite a formal minute. You don't record  
20 Altius having agreed with your suggestion, do you?

21 **A.** No.

22 **Q.** In fact, you requested Altius consider numbers being allocated. So you request  
23 them to consider this as a possibility but it is not agreed at this point. There is  
24 a record of what's required to get a RISQS ID.

25 Then, last paragraph in this box:

26 "Mark Chamberlain asked if the RISQS account would be free to the supplier or if

1 there was a pay wall. Altius commented there would be a cost."

2 So Altius at this point are still expecting the supplier to sign up to their portal and pay  
3 something, aren't they, even after your suggestion?

4 **A.** Altius are.

5 **Q.** And then you say:

6 "KB confirmed that the expectation was there would be no charge."

7 Whose expectation are you talking about there? Is it a Network Rail expectation?

8 **A.** Yes, because Network Rail -- I think I say it further on. I am just trying to find the  
9 sentence. The charge by Network Rail -- they want applicants to become  
10 approved supplier assurance providers. It would include any set-up  
11 associated with the nominated supplier assurance platform.

12 **Q.** So this was not something that you had discussed with Altius previously?

13 **A.** No.

14 **Q.** You didn't walk away from this meeting with an agreed solution between you and  
15 Altius that Altius would provide RISQS IDs to Achilles to use. There wouldn't  
16 be a need for suppliers to sign up, they wouldn't have to pay anything?

17 **A.** No, this meeting was really about options. There was another option that  
18 seemed quite sensible at the time, which was that a block of numbers could  
19 be allocated to Achilles or other approved supplier assurance providers to use  
20 and allocate within their own supply chain as a surfeit.

21 **Q.** We have seen before essentially the RSSB said it was willing to go away and  
22 work with Altius to produce the API. We have seen the API was produced by  
23 Altius with early input from Mr Sharp. Now, you would agree that Altius and  
24 RSSB are Achilles' commercial competitors, aren't they?

25 **A.** They are.

26 **Q.** So it was hardly surprising when they are coming up with a solution they are not

1           trying to come up with one that's fair, is it?

2 **A.** Nothing about any of the conversations struck me that anyone was trying to be  
3           unfair. The conversation was largely about people suggesting ideas. Those  
4           ideas, if they were challenged by Achilles, so be it, but the idea was to get  
5           them to the table to find a way that was mutually appropriate to both parties.

6 **Q.** What I am suggesting to you is back in September 2019, you handed over  
7           control of this part of the process to Achilles' commercial competitors. Yes?

8 **A.** Okay. Do you want me to explain it?

9 **Q.** We have covered it. I am saying you handed over the drafting of the API to  
10          Achilles' commercial competitors. Yes?

11 **A.** There was no-one in Network Rail with the expertise to provide that API. The  
12          people who had actually set up the Exigo platform and Network Rail choosing  
13          the RISQS platform, ie, the Exigo platform, as the supplier assurance portal, it  
14          seemed -- given we had a time constraint by the CAT to get a solution in  
15          place quickly, it seemed logical, if most of our suppliers were going through  
16          that platform technologically we should be able to create some system that  
17          quickly allows --

18 **Q.** Yes, I understand that. You then, having received a draft of this API, you let  
19          Achilles' commercial competitors draft, you received it in October and didn't  
20          share it with Achilles for another four months?

21 **A.** Yes. The main thing for getting it done early was I wanted to make sure it had  
22          been done and we were not leaving it to the last minute.

23 **Q.** You could have shared it with Achilles at that point, couldn't you?

24 **A.** I could, yes.

25 **Q.** At the options meeting of 11th September, it was envisaged that it could be  
26          shared with Achilles within 14 days?

1 **A.** I am not sure if that included the API or if that was just a standard --

2 **Q.** This is important. We might need to get this absolutely clear. If you could leave  
3 bundle G11 in front of you, go back to bundle G10. It is at tab 520. On the  
4 second page of note 4935, there are two bullets involved on that page. The  
5 fourth bullet under the second heading. You see:

6 "RSSB to provide details of field names and requirements ... within 14 days. ... 302  
7 and explore the possibilities of sharing this early with Achilles, so Achilles can  
8 commence the development of their API."

9 Then the next bold bit, which is about halfway down the page:

10 "On receipt of the field names and details, NRIT shall confirm the most appropriate  
11 data transfer approach" -- it should have been API -- "after which we propose  
12 to communicate this to API to commence build of the API without waiting for  
13 the whole process to be written."

14 So this was envisaging at this stage that you could send some details of the API to  
15 Achilles early?

16 **A.** Yes, certainly the field names.

17 **Q.** And you were communicating very heavily with Achilles' competitor, RSBB and  
18 Altius through September and October?

19 **A.** Insofar as they were developing the API, yes.

20 **Q.** You can put bundle G10 away now. The point I was going to put to you, turning  
21 back to this meeting note at G11, is that any of these concerns about the  
22 drafting of the API, the requirement that everybody has a RISQS registration  
23 and that people pay, this could all have been sorted out back in October,  
24 couldn't it?

25 **A.** I think if we issued something in October, it might have brought the matter to  
26 a head earlier.

1 Q. Yes. If you had been as open with Achilles as you were being with Achilles'  
2 competitor, it could have been solved at that stage?

3 A. I probably didn't think about it in that context, because I was looking at it from  
4 a platform provider being the quickest option to get Achilles access to the  
5 market.

6 Q. If we go forward on G11 to tab 616, you will see point (a). I am going to trace  
7 through the correspondence about this API issue to see how the remaining  
8 delay eventuated. There is an e-mail from Miss Ferrier to you of 7 May. She  
9 is seeing some misalignment on what we are trying to achieve. There is  
10 a debate about the CAT's order.

11 If I can take you to your point 4 on that page:

12 "This then leads up to a series of recent calls. Looking back, we found it strange that  
13 Network Rail had invited representatives of both the RSSB and Altius to join  
14 the calls." You recall the email to you regarding RISQ developing a conflict of  
15 interests between competing bodies. "But we were very much in listening  
16 mode to understand the thinking in Network Rail about the new way of  
17 working. It was also somewhat strange", I think you said inappropriate  
18 a few minutes ago, but strange here, "to listen to a proposed solution that  
19 required Achilles' assured suppliers to also have to register with RISQS, our  
20 competitor, of whom we would have won the supply audit. However, I was  
21 genuinely shocked on Friday and Tuesday", I think referring to other  
22 meetings, "with regard to your comments regarding the status of the RSSB.  
23 You mention you did not see how Achilles could compete with the RSSB and  
24 went on to describe the role of the RSSB (industry body to establish safety  
25 standards, etc) and at a later level what is needed for Network Rail for 'the  
26 best of the industry' rather than making a profit."

1 This is on the same lines as your witness evidence. So that was your view at the  
2 time, wasn't it?

3 **A.** Yes, I remember this conversation with Katie.

4 **Q.** You remember saying that your view was that Achilles could not compete with  
5 the RSSB?

6 **A.** There's been a long running trend ever since Katie and I first met in Milton  
7 Keynes over a coffee to discuss the question of equivalence between RSSB  
8 and Achilles. That question of equivalence was -- Katie put it to me was along  
9 the lines of: "You know, Ken, Achilles have been providing this service for  
10 a number of years. We are equivalent to the RSSB and we should be treated  
11 on that basis".

12 I didn't like the word "equivalence" in that context, because the way that Network Rail  
13 use RSSB RISQS is for two purposes, not just one. We use it for  
14 a procurement point of view, they are suppliers, instead of responding to  
15 notices (inaudible) at the time. They could register under a qualification  
16 system, and that qualification system, under the utilities contract regulations  
17 was operated by RSSB.

18 This is quite an important point, because when I heard I think it was yesterday or the  
19 day before conversation about your suppliers being invisible, it doesn't relate  
20 to the assurance part. It relates to from a procurement point of view. So  
21 suppliers pay money under the qualification scheme to be on RISQS, to be  
22 visible to Network Rail when we are selecting tender RISQS. So there is a  
23 procurement part and there is an assurance part. When Katie says to me  
24 "We want to be treated equivalent", whilst the Link-Up system can do that as  
25 well for other buyers or customers, Network Rail currently does not use two  
26 systems. We use one system.

1 **Q.** Yes. I think Achilles well understand that you want to use RISQS as your  
2 procurement system and that is fully common ground. Nobody is saying they  
3 are going to force you to use RISQ as a procurement system.

4 Okay. The thing about this email is by this stage, 7th May, nobody has told  
5 Miss Ferrier that suppliers don't have to register with RISQS. That had not  
6 been said to her at this point, had it?

7 **A.** I thought I said that during the meeting.

8 **Q.** You sort of brainstormed it as an idea, but the meeting didn't record that that was  
9 agreed as an outcome?

10 **A.** So it hadn't been agreed as the outcome, but I think what was said at the meeting  
11 was that was not a sensible way forward.

12 **Q.** But the way forward wasn't settled. It wasn't settled that they wouldn't register?

13 **A.** Yes, I accept that.

14 **Q.** G11, tab 617, is an e-mail from you dated May 13th:  
15 "Thank you for your e-mail setting out how you are approaching matters."  
16 This attaches the letter which is at tab 618. You say in your letter, 5807:  
17 "Network Rail have undertaken a lot of detailed work since receiving the CAT's  
18 order, developing all necessary systems and documents to facilitate and  
19 support our multischeme environment."  
20 Under "Network Rail's approach".  
21 "Not done just within the language but also within the spirit. Also a revised standard.  
22 At the same time it shared the accompanying API document."  
23 There was not a detailed work on the API by Network Rail, was there?

24 **A.** No. It was really the standard was the --

25 **Q.** In terms of systems, these are not Network Rail's IT systems that are interfacing?

26 **A.** No.

1 **Q.** So you hadn't done work on those. Over the page to 5808, having recited some  
2 of the judgments, you are referring back to the litigation at this point as well.  
3 Underneath that you say: "The role of Altius in the RISQS platform".

4 You refer in the first paragraph under that that you had asked Altius to prepare the  
5 API spec, which has subsequently been approved by Network Rail. This was  
6 a document which was given to Achilles on 18th February.

7 You are presenting the API here essentially as a done deal, aren't you? Altius has  
8 prepared it, We have approved it. This is the API. That is how you are  
9 presenting it in this letter?

10 **A.** Insofar as a solution that Altius believed worked.

11 **Q.** But you were not presenting it as something that was open for discussion  
12 particularly, were you?

13 **A.** During the meetings we were talking about how the actual kind of administrative  
14 set-up would work, but we had never really discussed the contents of the API  
15 at that point between either with Network Rail or Achilles or --

16 **Q.** You go on to deal with alleged conflict of interest. You reject the idea of conflict  
17 of interest, nor that it is in Altius' interest to make the integration process as  
18 difficult as possible.

19 It is in Altius' interest to make it difficult, is it not? Whether they are doing it is  
20 another matter, but it is in their interest to make it difficult, isn't it?

21 **A.** I can understand why you would say that, but nothing during the conversations  
22 we were having was giving me the impression that Altius were doing anything  
23 other than trying to be constructive and helpful in offering solutions, even if  
24 their ideas were subsequently superseded by other ideas from, you know,  
25 people in the group. You know, they were being very open.

26 **Q.** You go on to talk about the primary concern of the parties involved to maintain

1 safety and so forth. You say I think in the last sentence of that paragraph:

2 "In turn, the integrity of such a system requires the universal application of a unique  
3 identifier to any audited supplier."

4 As we discussed a moment ago, I think we are agreed that need not necessarily be  
5 a RISQS ID number. You just need a unique identifier. That's right?

6 **A.** That's my belief.

7 **Q.** You go on to say:

8 "We have perhaps unhelpfully referred to this process as registering on RISQS, as  
9 this is where the master database will be held. However, whatever title this  
10 process is given, whatever the theme of the unique identifier, the principle  
11 remains the same."

12 You are retreating from saying you have to register on RISQS at this point to  
13 accepting the idea that there is a unique identifier. Yes?

14 **A.** Yes. I think this concurs with what I said during the initial meeting, where  
15 I accepted Katie's point that it seemed an unreasonable step for that to be  
16 asked for by Altius.

17 **Q.** By this time it is 13th May. Achilles responds to you just a week later at tab 624  
18 on 20 May, thanking you for your letter. Miss Ferrier in that raises certain  
19 questions about why you need an API at all and so forth. Perhaps if I can  
20 take you to page 5837, the paragraph that goes from the bottom of that  
21 page to the top of page 5838.

22 "Registering on RISQS.

23 Thank you for your comments on this point, which are welcomed."

24 So she welcomes your clarification at this stage, in late May.

25 "We were understandably concerned that one of Network Rail's conditions was that  
26 suppliers assured by Achilles will need to also be registered ..."

1 You will recall what happened at the meeting. Last sentence of that paragraph:  
2 "Based on your letter, we now understand this not to be the case, and the point  
3 under discussion here is the need for each supplier entity to have a robust  
4 unique identifier of some sort, a point with which we entirely agree."

5 At that stage there is agreement between Achilles and Network Rail that this API can  
6 work, provided it has a unique identifier in it, as long as suppliers don't have to  
7 register with RISQS. Yes?

8 **A.** Yes.

9 **Q.** Okay. You thought that would be workable?

10 **A.** Yes. There might still be some other details to sort out. For example, I don't  
11 think we have quite touched on the idea of how Achilles data would be  
12 protected in the system, but that's another example where, with modern  
13 technology, the fact that we were intending to use the existing Exigo platform,  
14 you know, with partitioning and firewalls in place, I saw no reason why, you  
15 know, those parties couldn't agree a technological solution to make it work.

16 **Q.** But in terms of Achilles' stance in this letter, they are not rejecting passing their  
17 data into the RISQS platform, are they? They are accepting it, subject to their  
18 suppliers not having to register with RISQS?

19 **A.** At that point, yes, but equally we had no acceptance that Achilles were prepared  
20 to use the existing platform.

21 **Q.** Well, I am suggesting to you that, in fact, Achilles is not arguing with you about  
22 that point. Achilles' concern is the requirement for suppliers to register with  
23 RISQS. Based on your letter they now understand the unique identifier is  
24 enough. They agree with that. They are not saying in this letter: "Oh, and we  
25 object to the API on other grounds"?

26 **A.** Okay, but we will come to that.

1 **Q.** Okay. We will see some more stuff in a few moments.

2 Now, just to go back to page 5837, under the heading which is level with the bottom  
3 hole punch:

4 "Achilles' application to become an approved supplier assurance provider.

5 In your letter you assert that it has been open to you since 9th March to apply."

6 Miss Ferrier says:

7 "The simple reason why Achilles has not yet applied is you have told us we cannot  
8 do so until the API is established. In addition, given the lack of detail provided  
9 by Network Rail as to why the API is required in the first place and not just to  
10 progress the application."

11 So it is the API that is identified as the reason for delaying the application at this  
12 point, isn't it?

13 **A.** Yes.

14 **Q.** Okay. Now I am just looking at the time and seeing how much. Fine. I will do  
15 this last point. You can put away that bundle and take up -- sir, I will be about  
16 five minutes and then we can have a break.

17 Take up bundle G13, please. If you turn to tab 652 and behind 652 you have tabs A  
18 and B. It is 652A we want. It is page 6536, a letter from you dated 23rd June.  
19 I think Miss Ferrier's letter to you was 23rd May, so this is just over a month  
20 later. There's roughly a month gap for the response.

21 "Thank you for your letter."

22 Again you refer back to the CAT order. You engage in an argument over the page at  
23 page 6537 about the measure of equivalence and referring to underlying  
24 issues. Commercial issues and so forth. Under "Commercial Issues".

25 "Network Rail has made clear the requirements of its API to interface with RISQS.  
26 This information has been with Achilles in final form since 9th March 2020."

1 Again, when you sent it in March, you didn't regard it as open for discussion, did  
2 you? It was in final form?

3 **A.** What I am referring to there is the code and stuff, but that's included in the API.  
4 In terms of the mechanism for how the structure round about it, that was still  
5 up for discussion.

6 **Q.** You go on:

7 "With respect Achilles has spent time seeking to negotiate and question the API and  
8 Network Rail's approach, rather than commencing the development of it."

9 So you don't recognise in this letter what you accepted earlier on this morning, was  
10 that actually requiring suppliers to register with RISQS is inappropriate. You  
11 don't recognise that point.

12 **A.** I don't repeat it in the letter, no.

13 **Q.** The bottom of that section, you say:

14 "While we do not believe we are under any legal obligation to do so, in an attempt to  
15 move things forward we have continued to work to find an approach that is  
16 agreeable to all parties, that is feasible and robust."

17 You set out your latest position in appendix A, which we will see in a moment.

18 Before we go to that:

19 "Achilles' data.

20 As you are aware and as I explained to you in our telephone conversation earlier this  
21 afternoon, the Sentinel scheme is not set up to cope with any overall  
22 disagreement. In the event of RISQS we have an adequate supplier  
23 qualification insurance scheme upfield of the Sentinel scheme, able to do this  
24 more robustly. However, Network Rail have listened to and considered  
25 Achilles' concerns around visibility and usage of its customer data. Since our  
26 most recent discussion we have worked with RSSB and Altius to come up

1 with a solution to alleviate these concerns."

2 Over the page:

3 "As a result Altius is creating a Sentinel API aggregator that would be  
4 a stripped-down section of the Exigo platform/database. This proposed  
5 system would not require any form of registration with RISQS on the part of  
6 suppliers. They would individually feed their supplier data into the Sentinel  
7 API aggregator that would check it."

8 What you are saying here is not just that there will be an API specification, which is  
9 the description of an API, but there will actually be part of -- how do I put  
10 this -- Altius will actually host part of their platform that will do this job. Yes?  
11 Perhaps if we look at the diagram. Go to tab B of that. Do you see behind B.  
12 You probably remember this diagrammatic description. You have current  
13 proposed solution and new solution. We can see, in the current proposed  
14 solution, Achilles and other providers would feed into RISQS, and this would  
15 go on to Sentinel. Yes?

16 **A.** Uh-huh.

17 **Q.** Now, Achilles, although they had expressed some concerns that their data  
18 should not be visible to all buyers, they had not objected to that model, had  
19 they?

20 **A.** We hadn't concluded the point about Achilles' concerns of their data feeding into  
21 RISQS and being confidential just between Network Rail and Achilles.

22 **Q.** Okay. That was fundamental from the start, wasn't it? It was well understood  
23 that Achilles was providing information to Network Rail so you could see it for  
24 Sentinel purposes. It wouldn't be visible to the whole market? That was  
25 known right from the start, wasn't it?

26 **A.** Nevertheless, Achilles had concerns that --

1 **Q.** That was known from the start --

2 **A.** When you say known from the start?

3 **Q.** From September, 2019, when you were implementing the CAT's judgment, it was  
4 known to you when Achilles was providing the information that you would  
5 need for Sentinel purposes and so on, that information should be visible to  
6 Network Rail but should not be visible to the market as a whole? Yes?

7 **A.** Of course that was accepted from the outset --

8 **Q.** That was known from the start?

9 **A.** But what Achilles' concern was when they fed their information into RISQS, what  
10 assurances would they have that that was going to be protected, given that, in  
11 Achilles' words, they were providing that information to somebody who was  
12 otherwise a competitor.

13 **Q.** We can see here that you have a current proposed solution and new solution.  
14 Diagrammatically, you can see both Achilles and RISQS now feed into the  
15 new orange icon on that diagram, which is the Sentinel API aggregator, and  
16 that passes the information to Sentinel. That's the new model.

17 So this is a change of direction by you in June 2020, isn't it? You are proposing  
18 a different solution?

19 **A.** Well, it is a different solution, but it's a compromise on the one we wanted to go  
20 for, because the current proposed solution was what everybody envisaged as  
21 the quickest and easiest to implement. You know, moving to the new solution  
22 (a) it was going to take time to develop because it didn't currently exist,  
23 whereas the proposed solution did. Actually, there were other compromises  
24 as well. At the outset, we were endeavouring to make sure both parties were  
25 treated absolutely the same. So, therefore, the information which RSSB  
26 RISQS would otherwise provide to Sentinel would be the same as Achilles.

1 One appropriate compromise we made at the point where we proposed a new  
2 solution, Network Rail had hoped that all of the supplier reports would be  
3 available via the one system. In moving to the new solution, it was scaled  
4 back enormously, so that whenever Network Rail wanted to view a supplier  
5 audit report we wouldn't be able to do it through the aggregator. We would  
6 then have to make an arrangement with in this case Achilles, to log on to  
7 RISQS to see the audit report. So it was a kind of descoping, trying to come  
8 up with something that would be acceptable to Achilles.

9 **Q.** But this is the point where Achilles has accepted this point about the use of -- so  
10 far as having to register on RISQS, as a change of direction. Very quickly,  
11 tab 666, Achilles' letter of 7th September 2020, and over the page of that  
12 Achilles' application to become a supplier assurance provider:

13 "Following receipt of your letter, Achilles is now aware of the model proposed and  
14 how the application process will operate and the fee", which I think had all  
15 been set out by this point, which it hadn't been earlier:

16 "We are not in receipt of the final API specification which you mention has still not  
17 been completed. Please can you share it with us as soon as possible."

18 In fact, they don't -- there's an e-mail from in the next tab, 30th October. So this is  
19 again nearly two months after Miss Ferrier's letter, so tab 667, 30th October,  
20 saying:

21 "I appreciate you are keen to move things forward and launch. The reality is  
22 Network Rail had a workable solution compliant back in March/April. If  
23 Achilles had accepted our proposed approach", which I think you have  
24 accepted today was unacceptable "and worked with us to develop a case we  
25 could most likely have re-entered. Achilles' rejection of that approach resulted  
26 in Network Rail's significantly changing our approach."

1 I am suggesting that Achilles did not reject that approach, did they? They suggested  
2 an amendment to it. As soon as you indicated you might be willing to accept  
3 the amendment, you changed to an entirely different approach?

4 **A.** The only reason we changed approach is because we didn't have an agreement  
5 with Achilles to base what we were doing on the current platform.

6 **Q.** Over the page, 661, most of the way down:

7 "API questions.

8 Your assumption that the API aggregator is ready and is being used by the RSSB is  
9 not correct."

10 Next paragraph:

11 "Basically, you can proceed with the development Of API at your own cost or wait.

12 We will share the final API with Achilles as soon as it is possible and  
13 available. It is our intention it should be completed by the end of next week."

14 So you are expecting that by the end of the third week in November, but you  
15 eventually sent it to Achilles in December, didn't you?

16 **A.** That's correct.

17 **Q.** So it took from June 2020, when you indicated the revised approach, to  
18 December 2020 for you to send the revised API?

19 **A.** That's correct.

20 **Q.** Okay. If we can take a break there, sir.

21 **THE CHAIRMAN:** Five minutes.

22 **(Short break)**

23 **MR WOOLFE:** Now, Mr Blackley, I think you should still have open in front of you  
24 the e-mail we were looking at before, which is in bundle G13, tab 667. I  
25 should just note at the top of the page that's where you gave Achilles' details  
26 for the first time, how to apply for email address and the fee and so forth were

1 set out. Under those bullet points:

2 "RD professional assurance have been appointed by Network Rail to carry out the  
3 SAP. Approval audit of Achilles' information limited to ensure it meets the  
4 requirement of the NR302 standard."

5 We are going to see more about that in a few moments. Here, this is where you first  
6 told Achilles, on 30th October, you were appointing RDPA Limited?

7 **A.** Yes.

8 **Q.** To return to the API point for a minute, to finish off on that, at 671, tab 671, this is  
9 your e-mail of 13th December, where you find attached the aggregator  
10 technical specification. You call it technical connection, but I think it is  
11 technical specification:

12 "You may now contact [scott.mcvey@constructionline...](mailto:scott.mcvey@constructionline...) to arrange to test the API",  
13 and so on and so forth.

14 The API itself is tab 672. At tab 672 we can see the Sentinel API aggregator. It is  
15 dated at the front, Liam Hayman-Tansley, 12/1/2020. Presumably that must  
16 not be 12th January 2020. It must be 1st December 2020. It must be  
17 American style date numbering?

18 **A.** I guess, yes.

19 **Q.** We can see from the version numbering over the page, it says "First created 30th  
20 November 2020". Then it was amended to add an API input documentation  
21 on first December 2020. So, in fact, this was only written quite late on, wasn't  
22 it, the end of November, beginning of December?

23 **A.** This version, yes.

24 **Q.** I think there was some sort of resource constraints within Altius about drafting  
25 this?

26 **A.** Yes. There was a period of months where the Altius development team were

1 committed on other work. Although they were working on this in the  
2 background, they were not at a point to be able to pull it all together and issue  
3 it.

4 **Q.** That's about Altius's resources, not about Network Rail, not about Achilles?

5 **A.** Essentially, it is Altius' resource.

6 **Q.** Okay. I think you said in your witness statement that all the delay was due to  
7 Achilles raising unjustified points. We have a period of about six months of  
8 delay which seem to be due to resource constraints on the part of Altius?

9 **A.** I think if we had gone ahead with the original plan, when we were having  
10 conversations in March and April, and the parties had continued or even  
11 collaborated more to get it over the line, then it would have happened a heck  
12 of a lot quicker. Because that didn't take place, then this lull crept in.

13 **Q.** Flipping the page over, this is quite a short and simple document, isn't it, this API  
14 specification?

15 **A.** Yes. It appears to me it is significantly simpler than the previous version.

16 **Q.** It seems to have been created on 30th November, amended on the 1st. It seems  
17 to be the work of a couple of days by someone who technically knows what  
18 they were doing with this kind of stuff?

19 **A.** I believe other work had taken place before this.

20 **Q.** For the tribunal's note, I don't think there is any dispute. On page 6709 under  
21 "Summary of requirements", the first one is aggregator ID number provided by  
22 built in functionality for any unique supplier. So this system will provide its  
23 own unique ID number.

24 Okay. I suggest to you it is really the API that delayed Achilles' application, and the  
25 delay for the API is not due to unreasonableness on the part of Achilles, is it?

26 **A.** Had we gone for the original API and were using the original database RSSB

1 were using, then, you know, that would have proceeded quicker. Because we  
2 didn't go for the Exigo database that was being used by RSSB, then we had  
3 to change the API.

4 **Q.** But that was not due to any objection on the part of Achilles, was it, that change  
5 of plan?

6 **A.** I believe it was. We would not have changed the plan had it not been for the fact  
7 we did not reach agreement.

8 **Q.** Achilles were not objecting to feeding their information into RISQS, were they?

9 **A.** I believe they were objecting to feeding information into RISQS. They were  
10 concerned about the protection of their information, once it was --

11 **Q.** They were raising some concerns about how their information would be  
12 protected when it was in RISQS, but they were not objecting to feeding their  
13 information into RISQS, were they? If I can take that back, the NR302  
14 standard itself requires in terms that the information is provided from supplier  
15 assurance providers into Network Rail's chosen supplier assurance provider  
16 platform, doesn't it?

17 **A.** Nominated supplier assurance provider, yes. That was --

18 **Q.** The NR302 standard itself requires the information to be provided into RISQS,  
19 doesn't it?

20 **A.** Yes.

21 **Q.** And Achilles accepted that part of it?

22 **A.** If I thought Achilles had accepted the RISQS model, then we would have been  
23 developing the RISQS model to actually dot the I's and cross the T's and  
24 commence with that. It is because we had not reached agreement on that  
25 that Altius came up with a kind of plan B, which was the separate agreement.

26 **Q.** What I am suggesting to you is back in May and June, Achilles was raising

1 concern about their suppliers having to register with RISQS, and then, right at  
2 the point where it seems some agreement was reached that this could be  
3 done by having some other form of unique identifier, Network Rail changed its  
4 plan and said: "we are going to go down the route of having a new model".  
5 But it didn't say to Achilles at that point that a change in model would require  
6 another six months to develop, did it?

7 **A.** No. It was clear to Network Rail it was going to take longer, but that was  
8 because we had not reached agreement on the base model. Had that been  
9 the case, I would have been delighted if Achilles had written to me saying:  
10 "Why are you changing the model? We have just reached agreement on what  
11 is to happen in the first part". That clearly didn't happen and that is what led  
12 on to the Sentinel API aggregator.

13 **Q.** I suggest to you the reason this took so long is because of the way that Network  
14 Rail and Altius handled it, because you handed development of the API to  
15 Altius, who came up with a solution that favoured them, and then you didn't  
16 share that with Achilles until February, and then, when they raised  
17 a reasonable concern about supplier having to register with RISQS, you  
18 resisted initially, and then --

19 **A.** I thought at the first meeting we accepted the reasonable concern that they  
20 shouldn't have to register RISQS?

21 **Q.** You thought at that meeting -- somebody else from Network Rail was saying the  
22 opposite, and you were saying: "Maybe we don't have to do that." It wasn't  
23 confirmed until some time later.

24 The delay in the second part of the year seems to have been due to a new model  
25 chosen by Network Rail and Altius, that took some six months to develop?

26 **A.** Because I wasn't under the impression that we had reached agreement on the

1 first model.

2 **Q.** And none of that is due to Achilles raising unjustified points, is it?

3 **A.** But it's due to us not reaching agreement to use the RSSB RISQS platform as  
4 the model.

5 **Q.** The concerns they were raising were about their suppliers not having to register  
6 with RISQS and about their data not being visible to other people on the  
7 platform, other than Network Rail?

8 **A.** Yes.

9 **Q.** Both of those are justified points, aren't they?

10 **A.** Yes, both of those points could be resolved by alternative ways of --

11 **Q.** No, they are both justified points, aren't they? They are both good points?

12 **A.** I accept the rationale for raising the points.

13 **Q.** If we can look back at the auditing point for a moment. We have to go back in  
14 the bundle to tab 668. This was an e-mail from Miss Ferrier to you of  
15 6th November, following up on the application matters, saying she would be  
16 writing to Phil Bower shortly:

17 "With details of our application as instructed. Phase one audit. We appreciate the  
18 decision to phase the audit."

19 Last sentence on page 663:

20 "As I hope you understand, Network Rail's decision to appoint RD Professional  
21 Assurance to undertake this audit is somewhat of a surprise and does bear  
22 noting for the record."

23 She refers to who RDPA are. They are a business set up two years ago by  
24 Richard Sharp and Don Clarke. Richard Sharp we have met several times in  
25 this. Mr Clarke also used to work for the RSSB, didn't he?

26 **A.** Yes, for quite a long period of time. Again, I am not sure if he was an employee

1 of RSSB or whether he was a long-term consultant of RSSB.

2 **Q.** She goes on to say:

3 "As we both know, until very recently Richard Sharp and Don Clarke were key  
4 members of the RSSB RISQS business and have supported Network Rail's  
5 position in the litigation with Achilles. Richard in particular was in the CAT  
6 and Court of Appeal during hearing days as part of the Network Rail 'team'.  
7 He reviewed case disclosure documents in the CAT proceedings. Therefore,  
8 RDPA is not independent from the subject it is being asked to audit. Given  
9 the importance of independence", which is shown in the NR302 standard  
10 itself, "it would be remiss of not to raise this point and check that Network Rail  
11 is comfortable that RDPA is the best choice for this role and that any audit  
12 would be free from bias."

13 She goes on to be concerned about confidentiality of information and trusts that  
14 Network Rail would not object to an appropriate NDA being put in place, NDA  
15 being non-disclosure agreement.

16 It is quite a measured e-mail, isn't it?

17 **A.** Yes. I think at this point also it is worth noting that both Don Clarke and  
18 Richard Sharp had then left the RSSB and were trading under their own  
19 company name.

20 **Q.** Right, but they had been trading under their company name while they were still  
21 working for RSSB?

22 **A.** I suspect the company existed while they were still working for RSSB, but  
23 whether they had been making use of it --

24 **Q.** We had seen a year before this, because this is in October 2020, but in  
25 October 2019, when you said Mr Sharp was still at the RSSB --

26 **A.** Yes.

1 Q. -- and he was received that e-mail from Altius to his RSSB account and  
2 forwarded it to you from his RDPA account --

3 A. I acknowledge that.

4 Q. You said he was working as a consultant for the RSSB in your witness evidence.  
5 So as a consultant he is heavily wrapped up with the RSSB, isn't he?

6 A. He had been.

7 Q. Ms Ferrier does not say "We are not willing to accept this." She just wants to  
8 know for concern the record. When delay is caused by this e-mail --

9 A. One further point for my last answer is that it is not just with the RSSB in the  
10 latter years. When I go back to the records of when we had -- I think it was  
11 called a Link-up Steering Group. It has been a long association with the  
12 railway supplier assurance for a long period of time.

13 Q. I think Mr Sharp used to work for J Murphy & Sons?

14 A. That's correct, Yes.

15 Q. He came to Link-up as part of that and then to the RSSB?

16 A. Yes.

17 Q. So she raises these concerns but is not refusing to have the audit. There is no  
18 delay arising from this. She is simply noting her concern for the record.

19 Your response to her is at tab 669, and you say you took a decision to appoint RDPA  
20 because they are experienced and familiar with supplier qualification  
21 requirements. There is no dispute there.

22 "We are confident that the audits ... performed by RDPA will be free from bias."

23 But you don't present any reasons why it would be free from bias, do you? You just  
24 assert it will be free from bias?

25 A. I do, yes.

26 Q. But it is fairly obvious, is it not, that Achilles would be concerned about this,

1 because RSSB employs Richard Sharp as a consultant through RDPA, and  
2 Mr Sharp's long-standing loyalty is to the RSSB, isn't it?

3 **A.** The RSSB had been -- I am not sure whether it was the exact same concerns as  
4 Achilles but it was a very similar concern to Achilles, and that meeting for the  
5 audit, when they agreed a form of words about information that was to be  
6 made available to them that wouldn't be disclosed --

7 **Q.** That is about disclosure of information. Conflict of interest is slightly different.  
8 I mean, it is not in the RSSB's interests as RISQS that Achilles is approved. It  
9 would be quite in the RSSB's interests that Achilles fails this audit, isn't it?

10 **A.** It might be in the RSSB's interest, but it is not in Network Rail's interest to have  
11 a consultant come in and make an audit report that is detrimental to what we  
12 are trying to achieve. I had no concerns about Achilles' abilities to undertake  
13 the audit to the standards required. The only concerns I had at the time was  
14 that Achilles were able to transfer the information via the API into the system.

15 **Q.** That's your concern and your belief in the case?

16 **A.** Yes.

17 **Q.** From Achilles' perspective, they are going to have someone coming in who has  
18 been running their competitor for a number of years and is still a consultant for  
19 the competitor, and they may legitimately feel that he will find some  
20 unjustifiable reason for failing them?

21 **A.** I understand why Achilles would have that concern but certainly I was involved  
22 and Phil Bower in a conversation with RDP before we appointed them, that  
23 we expected them to put the RSSB stuff behind them, because I did think they  
24 had fallouts with RSSB as well. So all that was put aside and they were  
25 expected to behave professionally under the commission we had with them --

26 **Q.** An expectation of professional behaviour?

1 **A.** Behaviour.

2 **Q.** You go on to agree with her about the NDA in the next paragraph, for what it is  
3 worth.

4 If we can go in your witness statement bundle, so bundle D, tab 9 should be your  
5 fourth statement, and right at the end of that statement on page 114 of the  
6 bundle, paragraph 38, referring to the response we have just seen, which is  
7 quoted under paragraph 37, you say:

8 "Network Rail were entitled to select RDPA."

9 You go on to refer to:

10 "A conflict of interest has led to the Achilles' audit being postponed."

11 We need not go to it in the bundle, but I think there was some notice just before  
12 Achilles was due to be audited by Mr Sharp it was cancelled on the basis that  
13 you had cancelled his appointment as the auditor. Is that right?

14 **A.** I am not sure whether it was a week before. It was very close to the date of the  
15 Achilles' audit that we terminated the contract we had with RDPA Limited, and  
16 we tried to expedite the appointment of a replacement auditor.

17 **Q.** For the tribunal's note -- I don't think it is particularly controversial -- G13,  
18 tab 675 -- we need not go there -- page 6728, there is an e-mail from  
19 Mr Bower of Network Rail to Ms Ferrier of 12th March cancelling an audit he  
20 says for the next week.

21 **A.** Yes.

22 **Q.** So it was cancelled. I will finish your statement:

23 "However, the conflict of interest that has led to the Achilles audit being postponed  
24 for a short period is not the one raised by Achilles", as you say Miss Ferrier  
25 mistakenly inferred:

26 "Rather, it is a commercial matter for Network Rail and RDPA Ltd concerning a

1 non-disclosure about RDPA Ltd of its membership of RISQS in the context of  
2 an engagement by Network Rail. As a result of this non-disclosure and with  
3 a view to keeping the process as open and transparent as possible Network  
4 Rail has decided to cease RDPA's appointment as auditor. So there's a short  
5 delay."

6 So you thought a conflict of interest arose because RDPA Ltd was a member of  
7 RISQS as a buyer member or a supplier member?

8 **A.** I don't know which designation. I suspect as a supplier. Nevertheless, they  
9 didn't disclose it to --

10 **Q.** -- a conflict of interest arose because RDPA Ltd has a subscription from RISQS,  
11 but you weren't concerned about the conflict of interest that arose from  
12 Richard Sharp having been scheme manager at RISQS and ex-consultant at  
13 RISQS, being in meetings with you about the implementation of the tribunal's  
14 judgment on 11th September, being involved in the drafting of the standard he  
15 must have received between 17th October and 23rd October, commencing on  
16 the API, being involved at every step of that process. You were not  
17 concerned about those conflicts of interests but you were concerned about --

18 **A.** I was.

19 **Q.** -- RDPA being on RISQS --

20 **A.** I was.

21 **Q.** I suggest to you that your understanding of conflict of interests is rather skewed.  
22 You can comment on it. That's my suggestion. I suggest to you your  
23 understanding of a conflict of interest is skewed. I will suggest to you you  
24 shouldn't have involved Richard Sharp as closely in the process as you did.

25 **A.** The advantage -- well, it was Richard Sharp primarily, I suppose with Don Clarke  
26 in the background, but Richard Sharp was the main person. His knowledge of

1 the scheme over many years was actually the reason by which we managed  
2 to get the standard created within just over a six month time period. Had it not  
3 been for making those documents available, I could quite easily have seen it  
4 taking the best part of a year. So it was very convenient for Network Rail to  
5 have somebody like him available to tap into.

6 **Q.** I will put another suggestion to you. Had you been open with Achilles at an early  
7 date and shared the standard and API with them, any of these concerns could  
8 have been sorted out in a much shorter period. That's right, is it not?

9 **A.** Yes, I am not sure. It may have been right, but we didn't choose to do that.

10 **Q.** You can't solve their concerns before they tell you, can you?

11 **A.** No.

12 **Q.** So if you had given the standard earlier, they would have raised their concerns  
13 earlier and they would have sorted them out earlier.

14 **A.** Yes, but equally I didn't share the standard with RSSB either. It was one person  
15 I was actually seeking information from.

16 **Q.** Okay. We have been talking so far about the actual implementation of the  
17 judgment, but the reason for doing this is the point you make in your third  
18 statement, bundle D, tab 8, at paragraph 15. It is really what would have  
19 happened in the counterfactuals, as we are calling it here, where the  
20 RISQS-only rule wasn't in place.

21 I think what you say at paragraph 15, if I can paraphrase it, is: "We wouldn't have  
22 this complete system in place."

23 The second sentence in that paragraph, you are saying:

24 "I am not saying that without the RISQS-only rule Network Rail would not have made  
25 clear that we would recognise alternative suppliers assurance providers.  
26 Indeed we would have said that we were willing to recognise an alternative

1 supplier assurance provider for suppliers not seeking to truck with Network  
2 Rail, but I do not think we would have gone to the trouble and expense of  
3 implementing the technical system and structure needed to deal with more  
4 than one supplier assurance provider in practice."

5 So you are suggesting without the RISQS-only rule you would have had a clear  
6 statement somewhere that you are willing to recognise others, but you  
7 wouldn't have had some aspects at least of this technical system and  
8 structure?

9 **A.** So we wouldn't have had a fully written standard the way you now see in 302,  
10 and we wouldn't have had an alternative mechanism or system in place.

11 **Q.** Okay.

12 **A.** The reason for that I think is something I said earlier in response to a previous  
13 question, where between 1997 and 2014 there was a Network Rail standard,  
14 but that Network Rail standard referred to use of Achilles' Link-up, and the  
15 detail as to what Achilles' Link-up did or how they undertook the business in  
16 detail actually was owned and managed by Achilles. So we didn't have that  
17 information in terms. We didn't own the document or the process.

18 **Q.** In practice, you produced a draft of the standard between 11th September 2019  
19 and 17th October 2019.

20 **A.** Yes.

21 **Q.** That was your own work. It was finalised draft, by the end of November. Yes?

22 **A.** The date you talk about, that's when we had the bulk of the document drafted  
23 and it then went into a series of in-group sessions with individual subject  
24 matter experts for the various modules to actually make sure all their  
25 comments were incorporated.

26 **Q.** Having started in September 2019, you sent a draft to Achilles in February. You

1 said that they could work on that basis from March onwards, because you  
2 could preview the standard?

3 **A.** Yes.

4 **Q.** So between September and March the standard which -- nothing has changed  
5 since that March publication, has it?

6 **A.** There's been two very minor notes of qualification, but they're very minor. It is  
7 the odd sentence or a change of words.

8 **Q.** Okay. So you could get a standard in place between September of one year and  
9 March of the following year, which would be capable of allowing Achilles to  
10 compete. That's what you managed, wasn't it?

11 **A.** That's what we managed. The business at the time didn't think we would  
12 manage it in that short a timescale. This is where the approach we took in  
13 terms of the documentation that I was able to see in soft copy from  
14 Richard Sharp facilitated me making quite a lot of progress early on. So by  
15 the time I actually sat down with the subject matter experts in the working  
16 group, there was less for them to do because we had established a pretty  
17 reasonable working draft. I think the example used in the email referred to  
18 a document that had revision G at the end, so that was revision G of that  
19 document. So it had already been through a number of iterations.

20 **Q.** The API specification was quite quick to produce. The original one was written  
21 some time between 11 September and 16 October, so it was a matter of  
22 weeks to produce the API specification. Yes.?

23 **A.** Can you just repeat the dates again?

24 **Q.** The API specification must have been written between 11th September 2019  
25 and 16th October 2019, which is when it was sent to you?

26 **A.** The first version.

1 Q. The first version, yes. It was done very swiftly. So if Achilles had applied to you  
2 say in September 2017, you could easily have had all that in place before May  
3 2018, couldn't you?

4 A. I am not sure it would have happened quite as quick as you are saying.

5 Q. Well, you started the process in September 2019. Conveniently, the months  
6 line up, which is nice. In September 2019 you started the process and you  
7 say you had a functioning API and standard in place by -- you sent it to  
8 Achilles in February.

9 A. In February.

10 Q. And they raised a concern about which number is used within that standard --  
11 within the API as identifier. The period of September to February/March time,  
12 you could get the (inaudible) in place, couldn't you?

13 A. Based on the time it took the standard to develop, based on the individual time it  
14 took for the API, with a headwind, yes, we could have achieved dates that  
15 were quick.

16 Q. With that, we are going to start looking at the chronology between  
17 September 2017 and May 2018.

18 If I can start in your third statement at paragraph 9, a series of subparagraphs here.

19 If you go to sub-paragraph D, which I think is on page 76 of the bundle, and  
20 you refer to Achilles' letter to RSSB withdrawing from the tender, which I think  
21 was in early -- it was in spring of 2017. You say that Achilles was aware at  
22 that point that changes would have to be made. Then you say:

23 "E. Despite this, it was not until 21 March 2018 that Achilles wrote to Network Rail  
24 seeking approval for it to provide audits for the Sentinel scheme."

25 Now, that's the date you sort of take as the starting gun on when Network Rail would  
26 have started doing something. Of course, in reality, you suggested that in the

1 counterfactual, at paragraph 15 of your statement, that you would have had  
2 something making clear that you would have recognised alternative supplier  
3 assurance providers. Presumably there would need to be a process in play to  
4 create necessary mechanisms or something. Achilles didn't have the benefit  
5 of that kind of indication, did it?

6 **A.** No.

7 **Q.** Now, 21st March 2018, that was not the first time you were aware that Achilles  
8 wanted to complete in the market for supplier assurance, was it?

9 **A.** No. I had had a previous conversation with Katie and I had also seen the letter  
10 Achilles had written to Mitie.

11 **Q.** In fact, there is much stuff before. Keep bundle D. The only G bundle you need  
12 for the moment is bundle G3, so can you be given bundle G3, please.  
13 I suggest to you quite a long time before the e-mail to Mitie.

14 Go to bundle G3, tab 80. From what we can see there is a whole series of tabs here  
15 with the same e-mail chain forwarded around. So tab 80, at the bottom of that  
16 page there is an e-mail has gone from J Katzen of Achilles. Do you know who  
17 Mr Katzen is?

18 **A.** Yes.

19 **Q.** He is the Chief Executive Officer I think of Achilles, or was. Sent on  
20 14th September '17 to a Mr Robert Traczyk?

21 **A.** Traczyk.

22 **Q.** That's someone you know in Network Rail?

23 **A.** It is, yes.

24 **Q.** He forwards it to Gillian Scott, who was at Network Rail at that stage. Then, at  
25 the top of the page, you can see she replies to Mr Traczyk saying:

26 "I have forwarded it on to Ken and Andy."

1 That's how it gets on to the supplier chain.

2 If we go to tab 89, there is an e-mail back to you from Gillian Scott, replying to -- she  
3 has forwarded to you the same communication from Achilles. If you read the  
4 terms of your e-mail back for a moment. Sorry. Over the page to page 1675,  
5 to see actually what Achilles said. In the very first paragraph:

6 "Achilles partnership with the RSSB will cease from May 2018. We are 100%  
7 committed to ensuring continuity, and from that date Achilles will continue to  
8 offer rail assurance services through Link-Up, a brand many are familiar with."

9 So that e-mail made clear that Achilles were going to carry on after May 2018, didn't  
10 it?

11 **A.** Yes.

12 **Q.** If you look at the point I was going to put to you about your e-mail, you  
13 understood that, didn't you. You understood at that point that Achilles  
14 intended to carry on in the market after May 2018?

15 **A.** Yes. If Achilles again wished to provide services to buyers, that's Achilles' choice  
16 and the buyers' choice.

17 **Q.** Okay. You go on to say you think that Achilles referring to the launch of the new  
18 RSSB qualification services is very misleading, as the RISQS scheme exists  
19 now and shall continue to exist and operate under a new provider".

20 So you saw at that time there was continuity in terms of RISQS before and after  
21 May 2018. That was your understanding?

22 **A.** It was absolutely my understanding, because that was the whole point of RSSB  
23 RISQS running a comparative tender, to actually select the parties who were  
24 going to operate that scheme going forward. I think also, as they were  
25 obliged to do under the public procurement rules, so they could not continue  
26 with the same supplier indefinitely. They were obliged to compete the work.

- 1 **Q.** Leave that point, what was required. The point I am asking about is continuity.  
2 This is about your understanding at the time, not the legal rights and wrongs  
3 of it. Your understanding at the time was you saw continuity -- RISQS will  
4 carry often?
- 5 **A.** RSSB RISQS would carry on after the end of the concession contract with  
6 Achilles.
- 7 **Q.** So you thought RSSB RISQS was already providing services to the market, did  
8 you?
- 9 **A.** RSSB RISQS was already providing services to the market. They served  
10 a subscription service to which Network Rail and --
- 11 **Q.** You are wrong about that. RSSB RISQS were not selling a subscription service  
12 to the market. Achilles was selling a subscription service to the market?
- 13 **A.** From an industry point of view -- so there is a bit of history here, which is, as  
14 I said at the beginning, from 1997 to 2014, the sole supplier in the market  
15 providing assurance services was Achilles Link-up. They developed that in  
16 the early days. Even in the early days of Sentinel, although it is not part of  
17 this case, for context, I think back in 2005 or even 2003 there was even the  
18 equivalent of a Link-up only rule. That's where it all started. Actually, this is  
19 the way RISQS was being set up to provide. When industry then decided,  
20 following the Lord Cullen Inquiry that actually the contract wouldn't be  
21 between Network Rail and Achilles, it would come under the auspices of the  
22 RSSB, from a sort of safety (inaudible), at that point what was the Link-up  
23 only rule transferred into RISQS and became the RISQS-only rule.
- 24 **Q.** I think we have established, you thought at this time that RSSB was already  
25 selling services to the market, and I have suggested to you that that is wrong.
- 26 **A.** I think I misheard you on the dates. Between 2014 and 2018, I am saying that

1 RSSB was responsible for the services in the market.

2 **Q.** But RSSB was not providing services to the market. It was not providing  
3 a supplier assurance service to suppliers and buyers in the rail industry  
4 between 2014 and 2018?

5 **A.** I think many people will believe they were providing services.

6 **Q.** And you were one of those people who believed --

7 **A.** Yes.

8 **Q.** Now, you referred to getting something out to the supply chain, making it clear  
9 that you support and RISQS will continue to operate, albeit through a new  
10 supplier. You would like to go further and clarify that they are the only  
11 scheme you recognise. You will consider carefully the wording to publish.  
12 What I am suggesting is in December 2017 you were well aware of Achilles'  
13 intention, weren't you, Achilles' intention to continue in the market I should  
14 say?

15 **A.** Insofar as, you know, tier 1s to Network Rail can use any supplier service  
16 provider they want. So if Achilles want to continue to provide services to  
17 them, even though Network Rail may not be using Achilles, others can.

18 **Q.** If Network Rail had had in its standard something that made clear that it could  
19 recognise alternative supplier assurance providers, and Achilles had put out  
20 this communication to the market, you would have known that you needed to  
21 start developing your standard, wouldn't you?

22 **A.** Whether that would have been my decision or my choice or whether it would  
23 have been the safety people at Network Rail, but I understand the point you  
24 are making, that should somebody have picked up on this at an earlier point in  
25 time.

26 **Q.** In the actual situation you had the RISQS-only rule in place, so it wasn't hard for

1           you to pick up on, given that rule, but if you imagine a world where it was not  
2           in place.

3    You can put bundle G3 away and go to bundle G4, tab 153. Let me just check.  
4           I need to check. This is not confidential for me. I need to check whether it is  
5           confidential. Yes. Okay. I think it is all right.

6    Go to page 1912. There's a table and a series of headings, current status, current  
7           response and so forth.

8    I suggest to you on the basis of what's there that it was well understood by  
9           everybody in the market --

10   **A.** You said page 1912?

11   **Q.** 1912. There was an issue you --

12   **A.** It is just a blank page.

13   **Q.** You have the non-confidential one. it doesn't matter. We can leave that one.  
14           That's okay.

15   I am sorry. Can I actually go back to bundle G3 again. I am sorry. I am going to  
16           have to take you back. Bundle G3, and we are going to be in it for a little  
17           while. Tab 111. What we should see there is an e-mail from Mr Graham Cox  
18           sent on 4th October 2017 to quite a long list of recipients, but in the seventh  
19           line down in the right-hand side it includes your e-mail address.

20   **A.** Is that page 1771?

21   **Q.** 1771. Can you give him the confidential bundle on this, because this is not  
22           confidential from him. Actually, perhaps you can help me on something. No,  
23           it is all right. We're fine.

24   If you look, he attaches a letter and the letter is in tab 112. I just suggest to you that  
25           that letter was sent to you from somebody at RSSB. Yes? Can you see the  
26           letter at 112? There's a paragraph stating "Finally"?

1 **A.** Yes, I see that.

2 **Q.** Two points. First of all, it was well-known to you that Achilles was going to be  
3 competing in the market after May 2018, wasn't it?

4 **A.** I mean, that's what it says in this letter.

5 **Q.** Okay. Thank you. Right. Then if you pass the confidential bundle back and be  
6 handed back the non-confidential bundle again.

7 I should explain, most of the confidential material is confidential to Achilles, but there  
8 are a small number of items on which Network Rail is asserting confidentiality,  
9 so there are times we are going backwards and forwards.

10 At tab 117 in the non-confidential bundle for you, and this is an e-mail from you to  
11 a Mr Blakey within Network Rail dated 10th October:

12 "I have left you a voicemail.

13 I have just learned you are due to speak this afternoon at an Achilles organised  
14 event. I am concerned that although your topic is 'collaborative working', the  
15 perception that you being there may give the supply chain is that you (or  
16 Network Rail) support Achilles' relaunch of Link-Up ... a supplier qualification  
17 system being relaunched in competition to RISQS. I would request that no  
18 Network Rail employee attend this Achilles event."

19 First of all, you say in terms you are aware they are going to be in competition. You  
20 were concerned to try and avoid helping Achilles, weren't you?

21 **A.** I didn't understand the context of the competition. I suppose it is back to my  
22 concern in my first conversation with Katie about this. It seemed to me that  
23 Katie was trying to put words in my mouth to say: "You must accept, Ken,  
24 surely we are able to compete with RSSB". By that I took it to mean for all  
25 Network Rail business, that she was not recognising that Network Rail had  
26 the ability to choose.

1 **Q.** So you thought that Achilles were saying to you that you had no choice, but you  
2 had to be their customer. You had to use their system?

3 **A.** That they would be providing a service to the supply chain and Network Rail  
4 wasn't able to choose what to use.

5 **Q.** Okay. You went to quite a lot of trouble to try to stop Stephen Blakey attending  
6 that event, didn't you?

7 **A.** I tried to phone him as well.

8 **Q.** More than that. If you look at tab 118, you left him a voicemail already. You get  
9 an e-mail back from Joanna Dunn saying:  
10 "I have had the same conversation with him".  
11 Then, at tab 119, later the same morning, you send an e-mail to Mr Haines. Who is  
12 Mr Haines?

13 **A.** He was the commercial and procurement director who I reported to.

14 **Q.** He is a level above you in the --

15 **A.** More senior still.

16 **Q.** You ask him to recruit more senior people still, because you are forwarding the  
17 email you sent to Stephen, and you say:  
18 "Andy, do you support the approach below? If so, are you able to influence Susan  
19 Cooklin or Francis Parnessa to reiterate for Stephen Blakey not to attend  
20 today's Achilles relaunch of Link-up?"  
21 You are trying to get your line manager, is that the correct word?

22 **A.** Yes.

23 **Q.** To get someone above him to tell Stephen Blakey not to do this?

24 **A.** Yes.

25 **Q.** Then, at tab 120, Mr Haines replies saying:  
26 "Yes, I will try through Matt Steele."

1 Is he similarly a senior party in the business?

2 **A.** I would say he was on a similar level to Andy Haines but in a different part of the  
3 business.

4 **Q.** So reaching out. Then tab 121, he has obviously gone and e-mailed and left  
5 a message for Mr Steele.

6 Tab 122, we see Ms Scott e-mailing Mr Sharp, and Mr Sharp informing him you are  
7 trying to stop this.

8 Then, at 124, it turns out your efforts failed. Mr Blakey did attend the event, at 124,  
9 and he explained something about what he did and he left at a certain point.

10 Now, at 126, it is obviously not just an internal concern, because you send  
11 a message to Mr Sharp:

12 "See Stephen Blakey's response below.

13 We tried ..."

14 So you are reassuring RISQS RSSB that you had tried to stop any impression being  
15 given that Network Rail supported Achilles?

16 **A.** In this context, yes.

17 **Q.** So it wasn't just a matter of your concern about whether it was internally  
18 inappropriate for Network Rail. You were concerned to help RISQS RSSB?

19 **A.** What we were trying to do, or what Network Rail was trying to do, we were  
20 concerned about the disruption to the market place.

21 **Q.** If you were concerned about that you would not need to reply to Mr Sharp,  
22 reassuring him that you had tried to stop it?

23 **A.** Well, I can't remember what other conversations were going on round about, but  
24 clearly he must have been in contact with me.

25 **Q.** Although actually I note the e-mail had another e-mail address, a Certus Group  
26 e-mail address?

1 **A.** Yes.

2 **Q.** Are you familiar with that address?

3 **A.** I am not actually. I am aware they exist but I couldn't tell you what they do or his  
4 association with them.

5 **Q.** Okay. You can now put away bundle G3. I will take you to bundle G4. Go to  
6 tab 168. You should see an e-mail chain there. This is an Achilles e-mail. At  
7 the bottom -- I think we will have seen this -- an e-mail from Estelle Whittaker,  
8 sent on 19th January, 2018, to Sentinel@mitie.com. Mitie are the external --  
9 they operate the IT platform for Sentinel. Is that right?

10 **A.** No. I would describe Mitie as the service provider for Sentinel, and they've got  
11 a sub-contractor that manages the IT platform.

12 **Q.** Okay. So Mitie administer Sentinel, essentially?

13 **A.** Yes.

14 **Q.** But there are certain people internal to Network Rail who also have some  
15 responsibility for ensuring it does what you want it to do?

16 **A.** Yes.

17 **Q.** Understood. So this is a date when Achilles clearly make, even in the absence  
18 of any clarity in the Network Rail standard, make completely clear to Mitie that  
19 they intend to issue validation as an equivalent scheme. So they intend to  
20 carry on. That's right, isn't it?

21 **A.** Yes. On the face of it, that's what this letter or e-mail is saying.

22 **Q.** Okay. I will not do that now. Can we go to tab 177A? It should be a later insert.  
23 Do you have 177A?

24 **A.** Yes.

25 **Q.** You should have in front of you an e-mail from Gillian Scott. Is that right?

26 **A.** Yes.

1 **Q.** Great. I am sorry. That is a false reference. Can you go to tab 193. I apologise.  
2 What you should have there is an e-mail that says it is from Colin Black at the  
3 top. What I am interested in is what he is replying to which is one from Katie  
4 Ferrier on 12th March, 17.54. she says:  
5 "This afternoon I met with Ken Blackley, who is the head of commercial process and  
6 governance."  
7 This is a meeting with you on 12th March, 2018. do you remember that meeting?  
8 **A.** I do. That was a Milton Keynes meeting.  
9 **Q.** Just to check, in the second paragraph you say that:  
10 "Network Rail are very happy with the way Altius are integrating with Bravo."  
11 That was an expectation that Altius would have an API that would feed information  
12 into the Bravo system that Network Rail use. Is that right?  
13 **A.** The point that was conceived, the tender wouldn't have taken place at that point.  
14 So we wouldn't have known it was going to be Bravo. So the idea was, as  
15 part of the RSSB specification requirements for selecting the people who were  
16 going to support them, that one of those aspirational requirements was at  
17 some point in time the platform would be able to interface with Network Rail's  
18 procurement system.  
19 **Q.** So the RISQS platform would interface with Bravo NR, essentially?  
20 **A.** Correct, irrespective of who provides RISQS with their service.  
21 **Q.** And has that, in fact, happened?  
22 **A.** No.  
23 **Q.** So when it says: "Altius are integrating", that was to do with your expectation  
24 before Altius started doing it, that this is what the tender would provide for.  
25 You were happy with that?  
26 **A.** Yes.

1 **Q.** Then a couple of sentences in:

2 "Ken was clear that if principal contractors or buyers want to use another scheme to  
3 manage supply chain, then that is their choice. Network Rail do not want to  
4 inhibit this."

5 Do you recollect saying that?

6 **A.** Correct.

7 **Q.** Miss Ferrier says that she raised concerns that the equivalent enables them to  
8 offer Sentinel assurance, by a surety from a Sentinel perspective. Then he  
9 admitted he "hadn't really thought through these implications and would seek  
10 guidance from Graham Hopkins on this and come back to us."

11 Do you remember saying that?

12 **A.** Yes.

13 **Q.** Do you remember saying you would come back to them?

14 **A.** Yes. I never got a response back.

15 **Q.** Okay. Now if we can jump forward in the same bundle, tab 213, so bundle G4,  
16 tab 213. Now at the bottom of that page, you have an e-mail from  
17 Gillian Scott to you, dated 6th March. It starts:

18 "Ken.

19 Katie came in to see me" and so forth.

20 There is some discussion. Over the page, it says:

21 "I did not say all equivalent. She asked me to provide her with a statement, briefing  
22 notes and copies of the standards."

23 So it seems to be that Ms Scott raised with Miss Ferrier the problem that your  
24 Network Rail's standards did not allow for equivalence, and Ms Ferrier is  
25 asking for a statement, briefing notes and copies of the standards. They want  
26 to see what Network Rail is talking about here.

1 You respond to Miss Scott on 8th March:

2 "Gillian, at Achilles what was the purpose of Katie asking you to provide her with a  
3 statement, briefing notes and standards? I am not sure responding the way  
4 outlined is the way I would approach this. Please don't respond until we have  
5 had a chance to discuss."

6 So essentially you are urging caution in responding, aren't you?

7 **A.** I don't really think I fully understood the issue at the time and I wanted to find out  
8 more about it before we replied.

9 **Q.** But you are querying that and suggesting that she should not provide statements,  
10 briefing notes and copies of the standards to understand the issue?

11 **A.** Yes. I think I wanted to understand the issue before Gillian responded.

12 **Q.** Achilles sent a further letter to Sentinel on 21st March. That is at G5, tab 225.  
13 We need not go there. Do you recall that letter to Sentinel on 21st March?

14 **A.** Was it addressed to Mitie?

15 **Q.** We can look at it briefly. Put away bundle G4 and look at G5. There is some  
16 further material also in G5 anyway. I really just want to note the date of it. So  
17 tab 225. I think this might be the letter you are referring to when you take  
18 21st March as being your sort of kick-off date when Achilles had let you know.  
19 Paragraph 9E, you say:

20 "It was not until 21st March that Achilles wrote to Network Rail seeking approval."

21 So I think this must be the letter you are referring to.

22 **Q.** Achilles, in the fourth paragraph, starting:

23 "Achilles recognises.

24 Achilles requested confirmation from Sentinel by 3rd April that Link-up TransQ would  
25 be recognised by Sentinel as meeting the requirements of the 2750 generic  
26 supplier assurance standards and the NRL2."

1 I think that is the standard to do with principal contractors, NRL2, INICP0070. That's  
2 principal contractors.

3 **A.** I don't recognise the first bit of that but certainly 070 is a principal contractor  
4 standard.

5 **Q.** Achilles provided a chasing letter referring to the 9th January e-mail to Sentinel  
6 on that date.

7 Then, at tab 228, an e-mail from Graham Cox at RRSB to you. That was in  
8 response to an e-mail where you had forwarded the letter from Achilles to  
9 Richard Sharp at RSSB. Can you see between the two hole punches -- on  
10 page 2394 is the e-mail with the letter from Achilles to Sentinel.

11 **A.** I can see that.

12 **Q.** Then you forward it to Richard Sharp, don't you, and Graham Cox at RSSB says:  
13 "Thanks. Actually we have also received a copy of the data and audit provision letter  
14 as well."

15 So there is another letter about data and audit provision. It was never going to be an  
16 easy partition. Opaque comment.

17 Then you engage with RSSB about how to respond to this, or Network Rail engage  
18 with RSSB about how to respond to this?

19 **A.** Nothing springs to mind in terms of what correspondence you are referring to --

20 **Q.** If you go to tab 234, it is another e-mail from you of 22nd March to Miss Scott,  
21 page 2415 of the bundle. Again you are forwarding the letter from Achilles to  
22 Mitie. This is now to Network Rail:

23 "Please see attached the letter. Can we arrange a meeting to discuss, please. NR  
24 may choose to provide ... contractors on this matter. Glen, what do the  
25 current, future Sentinel contracts say about supplier qualifications."

26 Is Sentinel an obstacle to this is an issue.

1 Now, G5, 238. So you in a sense hand it over to Miss Scott to deal with. She deals  
2 with it somewhat more.

3 At 238, tab 238, we can see an e-mail from Richard Sharp to Gillian Scott saying:

4 "As discussed, my thoughts on this."

5 In the next tab we have his attachment, setting out his attack on Achilles' assumption  
6 that Link-up is recognised as an equivalent scheme.

7 "First point, it would not be up to and able to recognise an equivalent scheme under  
8 RS2750", which is an RSSB standard.

9 "Network Rail should not proclaim the suitability of Link-up. Each buyer will need to  
10 make their own assessment as to whether it meets their needs. Sentinel can't  
11 recognise Link-up as equivalent to the principal contractor standard, as that is  
12 a Network Rail standard, not for Sentinel to do. Request for recognition would  
13 need to be made to that standard owner directly. Network Rail have chosen to  
14 use RISQS as their system to gain assurance on the supply chain and so  
15 would not look to recognise an alternative as this would cause potential  
16 duplication in the industry."

17 So here RSSB is making an assertion about what Network Rail would look to do, and  
18 so forth.

19 Then perhaps the penultimate paragraph:

20 "Network Rail as the infrastructure manager has a duty to ensure suppliers in the  
21 Sentinel scheme are meeting its requirements."

22 That's why the industry scheme is the recognised provider of the Sentinel assurance  
23 for NR."

24 You see the last sentence of that penultimate paragraph?

25 **A.** Yes, I see that.

26 **Q.** So he's making the point that RISQS is the recognised provider of Sentinel

1 assurance?

2 **A.** The timing of this, I imagine Richard Sharp is the scheme manager for RSSB  
3 RISQS.

4 **Q.** So he is the scheme manager of RSSB RISQS and he is providing his thoughts  
5 to Gillian Scott on this point.

6 Now, if we go to 242, Ms Scott -- this is later the same day, the afternoon of the  
7 22nd. She is replying to Dan Kent and Lee Parlett, forwarding your e-mail:

8 "Gents for info.

9 I will prepare some comments/thoughts to the letter shortly, and make arrangements  
10 to attend the meeting with Ken, Jo, etc."

11 Then, about a week later, if we go to tab 258, this is Gillian Scott's e-mail to you  
12 asking for review of draft comments and Mitie to incorporate a response:

13 "With reference to your correspondence dated 21st March."

14 So this would be replying to Achilles. She essentially sets out under Sentinel that  
15 Mitie is not in a position to approve any alternatives to RISQS, OTP and so  
16 forth in the bottom of that. NRL2, the principal contractor standard is  
17 a standard which Mitie have no dealing with, and so forth.

18 So those are her comments. They essentially mirror the same points made by  
19 Richard Sharp on his e-mail to her. They are different language but the same  
20 points. Yes?

21 **A.** I have not read it that closely, but Gillian Scott was in that leg of the business as  
22 being close to both the principal contractor licence scheme and the central  
23 scheme. So I would imagine she would have maybe thoughts that were  
24 similar, but whether or not she was influenced by Richard Sharp's comments,  
25 I don't know.

26 **Q.** She had some discussion with him. I think she sent you a chaser the next day,

1           which is at tab 262, but it is not that important.

2   Tab 341, and now we are going to bundle G6. If you go to 341.

3   We can see the timeline. This must be an internal contact management system.

4           The first item is a letter from Estelle Whittaker, March 21st, 14.51. Caller's

5           category. Estelle Whittaker:

6   "Please find attached a letter -- "

7   **A.** Yes.

8   **Q.** Then that is forwarded by Simon Duke at the bottom of that page on the same

9           day to Network Rail. Then what you can see is an e-mail or letter detected

10          from a Michelle O'Neill, April 23rd, 10.18. She is somebody within Network

11          Rail, is that right? You are not familiar?

12   **A.** I have never heard of her, but --

13   **Q.** What she seems to do is pass on -- sorry. I am sorry. I am wrong. What we can

14          see is on 23rd April Michele O'Neill has set out the text of a reply to Achilles to

15          their letter of 21st March. That text was the text that was drafted by

16          Gillian Scott that we were talking about?

17   **A.** Yes, that's what it looks like.

18   **Q.** Essentially, what we have is Gillian Scott has a discussion with Richard Sharp

19          about a response to this, and people within Network Rail as well. She drafts

20          a response, and that is the response that goes out through Mitie on 23rd April.

21          Yes?

22   **A.** Yes.

23   **Q.** But actually there is a gap of a month there, isn't there? There is a gap from

24          21st March until there is a response. I think we saw Gillian Scott's e-mail was

25          prepared I think at the very end of March and it seems to have sat in Mitie for

26          a period of about a month?

1 **A.** I don't know where it sat, but there's a month's difference between the dates.

2 **Q.** You can see explanation, if you go to 335, you can see halfway down that

3 page there's an e-mail from you to various people, including a John

4 Greenwood (Sentinel "). So I think he is a Network Rail person --

5 **A.** Yes, Network Rail.

6 **Q.** He says:

7 "Fresh back from leaving. Catch up on email. Is this resolved now or do you need

8 more input."

9 That is 23rd April. That seems to have prompted the response to actually go.

10 Stepping back on this topic of -- I have been tracing the chronology from September

11 through to May. I am going to put a couple of points to you.

12 First of all, you individually and Network Rail in general were well aware from

13 September 2017 that Achilles wanted to complete in the market for supplier

14 assurance, weren't you?

15 **A.** Yes, but again Achilles were always available to compete for supplier assurance,

16 given that there is a whole host of buyers out there who are free to choose

17 any provider they desire.

18 **Q.** And it wasn't clear to Achilles that they needed to apply to Network Rail for

19 authorisation to do so, was it?

20 **A.** Well, probably not, but again that's in a leg of the business that sort of falls under

21 safety technical engineering. So I am not sure who they would contact or

22 what process they would have to follow.

23 **Q.** But you said in paragraph 15 of your statement if you didn't have the RISQS-only

24 rule, Network Rail would have made clear that you could authorise alternative

25 supplier assurance providers?

26 **A.** Yes, that would seem to make sense, yes.

- 1 **Q.** Achilles repeatedly tried to get clarity, didn't it? It tried to come to Sentinel in  
2 January. It had meetings with you and Ms Scott in March and contacting by  
3 letter in March, and it wasn't getting any clarity coming back, was it?
- 4 **A.** I don't know when Graham Hopkins responded, but I thought he responded at  
5 some point. He was the director of safety technical engineering and within  
6 that leg of the business that's where Sentinel would sit and equally that's  
7 where Gillian Scott would sit.
- 8 **Q.** You don't give a clear answer that you won't recognise Achilles' as equivalent  
9 provider of Sentinel assurance until that response from Mitie we have just  
10 seen of 23rd April. That's the first time there is a clear response from Network  
11 Rail saying that there will not be recognition for the purpose of Sentinel.
- 12 **A.** If that predates the Graham Hopkins' reply, then yes.
- 13 **Q.** We will have to look at that in a moment.
- 14 Final point. You are allowing the terms of your response to be influenced by  
15 Richard Sharp, who is the scheme manager at RSSB?
- 16 **A.** So based on what we just read, clearly Richard Sharp's opinion was sought from  
17 Gillian Scott. That's clear from the correspondence. That doesn't sound  
18 unusual to me, that Network Rail are seeking the opinion of the scheme  
19 manager.
- 20 **Q.** Okay. But --
- 21 **A.** Again, he is familiar with the detail of the scheme which was operated by RSSB,  
22 and if you remember what I said earlier on, it is clear to me when I looked at  
23 the history of events that although the infringement was found on the  
24 RISQS-only rule, there had actually been a Link-up only rule from a very early  
25 date in the early 2000s, 2003, I think I said.
- 26 **Q.** Last point. In the counterfactual, in your proposed counterfactual, as you said in

1 paragraph 15 of your third witness statement, where Network Rail was making  
2 clear it would recognise alternative supplier assurance providers, it wouldn't  
3 have been appropriate to go to the RISQS scheme manager, would it, to ask  
4 for his comments on how you respond to an application from Achilles?

5 **A.** I think had that statement existed somewhere in Network Rail, then you are right,  
6 it wouldn't have been, but in the absence of that statement it didn't seem  
7 unusual to me at the time.

8 **Q.** Okay. Sir, that's probably a convenient moment. I am changing topics.

9 **THE CHAIRMAN:** 2 o'clock.

10 **MR WOOLFE:** Thanks.

11 **THE CHAIRMAN:** I reminded you yesterday you mustn't talk about your evidence.

12 **A.** Thank you.

13 **(1.01 pm)**

14 **(Lunch break)**

15 **(2.00 pm)**

16 **MR WOOLFE:** Just so you know where we are going I am going to be asking you  
17 some questions to begin with about the continuity between the old RISQS and  
18 new RISQS and so forth in 2018. That's mostly what I am going to do and  
19 then I will turn to your fifth statement at the end.

20 Before we start that, I have one question arising out of matters earlier on. Originally  
21 you appointed RDPA to be Achilles' auditor, to audit them against the NR302  
22 standard. You also had to appoint someone to audit RSSB RISQS against  
23 the standard. Is that right?

24 **A.** Yes. That was the RDPA as well.

25 **Q.** So RDPA audited RISQS' compliance with the standard?

26 **A.** First of all, yes.

1 Q. This would have been, what, in the run-up to September 2020?

2 A. I believe it was October that RSSB received their audit.

3 Q. So if there were any concerns about a conflict of interest to RDPA auditing  
4 Achilles, they would also apply in respect of RDPA auditing the RSSB,  
5 wouldn't they?

6 A. Yes. As I said previously, there was a concern raised by RSSB as well.

7 Q. Right. Now if we can go -- on the issue of continuity, can we go in the witness  
8 bundle to your third witness statement, tab 8, paragraph 18 of that. You refer  
9 to the basis for Achilles' loss and damage figure, and you criticise this as it is  
10 based on retaining a large proportion of revenues:

11 "The estimated losses do not take account of the fact they would be competing  
12 against the established and incumbent industry scheme in order to attract  
13 buyers and suppliers customers. It is inevitable that a large number of buyer  
14 customers and supplier customers would have stayed with RSSB as the  
15 incumbent industry scheme, even if Achilles had been able to compete."

16 You say in the penultimate sentence:

17 "The majority of suppliers would be unlikely to switch."

18 So you are treating this -- the basis on which you prepared this statement is that  
19 RSSB RISQS is the established incumbent, and it is a question of whether  
20 people would actively switch to Achilles in relation to --

21 A. That's correct.

22 Q. I think you also maintain that in your fourth statement at paragraph 6 as well.

23 Now I am going to test various aspects of that. First of all, at a commercial level -- I  
24 just want to check I am not doing something that's confidential. I am not. So  
25 if you could be given bundle G2, tab 30. You will see an agreement between  
26 the RSSB and Achilles. This is what people in this case have termed the

1 concession contract, although I think the word "concession" doesn't appear in  
2 it.

3 Were you familiar with that contract at the time it was in operation?

4 **A.** Not at all.

5 **Q.** Did you review it at all before writing your witness evidence for these  
6 proceedings?

7 **A.** No.

8 **Q.** If you can go to page 1101 -- I should just note when it says the service provider,  
9 you understand who the service provider is under this contract, do you? You  
10 see it on the first page of it on 1109.

11 "This agreement is made between

12 1. Achilles Information Limited (hereinafter known as the service provider."

13 So when whether it says the service provider, it means Achilles.

14 On page 1101, clause 4.3:

15 "Agreement for the provision of services to provide" the services at 4.1.

16 It is agreed to provide them. It does not say who to.

17 4.2:

18 "Service provider will provide the RISQ manager with access to the portal."

19 The RISQ scheme manager would be somebody like Richard Sharp or his  
20 successors.

21 4.3. I would ask you to read that. I shall read it out to you:

22 "The service provider shall have the right to charge fees for the period of this  
23 agreement to supplier and buyer organisations participating in the RISQ  
24 scheme, and shall hold direct contracts between itself and the participating  
25 supplier and buyer organisations. For the avoidance of doubt, the service  
26 provider will continue to manage those relationships independently, and shall

1 have the right to offer and contract for additional services to supplier and  
2 buyer organisations, providing that suppliers are entitled to the benefit of the  
3 services. Certain amendments to the direct contracts. Nothing in this  
4 agreement is intended to have the effect of amending or altering the direct  
5 direct contracts between the service provider and suppliers or buyer  
6 organisations."

7 At a commercial level, it was Achilles that was providing the service to suppliers and  
8 buyers, wasn't it?

9 **A.** I tend to regard that as like the back office service provider. The service was the  
10 services of the RISQS scheme, and Achilles were -- I used to refer to them as  
11 the administrator of that scheme. I understand your point about they had the  
12 contracts and were providing services, but from a Network Rail point of view,  
13 we subscribed to I guess the RISQS scheme to provide a service to us. How  
14 they physically contracted for the provision of those services was down to  
15 them.

16 **Q.** But the contract is between Achilles and the suppliers and buyers, isn't it?

17 **A.** Yes.

18 **Q.** And Achilles can manage those relationships independently of the RSSB, can't  
19 it? That's what it says there?

20 **A.** Well, without reading the other parts of this document, I am not sure what  
21 constraints Achilles would have been under in terms of their ability to manage  
22 these suppliers, but it is clear from what is said, there was a direct  
23 relationship.

24 **Q.** Well, we can see there are various things. For example, if you look at, since we  
25 are here, clause 8.9, page 1104:

26 "The service provider can use existing IP rights, including but not limited to Link-up

1 name outside this scheme, providing such usage does not conflict with the  
2 terms of this agreement or the communications policy detailed in schedule 5."

3 There is reference to communications policy.

4 "That name can only be used during the period of the agreement by agreement and  
5 approval of the RISQS board."

6 If you look at schedule 5, which is on page 1131, there are some limits about --  
7 there's a communications policy, and there is:

8 "The RISQS Board will specify the communications activities undertaken by the  
9 service provider. All RISQS relating to communication undertaken by the  
10 service provider shall be subject to prior approval by the RISQS scheme  
11 manager."

12 Again, this relates to communications relating to RISQS must be approved. If you  
13 look down:

14 "Unless otherwise agreed in writing, the the service provider must use RISQS as the  
15 name of the scheme and in conjunction with every promotion, and only use  
16 their own branding identity in connection with the RISQS scheme in a way  
17 which has been formally agreed by and signed off by the RISQS Board."

18 So they can put Achilles' own branding on their communications, but they need to  
19 have agreement by the RISQS Board to that, and so forth. You see there are  
20 some restrictions, but it is at that level. But at the level of the contract and  
21 relationship management, clause 4.3 is completely clear that Achilles holds  
22 the contract in the relationship with the supplier and buyer customers. That's  
23 right?

24 **A.** That's what that appears to say.

25 **Q.** Tab 25 of this bundle, what we can see there is a slightly earlier agreement  
26 between Achilles and Network Rail. This was actually the agreement, if you

1 turn over the page, dated 2nd July, 2013, between Achilles and Network Rail.

2 This was the agreement -- are you familiar with this agreement at all?

3 **A.** No.

4 **Q.** Right. We can perhaps jump to the -- again there's a front end and service  
5 schedule. We just note clause 19.1 on page 1033. There's a prohibition on  
6 assignment. As a procurement manager you must be familiar with that kind of  
7 clause. Neither party can assign this agreement to anybody else. So it is  
8 an agreement between Achilles and Network Rail and it can't be assigned by  
9 Achilles to the RSSB or anybody else.

10 Then the service schedule, if we look at that, which starts on page 1037, and we  
11 have a service schedule for a Link-Up subscription as a buyer. I suggest to  
12 you that this was the agreement that remained in place between Achilles and  
13 Network Rail right up until May 2018, wasn't it? Are you aware whether it was  
14 or not?

15 **A.** I wouldn't have imagined so, because I believe that Network Rail had  
16 an agreement with RSSB RISQS, but I don't know when it came into effect.

17 **Q.** I am putting to you, in fact, your agreement was with Achilles. This was signed in  
18 July 2013. Now, the RISQS Board came into existence in January 2013. Is  
19 that right?

20 **A.** It was before my time associated with this particular work activity, but if you had  
21 asked me the question, I would probably have said around 2013, 2014, as  
22 an approximate time scale.

23 **Q.** Take it from me for the moment --

24 **A.** Okay.

25 **Q.** -- that the Link-Up working group was transformed into the RISQS Board I think  
26 in January 2013, but we can confirm that later. So that was signed after that.

1 Look at 3.1. I am going to suggest to you the simple point. This is a contract  
2 between Achilles and Network Rail, under which Achilles provide services to  
3 Network Rail?

4 **A.** Looks like it, yes.

5 **Q.** It is not an agreement under which RSSB provide services to Network Rail.

6 Okay. That is the commercial contractual level.

7 Now if we can move to the issue of -- sorry.

8 Prior to May 2018, Achilles held the contract with suppliers and buyers. Those

9 contracts were not simply assigned to the RSSB, were they? The contracts

10 with suppliers and buyers were not handed over by Achilles to the RSSB,

11 were they?

12 **A.** I don't believe so. I think it was just data that was handed over from Achilles to

13 RSSB.

14 **Q.** So the RSSB had to enter into new agreements with suppliers and buyers in

15 May 2018, didn't it?

16 **A.** I believe so.

17 **Q.** Okay. Now, can we move to the issue of data transfer, which I think you just

18 mentioned? If you go to bundle G4, tab 180, there's something called

19 a transition guide. This isn't dated, on the face of it, but on the index the date

20 of it is 5th February 2018. Were you familiar with that document at the time it

21 was published in February 2018. Were you aware of that?

22 **A.** I do remember seeing this document or one like it.

23 **Q.** You may not remember all the details obviously. Now I would like to refer to the

24 section on data transfer on page 2077. There are three paragraphs there. It

25 refers to the challenges of moving to a new portal, and one of the biggest

26 challenges being how to populate it with necessary data. The RISQS team

1 looked to pre-populate.

2 Second paragraph. They had obtained 2 million items of data and uploaded them to

3 significantly reduce the burden on users. In the middle of that paragraph:

4 "Inevitably, though, there will be some data that you as the user will need to  
5 complete. It is important that you check the information imported as there is  
6 a small chance that some of it may be out of date or have been imported  
7 incorrectly. We are opening the profile page of the system to enable you to  
8 check and complete the information we hold. We would like to have this  
9 completed well before go live. The system is still being configured and tested,  
10 but this early access to the beta version will maximise the time users have to  
11 ensure they are happy before May 2018."

12 So the point I was going to put to you is there wasn't a continuity in May 2018  
13 between old RISQS and new RISQS, because there was a new IT system,  
14 and data had to be loaded into it, didn't it?

15 **A.** Yes, because the new platform was the Altius platform.

16 **Q.** And the process of importing was unreliable. Yes?

17 **A.** I'm not sure what process was in place. So RSSB were managing that.

18 **Q.** Right. Well, they say here that some of the data may be out of date or may have  
19 been imported incorrectly. Also not all the documents that suppliers had  
20 would be transferred across, would they?

21 **A.** I am not sure why they wouldn't necessarily be transferred across, because  
22 I think there was an expectation on RSSB's part that there was a clause in  
23 their agreement with Achilles that at a certain point in time information would  
24 be passed over to RSSB to upload into the system.

25 **Q.** That was your understanding. You thought that all the information would just be  
26 passed across?

1 **A.** Well, there was an expectation that information would be passed across. As far  
2 as all information, or relevant information, there was definitely an expectation  
3 of that.

4 **Q.** What we have here in February 2018, we have a clear statement in the second  
5 paragraph under the heading that:  
6 "Although there is a significantly reduced burden on users, there will still be some  
7 data that you as the user will need to complete and or need to be checked."  
8 I suggest to you this indicates there was not simple continuity between Achilles  
9 RISQS and RSSB's RISQS, was there?

10 **A.** Well, RSSB expected, as I say, because of a clause in the agreement between  
11 them, that Achilles had an obligation to pass over data by virtue of that  
12 agreement. That would have loaded into the system. The way I heard it was  
13 that the suppliers owned their own data. Really this was a facilitation type  
14 exercise, where once RSSB uploaded whatever data Achilles gave them, the  
15 suppliers would have to go in and check, and if there were any blanks, they  
16 would have to fill the blanks in.

17 **Q.** But this switching process is a substantial endeavour both for the RSSB and their  
18 customers, isn't it?

19 **A.** I would imagine it would be quite an effort.

20 **Q.** Yes. We dealt with the contractual point and established people would have to  
21 sign new contract terms. But they would also have to log into a new portal,  
22 wouldn't they? They would have to get new log in details for a new portal.  
23 That is what happened, yes?

24 **A.** Yes.

25 **Q.** It is not just a matter of staying with RISQS. It is joining a new portal?

26 **A.** It is a change of approach.

1 **Q.** It is more than that. It is a change of the IT infrastructure.

2 **A.** It is the same thing that would happen in the event of any competitive tender,  
3 where one supplier ends and another supplier begins. There is a transition  
4 process to go through.

5 **Q.** I would suggest to you it is not the name, because prior to this RSSB had not  
6 been providing the service to suppliers and buyers. Achilles had been  
7 providing the service. They contract with customers, and Achilles provides  
8 the customers with log in details to the Achilles system. What is happening  
9 now is RSSB is asking customers to enter into a series of new contracts with  
10 them and providing new log in details to a new system. I am suggesting to  
11 you that it is not simple continuity. It is a matter of suppliers and buyers  
12 having to join a new scheme.

13 **A.** From a Network Rail point of view, we believed we were getting a service from  
14 RSSB RISQS and RSSB RISQS are the administrator or provider in the  
15 background carrying out that service.

16 **Q.** We are going to carry on this theme. There is one more document in this  
17 bundle we will do now. If you go to tab 216 of that bundle, G4, another  
18 communication from Network Rail. I will just try to give you the date of this so  
19 you know when it is. This comes from 15th March 2018, so it's about a month  
20 later than the other one. This is the "Act now or potentially lose rail market  
21 access". This is a warning from Ms Scott, who at that time was at Network  
22 Rail, later at the RSSB:

23 "We have made it clear to maintain Sentinel status suppliers need to be RISQS  
24 assured and that means signing into the RISQS portal now. For most  
25 suppliers, signing and checking their data is quick and simple, but if  
26 companies leave it to the end of April, they risk being invisible to buyers from

1 May 1st."

2 **MR WENT:** Can I clarify, this is an RSSB document rather than a Network Rail  
3 document? You described it as Network Rail.

4 **MR WOOLFE:** I apologies. It is on their website. You can see that at page 2370.

5 The quote is from Gillian Scott, who is Assurance Manager at Network Rail at  
6 the time. She was later at the RSSB.

7 Now, what I am going to suggest to you is that second paragraph, which starts:

8 "Most suppliers signing in ..."

9 That one. From the point of view of a supplier, there is a very real break between  
10 the old scheme and the new scheme, isn't there, in that if they fail to sign up  
11 to a new contract, fail to get the new log in details or fail to log into the  
12 website, check the old information and upload new information, then, in  
13 a sense, she is saying they become invisible to the market. That's a pretty  
14 significant issue, isn't it?

15 **A.** Yes. So when I read this and understand what this message is saying to the  
16 industry, because the way that the suppliers operate in RISQS from  
17 a procurement point of view, and I think I mentioned this briefly earlier on  
18 today, because Network Rail are a utility, and we are entitled to operate under  
19 the utilities contract regulations, also we can therefore gain the benefits of  
20 a qualification system.

21 **Q.** Yes.

22 **A.** RSSB, in this instance, place qualification system notices, listed all the buyers  
23 who are in RISQS, and therefore, instead of each buyer placing a separate or  
24 due notice, and there being a lot of activity there, and bearing in mind each  
25 notice --

26 **Q.** Mr Blackley, I think the tribunal have that from the liability trial. It is not in dispute

1 that Network Rail has chosen to nominate RISQS as its qualification system,  
2 and it advertises contract opportunities through that?

3 **A.** Yes.

4 **Q.** And that burden is on Network Rail, broadly, speaking --

5 **A.** And suppliers as well.

6 **Q.** You are entitled to do that and you are doing that?

7 **A.** Yes. So this invisibility point is saying if for some reason you are going to  
8 disappear from the RISQS qualification system, when Network Rail is  
9 procuring something, when any utility user is procuring anything, and you type  
10 in the RACAL (?) code, the supplier would not pop up on the screen as  
11 somebody who has expressed an interest.

12 **Q.** What I am suggesting to you is this is a very significant break, because unless  
13 the suppliers sign up to the new portal, the new scheme, the new terms,  
14 nothing carries on. They can't simply stay a RISQS member. They have to  
15 do something new in order to be a RISQS member after this date?

16 **A.** There's clearly a transition process to follow. That's what this is telling me.

17 **Q.** Now put that bundle away and if you could be given G5, but I think if you were to  
18 be given the confidential version of G5 rather than a non-confidential version.  
19 In a few minutes there are going to be certain matters I want to take the  
20 witness to which are confidential to Network Rail. We may need to clear the  
21 court room at that point. I think this last letter is okay. 223.

22 **THE CHAIRMAN:** What is the reference?

23 **MR WOOLFE:** Bundle G5, 223. This is a letter dated 21st May 2018 from Achilles  
24 to the RSSB, but I think you were aware of it at the time. We saw some  
25 e-mails earlier on this morning where you refer to -- 21st March was when  
26 Achilles wrote to Mitie. There is an e-mail at that time: "Have you also seen

1 the data transfer letter". Do you recall that?

2 **A.** I don't recall the reference to the data transfer letter specifically.

3 **Q.** You remember this letter --

4 **A.** I was aware of the existence of the letter through the RISQS Board.

5 **Q.** That's the key point. You were aware of this at the time. Now, this is a letter  
6 from Miss Whittaker again. This refers to the data transfer process. We have  
7 dealt with the commercial contract point. We have looked at the actual data.  
8 This is data transfer between Achilles and Network Rail. Can you see under  
9 "Supplier Data" that this is offering to transfer data in three phases. The first  
10 phase --

11 **A.** You said there data transfer between Achilles and Network Rail?

12 **Q.** No. Data transfer between Achilles and RSSB?

13 **A.** Yes.

14 **Q.** For the purposes of complying with the conditions of the concession contract.  
15 Under phase one, that is the heading:  
16 "Current questionnaire data, Excel format, and order reports, pdf format, for suppliers  
17 with active subscription as of 20th March 2018."  
18 So there is a first phase as of 29th March, information would be handed over that's  
19 current as of that date, in an FTP server transfer. But it notes:  
20 "Where supplier data and RISQS" second sentence in the paragraph, "is  
21 supplemented by third party information, none of the third party information  
22 will be provided as part of the supplier data transfer, as this information is  
23 provided by Achilles to buyers under agreements between Achilles and a third  
24 party provider."  
25 Then there's a second phase for certificates, and a third phase for audit reports that  
26 are generated in April.

1 What I am going to suggest to you is for a start there is no third party data transfer.

2 So the data that RSSB gets is not the same as the data that is in the old  
3 RISQS scheme, is it?

4 **A.** I would have expected it to be the same data we are talking about. So whatever  
5 the supplier audit records were previously, it is those audit records we are  
6 talking about transferring into the new scheme.

7 **Q.** The audit records are going across but not all the information held by Achilles  
8 within the old RISQS scheme will be passed across. That's right? The third  
9 party information will not be passed across?

10 **A.** Yes. I have no idea what the extent of the transfer was agreed between the  
11 parties.

12 **Q.** That's a discontinuity between the old RISQS scheme run by Achilles and the  
13 new RISQS scheme run by RSSB, isn't it?

14 **A.** I am not sure I see it as a discontinuity. Presumably the parties agreed what  
15 a sensible level of data transfer was going to be.

16 **Q.** There's an agreement reached in 2014 as to what was going to be handed over,  
17 and that's the letter to say what was handed over.

18 I am going to be going to confidential material in this bundle. So perhaps we can go  
19 into confidential session for five minutes or so, sir. There's quite a lot to do.

20 **[Confidential section see seperate transcript]**

21 [Back in Open Court]

22 **MR WOOLFE:** You can come out of G5 and G6. Go to the non-confidential bundle  
23 now. If we go to tab 302 -- I will do this quite quickly because it is a point we  
24 have already seen. We have another RSSB announcement at tab 302.

25 **MR CUTTING:** Sorry, which?

26 **MR WOOLFE:** Tab 302, page number 3135. It's a newsletter it seems from RISQS

1 in April 2018. Over the page, on 3136, the item: "Log in now or face data  
2 loss, RISQS members warned". It is not just -- I think you see it in the point,  
3 bottom paragraph of the page:

4 "On 1st May the system goes live, but GDPR rules demand that members' profiles  
5 are wiped if they have not given explicit permission for the information to be  
6 held by logging into the RISQS platform before May 25th."

7 So it is quite important that it is not the same system, isn't it? Again, the fact that it is  
8 not the same database is a significant discontinuity, isn't it?

9 **A.** Again, I am not sure of the word "continuity", but it is a significant change to the  
10 way the service was being provided, but that was always going to happen  
11 after the competitive tender if a different supplier won the tender.

12 **Q.** Okay. Now I am going to go in the same bundle to tab 329. These are internal  
13 within Network Rail. The top e-mail from Peter Jones to Gillian Scott: "I have  
14 been using Achilles. I will still use this if needed, but why do we need an  
15 access to Network ... Am I missing something here."

16 This is what Network Rail is doing internally.

17 "I have been trying to get a log in using the new platform through RSSB RISQS.  
18 Can you help in any way?"

19 So on 18th April somebody at Network Rail was struggling to get a log in. Again, this  
20 is just at a very pragmatic level, there is discontinuity, isn't there, between the  
21 user experience of the old scheme and the new scheme?

22 **A.** Yes. I am not sure whether this is unusual or whether there is an element of this  
23 that is to be expected when you do a transfer.

24 **Q.** It is mundane but it is important, isn't it, because if you don't log in to the new  
25 portal, then RISQS isn't entitled to use the data.

26 **A.** I think equally this talks about Network Rail moving across to RSSB. I am not

1 convinced there is an entire choice here of Network Rail, because the whole  
2 industry was following an industry instruction. I am not sure what the right  
3 word is to use, but the industry decided that supplier qualification, supplier  
4 assurance should fall under the remit of the RSSB, because they were seen  
5 as the safety experts in the industry. I think I have mentioned this morning  
6 that my understanding is this all followed, whether it was directly or indirectly,  
7 followed the Cullen Inquiry after the Paddington rail crash. So there was  
8 a physical shift from using the system that had been used since 1997, to  
9 putting the responsibility for managing it to under the RSSB. So that was  
10 what caused the Network Rail shift.

11 Q. I don't think it is too far off the matters which we covered in the liability trial. The  
12 Cullen Inquiry decided that there needed to be greater focus on joined up  
13 supplier assurance. Then there was a decision at some point a couple of  
14 years after that to rebrand Link-Up as RISQS. Are you suggesting there is  
15 some collective industry agreement that everybody had to use RISQS?

16 **A.** No. I think the responsibility for the scheme -- I am not sure which body decided  
17 that it was going -- you know, the administration of that scheme, the  
18 responsibility of it was going to reside with RSSB. So Network Rail didn't  
19 have a choice, do we use RSSB or something else. We were guided to follow  
20 RSSB rather than do our own thing.

21 Q. If we can go to 342 in this bundle, there is an e-mail exchange between Ms Scott,  
22 who at that time was still at Network Rail, and Graham Cox. Start at the  
23 bottom of that page. Mr Cox's e-mail to a range of people, including -- I just  
24 want to check something -- Richard Sharp, Don Clarke, copied to  
25 Gillian Scott. He says:

26 "I remain concerned that numbers will remain efficient at 1st May, go live", and so

1 on.

2 He appreciates that not all suppliers are live. End of first paragraph of that e-mail:

3 "We have always worked on the fact that circa 3, 800 suppliers are generally live,  
4 and available to our buyer members. However, the fact remains we only have  
5 circa 2,200 into the system to date, despite our comms, considerable efforts  
6 by Network Rail, additional staff, etc, and are only seven days away from  
7 going live. We need to consider all current and additional methods to assist  
8 the transferring."

9 So there was still real concern, wasn't there, about whether or not enough people  
10 had signed up to the RISQS scheme at that point?

11 **A.** Yes.

12 Q. Now we can see what Ms Scott does at tab 346. She sends an e-mail. You can  
13 see if you turn to page 3299, so turn over a page, an e-mail of 24th  
14 April 2018, so a week before go live. You need not read all the e-mail  
15 addresss. It says to all principal contractors. We assume that's who it is  
16 going to. She sends them a list of suppliers who have not updated their  
17 details on the new RISQS platform, and asks principal contractors to contact  
18 them, saying that because they haven't updated, from 1st May they will not be  
19 searchable to any buyers and on 25th May any migrated data will be deleted.

20 In the actual situation as it happened, from the point of view of a supplier who failed  
21 to log into the new system, it really was a new system, wasn't it, because they  
22 would instantly cease to be visible. Yes?

23 **A.** It was a change of form that was being used for the new system, yes.

24 Q. Suppliers don't just carry on. If they fail to do something, they become invisible?

25 **A.** That's what it says, yes.

26 Q. In the counterfactual, where Achilles was going to be in the market in May

1 2018 -- let's leave aside staying on carrying on, but Achilles was going to be in  
2 the market from May 2018, the supplier would have a choice, wouldn't they?  
3 They could log into the new RISQS system and sign up for that and cancel  
4 their Achilles' membership. Yes? That's one thing they could do?

5 **A.** That's what they were expecting to do.

6 Q. They could log into the new RISQS system and get a RISQS membership, and  
7 they could decide whether to log into Achilles' system and carry on with  
8 Achilles' membership or cancel Achilles' membership?

9 **A.** Can I explain why that statement is relevant to this? Because if they remained in  
10 the Achilles' platform and they were not using the Achilles platform, and went  
11 to a procurement and typed in the name, the supplier name would be in  
12 a different system. As I said earlier, we are not using the Achilles system as  
13 a qualification system under utility regs. That's an important point.

14 Q. That's well understood. We are conscious of time. I am not disagreeing with that  
15 at all. I think the tribunal have the point. You don't need to repeat that.

16 **A.** When you asked me the question if they could have remained in the Achilles  
17 system, by remaining in the Achilles system that's what would have  
18 happened. They would have disappeared.

19 Q. From your view?

20 **A.** From our view, yes.

21 Q. But in this counterfactual world we are talking about where Achilles was providing  
22 a service in May 2018, buyers could, if they wanted, log into Achilles' system  
23 to see suppliers, couldn't they?

24 **A.** Yes.

25 Q. So if you chose to cancel your Achilles' membership at that point, they would be  
26 invisible to you, any suppliers, who stayed on Achilles, but they would remain

1 visible, wouldn't they, to buyers who were on Achilles?

2 **A.** Yes.

3 Q. This statement here, that they would not be searchable to any buyers, that's  
4 something Ms Scott could say with some confidence in the actual situation,  
5 but it is not something she could have said if Achilles was going to be there  
6 after 1st May 2018, is it?

7 **A.** I can understand why she wrote that, because she wrote it during the notification  
8 published, the quotation system notice, suppliers would have responded to  
9 that. So that's the kind of procurement law taken care of. I am not aware that  
10 Achilles published a similar notice on behalf of utilities.

11 Q. What she says here:

12 "Will not be searchable to any buyers."

13 That's different from saying will not be searchable to Network Rail. She is saying  
14 "will not be searchable to any buyers"?

15 **A.** Yes.

16 Q. Just focusing on the choice a supplier would have in a world where Achilles  
17 continues to provide supplier assurance services, if they want the RISQS  
18 system, they have to sign up to that and so forth. If they want the Achilles'  
19 system, they will have to log into the Achilles' platform. But if a supplier wants  
20 to single home to RISQS, use RISQS and not use Achilles, they would have  
21 to sign up for RISQS and cancel their Achilles' membership, wouldn't they?

22 **A.** I am not sure what the kind of protocol was with Achilles.

23 Q. If they wanted to single home to Achilles, they would have to log into the Achilles  
24 site but they don't have to cancel any RISQS membership, do they?

25 **A.** No, because at that point they haven't established that.

26 Q. Fine. Then just a couple of very short points. If we can go to bundle -- put away

1 bundle 6. This is how this was seen by people other than yourself at the  
2 relevant time. Go to bundle G3, please. Go to tab 100. You should see  
3 an e-mail from a Mr Gary Pine, who is a procurement manager at Network  
4 Rail. Sorry. A few pages in. Page 1706. This is an e-mail -- it is in tab 100,  
5 page 1706. Do you have that. The first page is 1704?

6 **A.** Tab 99.

7 **Q.** No. Go to tab 100. The first page in tab 100 is 1704. Yes?

8 **A.** No. 1707.

9 **Q.** I want you to look at page 1706. Maybe something has gone wrong with the  
10 tabs?

11 **A.** 1706 in tab 99.

12 **Q.** I am not sure where it is in the tribunal's bundles. We have the same page. We  
13 see an e-mail from Mr Gary Pine, procurement manager,  
14 21st September 2017 to you and Tony Wynne. Short point:

15 "Please could we have some confirmation as to whether we are switching to the  
16 RSSB Capita system or continuing to use Link-Up, as it will now be called  
17 again."

18 So Mr Pine clearly saw the continuity option as being Link-Up, didn't he?

19 **A.** I am not sure how he viewed it, but he certainly asked the question to try to seek  
20 clarification.

21 **Q.** He refers to using the RSSB Capita system as switching, and he refers to  
22 Link-Up as continuing to use. So somebody at Network Rail saw it in those  
23 terms. Yes?

24 **A.** Yes.

25 **Q.** So although you saw it as being continuity, somebody else might see it as  
26 switching. Yes?

1 **A.** I am not sure what was going through his mind, in terms of why he raised the  
2 question.

3 **Q.** That's how a user viewed it within Network Rail.

4 Then if we put that bundle away and go to G7, tab 400. Hang on. Let me check this  
5 is not confidential. No, it is not. Thank goodness. You can see e-mail dated  
6 8th May 2018. At the bottom of the page we have one from Darren at Quench  
7 Consultancy to Gillian Scott. Quench are a consultant in the rail industry. Are  
8 you familiar with them?

9 **A.** I have heard of them. I have never worked with them.

10 **Q.** The e-mail from Darren Male, director of the Quench Consultancy to  
11 Gillian Scott, 8th May:

12 "Hope you are well. I wondered if Network Rail supplier assurance had a public  
13 position on Network Rail's acceptance of the new Achilles TransQ Global rail  
14 supplier assurance scheme with both RISQS and Achilles (inaudible)  
15 invoices. We need some certainty that if suppliers stay with Achilles that it will  
16 be accepted by Network Rail."

17 Again, this is a consultant in the industry whose job it is to deal with these kind of  
18 matters. He is referring to it as suppliers staying with Achilles. That's how he  
19 saw it, isn't it?

20 Also just note the next paragraph:

21 "There was a level of uncertainty in my client base on the ability of using Capita to  
22 deliver the RISQS scheme. Having used Capita audit already, I felt it didn't  
23 deliver the level of assurance and depth that Achilles provided. As you are  
24 probably aware, the transfer of data from Achilles to another platform is very  
25 poor. The tone of Capita e-mails are also causing concern."

26 Again, at the level of who was actually providing the service, a consultant in the

1 industry whose job seems to be to help clients through this process, he sees it  
2 as being significant discontinuity as well between pre-and post-May 2018?

3 **A.** I think they are reflective of comment one week in to the new Capita models.

4 Q. But that was a contemporaneous perception of the change?

5 **A.** It is what he is saying in his e-mail.

6 Q. He is not seeing it as RSSB RISQS continuing to provide the scheme, is he? His  
7 perception differs from your perception. Your perception was that RSSB  
8 RISQS carried on. His perception is quite different, isn't it?

9 **A.** Yes.

10 Q. Okay.

11 Sir, I am conscious that I have got one more topic to do with Mr Blackley, which  
12 I think will take about ten to fifteen minutes. Do you want to press on?

13 **THE CHAIRMAN:** Yes.

14 **MR WOOLFE:** Your fifth witness statement. There are confidentiality issues around  
15 this. I think that means we do need to go into closed session again I am  
16 afraid. Some people need to leave.

17 (confidential portion see seperate transcript)

18 **(Short break)**

19 (Back in Open Court)

20 **MR WOOLFE:** Now, Mr Blackley, you will be pleased to know this is the last file  
21 I am going to get you to look at. Get your witness statement bundle, so  
22 bundle D, tab 8 and a statement you make at paragraph 32 of that statement.  
23 You refer to Achilles facing reputational issues during the relevant period of  
24 Spring, 2018. You say:

25 "In consequence, this would have meant that Achilles would have been unable to  
26 retain the number of suppliers they assert."

1 The reality is that when anybody is providing a service to a market for a long time,  
2 some people won't like them and some people will, won't they?

3 **A.** Invariably, yes.

4 Q. In fact, Capita had reputational issues, didn't they?

5 **A.** Do you want me to explain why I wrote that statement, because it is very specific  
6 to me as to why I wrote it.

7 Q. It is your evidence. If you want to tell me about it, you should.

8 **A.** So the reputational issues I refer to -- my experience of Achilles generally was  
9 they provided the service it said on the tin. The audit report aside, I never had  
10 any complaints about. What I did become aware of, when Achilles said they  
11 were going to make changes to their platform to improve the usability of the  
12 platform to adapt to higher requirements and requests, the question set, it  
13 never appeared to happen to the timescale. It was always kind of getting  
14 pushed off. Therefore, the reputational issues in this context is primarily to do  
15 with the fact improvements had been promised and then they didn't happen.  
16 So when they announced they were going to move to a new tender, in my  
17 view that was going to give Achilles the opportunity to refresh their platform  
18 and enter the market with a new and improved platform that would actually  
19 support the audit services they were providing. That wasn't to do with poor  
20 audit. It was more to do with the poor platform responsiveness and the data  
21 coming out of the platform.

22 Q. We have seen about Capita's reputation from a number of sources, haven't we?

23 **A.** Yes.

24 Q. Finally on Capita and its reputation, am I correct to understand that Capita is no  
25 longer providing the audit service?

26 **A.** Yes. RSSB effectively TUPE'd the Capita staff in-house, so they are now

1 managing them as direct employees to RSSB.

2 Q. So the RSSB model has changed again. Do you know why that decision was  
3 taken?

4 **A.** I have never been party to that decision, other than RSSB believed they were  
5 doing it for the benefit of the scheme, to strengthen the scheme.

6 Q. Sir, those are all the questions I have for Mr Blackley.

7 Re-examination by Mr Went.

8 **MR WENT:** I just have a few questions to ask Mr Blackley. Can we turn back to  
9 binder G11 and tab 616. So I think you were taken to some of the  
10 correspondence between you and Miss Ferrier on the API point, but I am not  
11 sure you were taken to all of it. So I just want to follow up with a couple of  
12 questions on that.

13 So here I think this is an e-mail from Miss Ferrier to you on 7th May 2020. Can I just  
14 get you to read the first paragraph there, please, and again just over the  
15 page just have a quick look down. Halfway down there is a heading "Baseline  
16 principles"?

17 **A.** Yes. Do you want me to read all of those bullet points?

18 Q. You may remember them in any event. Just cast your eye over them?

19 **A.** Yes.

20 Q. On receiving this letter, did you have the impression at the time that Achilles was  
21 ready to accept the API solution?

22 **A.** No, because that's when we could have started to think about the need for  
23 compromise in order to move this forward, because my belief was we could  
24 have been arguing about this point for many months to come. It was not  
25 getting anyone anywhere quickly. But by Network Rail making some  
26 concessions, we could at least move that on.

1 Q. Can we look at a couple of pieces in the correspondence here. If you turn over  
2 to tab 617 on the first page there, 2002 , if you have got that, just look at the  
3 bottom. Towards the bottom

4 {"JOIN EI's BIT}

5  
6  
7 **Re-examination by MR WENT**

8 **MR WENT:** Thank you. I just have a few questions to ask you, Mr Blackley. Can  
9 we turn back to binder G11, please, and tab 616? So I think you were taken  
10 to some of the correspondence between you and Miss Ferrier on the API  
11 point, but I am not sure you were taken to all of it, so I just want to follow up  
12 with a couple of questions on that.

13 So here I think this is an e-mail from Miss Ferrier to you on 7th May 2020. Can I just  
14 get you to read the first paragraph there, please? Then just over the page just  
15 have a quick look down. Halfway down there is a heading "Baseline  
16 principles".

17 **A.** Yes. Do you want me to read all of those bullet points?

18 **Q.** You may remember them in any event. Just cast your eye over them.

19 **A.** Yes.

20 **Q.** On receiving this letter did you have the impression at the time that Achilles was  
21 ready to accept the API solution?

22 **A.** No, because that's when we kind of started thinking about the need for  
23 compromise in order to move this forward, because my belief was we could  
24 have been arguing about this point for many months to come. It was not  
25 getting anyone anywhere quickly, but by Network Rail making some  
26 concessions we could move at least move that on.

1 **Q.** Yes. Can we look at a couple of other pieces in the correspondence here? So if  
2 you turn over to tab 617, just on the first page there, 5082, if you have got  
3 that, just look at the bottom. Towards the bottom there is  
4 a paragraph starting:  
5 "If after ..."  
6 Can I just get you to read that?  
7 **A.** Yes.  
8 **Q.** So I think you had the impression that Achilles was questioning whether the API  
9 solution was compliant with the tribunal's order. Yes?  
10 **A.** Yes.  
11 **Q.** Then you reference there is an attached letter that goes with that e-mail. That's  
12 in the next tab. So that was a letter obviously on the same date. If we can  
13 turn to page 5810, please, and then if you can just read that, just under "Other  
14 complaints raised by Achilles". Have you got that?  
15 **A.** Yes.  
16 **Q.** "Other complaints raised by Achilles". Just read the first sentence there, or that  
17 paragraph rather. Yes?  
18 **A.** Yes.  
19 **Q.** So in addition to the general questioning whether the API solution was going to  
20 be complaint with the order, there were still some specific issues being raised  
21 about the API solution. Yes?  
22 **A.** Yes. Again nothing seemed insurmountable, but again we had to address them.  
23 **Q.** Yes. Again if we can just turn to tab 624, so this is the letter from Miss Ferrier to  
24 you on 20th May 2020. Go over the page, 5837. Towards the top there is  
25 a paragraph starting "However ..." Can you just quickly scan over that or at  
26 least the first part of it?

1 **A.** Yes.

2 **Q.** So I think Miss Ferrier is saying that you still have not explained why the API is  
3 justified. Is that right?

4 **A.** That's what that paragraph says.

5 **Q.** Yes, and then -- well, did you think it was reasonable of Miss Ferrier to be  
6 asking?

7 **MR WOOLFE:** I'm sorry. Slightly leading, if I may.

8 **MR WENT:** Did you think it was reasonable of Miss Ferrier to be questioning the  
9 API solution in this way?

10 **A.** My starting point was I believed that under the terms of the CAT we had to put in  
11 a solution and my understanding was we were able to choose the portal.  
12 Therefore, by choosing the portal and having the person that designed the  
13 portal able to create the API, that made perfect sense to me, you know, as the  
14 quickest solution. In terms of why we were actually using the API, I think that  
15 was part of the first trial where the evidence presented by Achilles was, you  
16 know, APIs are pretty straightforward to put in place and it should be relatively  
17 easy to do.

18 **Q.** Yes. Then can I get you just to read the paragraph starting:  
19 "Please set out for us ..."

20 **A.** The objective safety risk?

21 **Q.** "Please set out for us the reason why an API is required."

22 **A.** Yes. That's reiterating the point about the safe storage in a repository.

23 **Q.** So she was asking questions, as you say, about the safe storage.  
24 So I think it was put to you by my learned friend that you came up with the API  
25 aggregator model, Achilles had not yet rejected the original API solution. In  
26 your mind did Achilles ever accept the original solution?

1 **A.** No. That's why we decided to try to find an alternative and that inevitably meant  
2 Network Rail had to make some compromise.

3 **Q.** Thank you. You explained in your evidence that I think there is confusion in the  
4 market place after Achilles announced in September 2017 that it was going to  
5 offer a competing service from May 2018. Is that right?

6 **A.** Yes.

7 **Q.** In the counterfactuals again I think we know that the RISQS-only rule in its  
8 original form wouldn't have existed, but there would nevertheless have been  
9 a rule making clear that direct suppliers to Network Rail must use RISQS for  
10 pre-qualification and audits for assurance. That's right?

11 **A.** That's right, yes, but you are talking about the counterfactual scenario?

12 **Q.** Yes. So obviously in the actual scenario you have the RISQS-only rule, which  
13 has been found to be unlawful, but in the counterfactual there would have  
14 been like a modified RISQS-only rule.

15 **A.** So my logic behind that was it would be useful, RSSB RISQS, as an approved  
16 supplier assurance provider or any other approved supplier insurance  
17 provider, you know, at that time.

18 **Q.** Assuming that Achilles in the counterfactual put out the type of announcement it  
19 put out in September 2017, how do you think the market might have reacted  
20 to that?

21 **A.** I think the market generally reacted that they were expecting a competitive tender  
22 to result in either Achilles re-winning the work or somebody else being put in  
23 place to provide the services where it was going to be under the RSSB new  
24 RISQS umbrella.

25 **Q.** Okay. I don't have anything further. I don't know whether the tribunal have any  
26 questions for Mr Blackley.

1 **THE CHAIRMAN:** No, we don't have any questions.

2 **MR WENT:** Thank you.

3 **THE CHAIRMAN:** Thank you very much, Mr Blackley.

4 **A.** Thank you.

5 **(Witness withdrew)**

6 **MR WENT:** If I can call Mr Berwick, please.

7

8 **MR ADAM BERWICK**

9

10 **Examination-in-chief by MR WENT**

11 **MR WENT:** If Mr Berwick could be passed binder D, please, tab 7.

12 Just while that's coming, just for the tribunal's note Mr Berwick also gave a statement

13 at the liability trial. That's at D/2. Do you have tab D/7 there?

14 **A.** Yes.

15 **Q.** Do you see a statement in front of you? Yes?

16 **A.** Yes, I do.

17 **Q.** Do you recognise that?

18 **A.** I do.

19 **Q.** That's your statement?

20 **A.** Yes.

21 **Q.** If you just turn to the end, please, is that your signature at the end?

22 **A.** It is.

23 **Q.** And then if we also then just turn on to tab D10 --

24 **A.** Yes.

25 **Q.** -- again do you recognise that statement there, and if you turn on to the end

26 again --

1 A. Yes.

2 Q. -- can you confirm that's your signature?

3 A. Yes.

4 Q. And that's the evidence you want to give in these proceedings?

5 A. Yes, it is.

6 Q. Okay. If you wait there, there will be some questions.

7

8 **Cross-examination by MR WOOLFE**

9 **MR WOOLFE:** Good afternoon, Mr Berwick.

10 Now in your second statement, which is at tab 7, you say at paragraph 35 -- this is --

11 "The only situation in which [you] can envisage Balfour Beatty Rail being in both  
12 RISQS and Achilles' scheme for its supplier assurance needs would be if  
13 a major client dictated that we use an alternative provider and that client also  
14 refused to recognise our RISQS assurance, both of which I think are unlikely  
15 at this stage."

16 So there you are referring to the possibility or in your view the unlikelihood of joining  
17 Achilles as a supplier. That's right?

18 A. Joining as a supplier, yes.

19 Q. Yes, that's what you are referring to, because you are saying for major clients if  
20 a buyer --

21 A. Yes.

22 Q. You would consider joining as a supplier. You acknowledge in that situation if  
23 a major client did dictate that they had to use Achilles --

24 A. Yes.

25 Q. -- that you probably would join at that stage. Yes?

26 A. Yes.

1 **Q.** It would make commercial sense. Now has that happened?

2 **A.** Not to date to my knowledge.

3 **Q.** Right. So, I mean, in fact, Balfour Beatty Rail has signed up as a supplier to

4 Link-Up, hasn't it?

5 **A.** I don't know. You have to remember that I haven't worked in the rail business in

6 Balfour Beatty for two years.

7 **Q.** Okay. What I am going to suggest to you is that, in fact, Balfour Beatty Rail

8 joined Link-up as a supplier in May 2021 --

9 **A.** Okay.

10 **Q.** -- which would postdate your statement, but, in fact, they have chosen to join

11 Link-Up as a supplier.

12 **A.** Okay.

13 **Q.** Perhaps if I could ask that the documents be handed to the witness and the

14 tribunal, one for the witness and for the tribunal and I hand one to my learned

15 friend, just to make good that point. I appreciate you have not seen this

16 before. It is a certificate of membership issued when somebody has

17 registered. Certificate of membership:

18 "This is to certify that Balfour Beatty Rail are now fully registered as a supplier on

19 Achilles' Link-Up community."

20 You see the expiry date and the Achilles ID, and expiry date is 7th May 2022. I am

21 actually inferring they must have joined on 7th May 2021, but it would be

22 annual, to Link-up.

23 With that in mind is there anything else you would like to correct at all about

24 paragraph 35 of your statement?

25 **A.** Not at this stage.

26 **Q.** So do you know if any major client came forward?

1 **A.** I don't know if any major clients have.

2 **Q.** Now looking in terms of your activity as a buyer, you deal with that at  
3 paragraph 21 of your statement.

4 **A.** Yes.

5 **Q.** So back at page 69. You essentially put forward five subparagraphs as to  
6 reasons as to why you specify RISQS. I think there are actually four reasons  
7 actually. The first one is in paragraph (a). It is against rail specific standards.  
8 Yes?

9 **A.** Yes.

10 **Q.** I think in a sense that's sort of the same point you are making in sub-paragraph  
11 (ec), because you talk about using Construction Line outside rail, but you use  
12 RISQS in rail. That's the same point essentially.

13 **A.** It is, yes.

14 **Q.** Then paragraph (b) -- I think the last sentence of paragraph (a) and then  
15 paragraph (b) is about consistency within the rail business. Yes?

16 **A.** Yes.

17 **Q.** The third point, (c), it is useful in prequalification and tendering, but you don't use  
18 it exclusively for that?

19 **A.** Correct.

20 **Q.** And the fourth point you say that everybody is already on RISQS, so it would  
21 import additional costs to require another scheme.

22 I just want to test these with you. The first point: rail specific. Link-Up is a rail  
23 specific assurance scheme, isn't it?

24 **A.** Yes.

25 **Q.** So that in itself is not a reason to pick RISQS over Link-up, is it?

26 **A.** Correct.

1 Q. Okay. Then the functionality of point (b) -- sorry -- point (c) rather, using the  
2 information for tendering --

3 A. Yes.

4 Q. -- is that unique to the RISQS portal? Is that a unique event to the RISQS  
5 portal?

6 A. No, it's not.

7 Q. Okay. So then we're back to the points at I think (b) and (d), which really are  
8 reasons why having a single scheme is better than having multiple schemes.  
9 That's more to the point.

10 Now what I am going to suggest to you is in both of those you are really focused on  
11 the situation as it now stands where, in fact, RISQS has been the only  
12 scheme in the market for the last three years and so everybody is already on  
13 RISQS. Yes?

14 A. Correct.

15 Q. So if you look at point (d), you say you:

16 "... do not want to import additional costs ... by requiring compliance with a further  
17 assurance scheme where those engaged in safety critical works such as  
18 deploying workers trackside would already be registered with RISQS for other  
19 clients."

20 A. Yes.

21 Q. Now I appreciate you have not been in this case every day, but do you  
22 understand that we are trying to imagine how things would have been had  
23 Achilles carried on in the market in May 2018?

24 A. Okay.

25 Q. So if on the 1st May 2018 -- up to 1st May 2018 Achilles was running the RISQS  
26 scheme, wasn't it? Yes?

- 1 **A.** Yes.
- 2 **Q.** And so all suppliers were already registered with it in that context. Then if after  
3 1st May 2018 Achilles had carried on and RISQS had carried on, it wouldn't  
4 immediately have required a whole lot of cost in the supply chain on day one if  
5 you had required Achilles, would it, because all suppliers would already be on  
6 the system?
- 7 **A.** Well, it would depend on whether or not they had to apply to RISQS to work for  
8 Network Rail.
- 9 **Q.** Yes, but indeed the requirement to be on RISQS may be adding costs or to be  
10 on Achilles may be adding costs?
- 11 **A.** So the requirement to join a second.
- 12 **Q.** On day one there wouldn't be an immediate cost, would there?
- 13 **A.** It depends on the supply chain. So my supply chain might work for both Balfour  
14 Beatty and for a client organisation such as Network Rail. So if on day one  
15 Network Rail required them to join a different scheme, then effectively there's  
16 a cost to you.
- 17 **Q.** So they have to pay the cost of joining the new RISQS scheme.
- 18 **A.** The new scheme.
- 19 **Q.** Yes, but they have to pay that new cost anyway, don't they, whether they carried  
20 on with Link-up or not? But at some point if you keep on requiring Link-Up,  
21 then down the chain when renewals come round there may an additional  
22 costs, but on day one there wouldn't necessarily be a great deal of costs from  
23 --
- 24 **A.** Well, there would be an additional cost if they had to join a second scheme to  
25 work for their clients.
- 26 **Q.** I'll just check. When you required your suppliers to be registered with RISQS,

1 that actually required them to go off -- sorry. In the run-up to 1st May 2018  
2 and the handover suppliers had to register for the new RISQS scheme, didn't  
3 they?

4 **A.** The new scheme.

5 **Q.** Yes, and so you were requiring to actually go and sign up for something new?

6 **A.** Yes.

7 **Q.** And if I can take you to -- can you be given bundle G6, tab 346?

8 **A.** Sorry. 3...?

9 **Q.** 346, which is most of the way through the bundle. Now this is an e-mail chain --  
10 this is an e-mail. You can see it starts on page 3297, and if you go over the  
11 page, a very long list of e-mail addresses. 3298, 3299. It is addressed to all  
12 principal contractors. It's from Gillian Scott. Balfour Beatty is a principal  
13 contractor, isn't it?

14 **A.** It is.

15 **Q.** I am afraid I did at some point identify where the Balfour Beatty (inaudible) was  
16 but I seem to have lost it. Let's not spend time now. (Inaudible) you are all  
17 principal contractors. It's attaching a list of suppliers, which we don't now  
18 have, who are part of the supply chain, who had not updated their details on  
19 the new RISQS platform. This was sent on 24th April 2018, so a week before  
20 the new scheme went live, warning of this issue that if they don't update their  
21 details they won't be searchable, and from 25th May any migrated data would  
22 be deleted to ensure GDPR compliance. That was a communication of Gillian  
23 Scott to all principal contractors. They were asking principal contractors,  
24 people like Balfour Beatty, to place pressure on the suppliers to go and  
25 update their details. Yes? So around that time you were having to actively  
26 push suppliers to register with the new system, weren't you?

1 **A.** Yes.

2 **Q.** If not all their suppliers did move -- in the actual situation she is saying they will  
3 not be searchable, if not all suppliers moved, on 1st May, you could have  
4 logged into the Achilles system to see information about the suppliers,  
5 couldn't you?

6 **A.** I don't know, but --

7 **Q.** You were before a buyer on Achilles, weren't you?

8 **A.** Yes.

9 **Q.** You could have logged in. When she says from 1st May, if they didn't update  
10 their details, from 1st May they won't be searchable to any buyers, that was  
11 true in the actual, but it wouldn't have been true if Achilles was allowed to  
12 carry on, yes?

13 **A.** Yes.

14 **Q.** In we go back to your statement again at paragraph 21B. This is this point about  
15 the advantage you see of RISQS as being a single point of contact for the  
16 supply chain. I don't understand what you mean by supply chain, because at  
17 paragraph 27 you say that you only stipulate risks for your own suppliers and  
18 not for your tier 2 and tier 3.

19 **A.** Correct.

20 **Q.** So when you say single point of contact for supply chain --

21 **A.** Our direct suppliers.

22 **Q.** I just want to understand that. You acknowledge in paragraph 27 it is perfectly  
23 manageable having different supplier assurance providers at different levels  
24 of the supplier chain, isn't it? So you use RISQS if your supplier, when it is  
25 acting as buyer, happens to use Achilles. That is a manageable situation,  
26 isn't it?

1 **A.** For me it is, because I am not managing it. The supplier is managing it.

2 **Q.** Okay. So this point about having a single point of contact, it is about having a  
3 single point of contact for you?

4 **A.** Indeed, in a single system.

5 **Q.** So that's not really an advantage of RISQS over Link-Up either. As long as you  
6 choose one scheme --

7 **A.** It is an advantage to me, yes.

8 **Q.** Okay. Now at 21 (b) you do say, having consistency, "applying the same  
9 standard to our supply chain as that which is applied to us helps reduce risk".  
10 So at some stage your supplier is being held to the same standard as you are  
11 reduces risk. We are almost done with this. If you go to G12, tab 628. Over  
12 the page 5850, this is a standard called the NR302 standard supply  
13 qualification requirements behind tab 628. Yes? It shouldn't be confidential.  
14 It is a public standard. Behind 628 in bundle G12. It is the Network Rail 302  
15 standard. So it is not confidential. This is the new standard for supplier  
16 qualification requirement set out by Network Rail in mid 2020. I think you said  
17 you have not been working for Network Rail for a while. Are you familiar with  
18 this?

19 **A.** I am not.

20 **Q.** 5860, you can see now that the rule changed. So at 6.1:

21 "Only supplier assurance providers approved by Network Rail against the  
22 requirements of the standards shall certify suppliers as being suitable to  
23 sponsor staff within Centinel."

24 Now at 6.3: Requirements for supplier assurance providers".

25 "All supplier assurance providers shall demonstrate and meet the requirements of"  
26 an ISO standard that's referred to there.

1 Are you familiar with the ISO standard there at all?

2 **A.** I am not, no.

3 **Q.** But it is the standard which sets principles and requirements for competence and  
4 consistency, impartiality of audit bodies. So what I was going suggest to you  
5 is actually there will be -- if you are looking at different levels of the supply  
6 chain?

7 **A.** Yes.

8 **Q.** Because the supplier assurance providers approved by Network Rail must meet  
9 the relevant standard, and they have modules against which the audit will be  
10 set out, there, in fact, will be reasonable consistently between different levels  
11 of the supply chain, even though different people are carrying out the audits.  
12 Do you accept that?

13 **A.** If they are operating to a standard, yes.

14 **Q.** That's quick. Can we go back to your third statement now, which is in bundle D,  
15 which is tab 10, I believe. At paragraph 11 you explain an issue immediately  
16 before the transition to RISQS, where you were seeking audit of I think  
17 300-odd suppliers. If you recall that issue, I suggest you were worried about  
18 there being a bottle-neck. There was a new scheme starting. People needed  
19 to be approved under it. You were worried about Capita not getting up to  
20 speed in time, post 1st May, therefore you wanted to get suppliers put through  
21 their audit a bit earlier than they otherwise might have been to try to smooth  
22 the issues. Yes?

23 **A.** No, not quite correct. What we had was about 300 suppliers whose RISQ  
24 qualification had either expired or they were not carrying the correct  
25 qualification for the work they were now doing. Effectively, what we wanted to  
26 do was get those through the process as quickly as we could, because it

1 presented a risk for us. With the transition taking place, we had accepted  
2 there would be a downturn as the service transitioned from one provider to the  
3 other. So we sort of had discussions with Achilles around potentially doing as  
4 many of those audits as we could before that service transitioned, as the  
5 incumbent supplier at the time.

6 **Q.** I want to suggest to you, in fact, if Achilles had been staying in the market as well  
7 as RISQS, there would have been less of an issue because you would have  
8 had (inaudible) to chose from, more capacity in the market?

9 **A.** No, it was still a problem. We had suppliers on our supply database that didn't  
10 meet --

11 **Q.** Okay. But then if we look at paragraph 20.

12 **A.** Yes.

13 **Q.** You refer to a specific problem with the cancellation. In April, Achilles were  
14 cancelling audits that had been booked to take place after 1st May, which  
15 postdated the transition. What I am going to suggest is that if Achilles had  
16 been able to stay in the market and carry out Sentinel audits, they wouldn't  
17 have had to cancel those audits.

18 **A.** Potentially. I don't know the reasons for cancelling.

19 **Q.** Thank you. Those are all the questions I have for Mr Berwick.

20 **MR WENT:** Nothing from me. Thank you.

21 **THE CHAIRMAN:** Thank you very much, Mr Berwick.

22 **(Witness withdrew)**

23 **MR WENT:** If I can call Mr Matthews, please.

24  
25 **MR DARREN MATTHEWS (affirmed)**

26

1 **Examination-in-chief by MR WENT**

2 **MR WENT:** Thank you. If Mr Matthews could be passed folder D, please, and it is  
3 tab 6. Do you recognise that statement?

4 **A.** Yes. It's mine.

5 **Q.** If I can just get you to the turn to the end of that tab, the last page. Do you  
6 recognise that signature?

7 **A.** Yes, that's mine.

8 **Q.** Okay. Is this the evidence that you want to give in these proceedings?

9 **A.** Yes.

10 **Q.** Just as a point to note for the tribunal, Mr Matthews did give a statement in the  
11 liability trial but it is not in the current bundle.

12

13 **Cross-examination by MR WOOLFE**

14 **MR WOOLFE:** Good afternoon, Mr Matthews. At paragraph 23 of your statement  
15 you state that:

16 "... the majority of Readypower's work ... comes from Network Rail, whether directly  
17 or via tier 1 suppliers who have won Network Rail contracts."

18 Can I just ask, roughly speaking, what would you say the split is between the work  
19 that comes directly from Network Rail, where they contract with you, and the  
20 work that is for tier 1 suppliers to Network Rail?

21 **A.** At the moment I am not exactly sure, but I think it is around about 30% of our  
22 work is with Network Rail at the moment. They are an important customer.

23 **Q.** So roughly 30% direct --

24 **A.** Thereabouts, 20 to 30, thereabouts.

25 **Q.** But a substantial portion of both.

26 **A.** Yes.

1 **Q.** At 37 you say the potential for multi-homing -- and I think here you are talking  
2 about joining an assurance scheme as a supplier. Yes?

3 **A.** Yes.

4 **Q.** Because you say:

5 "We are led by our customers in terms of their supplier assurance requirements and  
6 which platforms our customers want to use."

7 Now, at 37 (c) you refer to Ready Power customers who do not have to be on  
8 RISQS. You say:

9 "Possibly some tier 2 or 3 suppliers to Network Rail."

10 You go on to say, bottom of that paragraph:

11 "I cannot identify any of our current customers who do not have to be on RISQS."

12 So was it your understanding -- I think all your customers are either Network Rail or  
13 tier 1 suppliers to Network Rail. So was it your understanding when you were  
14 preparing this that all the tier 1 suppliers to Network Rail were obliged to be  
15 buyers on RISQS?

16 **A.** I believe so, yes. That's how I see it, yes. So they are principal contractors. So  
17 they are usually tier 1s. So yes, they are usually buyers on RISQS.

18 **Q.** I suggest to you that Network Rail chooses to use RISQS to procure its work.  
19 So, therefore, all the tier 1 contractors have to be registered with RISQS as  
20 suppliers, don't they, in order to bid for that work. Yes?

21 **A.** I believe so, yes.

22 **Q.** But they don't have to use RISQS themselves as buyers, do they?

23 **A.** I don't think they have to be forced to be buyers, no.

24 **Q.** Fine. In 37 (k) you seem to be saying it is only tier 2 and tier 3 suppliers who  
25 don't have to be on RISQS. Okay. Now, your customer relations -- seen as  
26 tier one suppliers.

1 At paragraphs 21 and 22 you refer to Balfour Beatty, Network Rail, Colas and BAM  
2 Nuttall. So you accept now that -- leave aside Network Rail -- there is no  
3 requirement that Balfour Beatty, Colas and BAM Nuttall have to be buyers on  
4 RISQS, is there?

5 **A.** No, I don't think they have to be buyers, no. I think they have to be RISQS  
6 qualified, though.

7 **Q.** They could choose to use Link-Up as their supplier assurance system, couldn't  
8 they?

9 **A.** They could, but I wouldn't understand why they would do that.

10 **Q.** If you go to 34, it seems to be slightly different, which is you think the fact they  
11 are tier 1 suppliers who are themselves required to be assured by RISQS, you  
12 say that makes it inherently more likely that in turn they would require their  
13 supply chain to be RISQS assured. Now, what I suggest is that there is no  
14 necessary connection. It doesn't make this inherently more likely, does it?

15 **A.** I think it does to me.

16 **Q.** So people who are involved in putting tenders together for the tier 1 suppliers will  
17 have to be looking at the RISQS portal as suppliers, but people who are  
18 involved in procurement, procuring services within those big companies, might  
19 prefer to use the functionality that's in Link-Up, mightn't they?

20 **A.** They might, yes.

21 **Q.** Okay. In 35, you say you understand that:

22 "Achilles may be offering a cross section (inaudible) shunt service, if they were able  
23 (inaudible) at an attractive price. That may have been something RTL would  
24 have looked at, given its overlap", and so forth.

25 Am I right to understand that Ready Power is, in fact, now registered on the Achilles'  
26 UVBD database. Are you aware of that?

1 **A.** Yes, I am, and we always have been. That's a separate entity to the rail sector.

2 **Q.** Yes. So, in fact, they work with not just the construction but utility section as well

3 that is something that may have been an attractive option. In fact, if Achilles

4 could offer you a cross sector audit that would cover UVBD and rail specific

5 stuff as well, that might have been an attractive option, mightn't it?

6 **A.** Yes.

7 **Q.** Okay. If one of your customers is requiring Achilles' membership, it wouldn't be

8 so onerous for you to sign up to Achilles as a supplier, would it, if you already

9 have a relationship with them through UVDB?

10 **A.** It wouldn't, no. I get your point. I am just thinking it is twice the cost to us,

11 though, to have to have RISQS and Link-Up.

12 **Q.** There may be a cost in having RISQS and Link-Up, but in terms of fuss and

13 bother, if I can put it that way, you already have a relationship with Achilles,

14 already have a load of information about financial capacity and so forth, all

15 that kind of basic information. That's already in Achilles' (inaudible), isn't it?

16 **A.** Yes, it is, yes.

17 **Q.** Thank you. Then at 36, last point, you say multi-homing was not desirable. It

18 would potentially duplicate increased costs and so forth. Now, in the present

19 situation, when everybody is on RISQS, if you are now required to register

20 with Link-Up, that would introduce some additional burden, but in May 2018,

21 when there was the transition from Achilles to RISQS, if one of your big

22 customers had required you to stay on Achilles -- yes -- there wouldn't have

23 been a great deal of duplication, would there? All your information is currently

24 in Achilles. You could have carried on. Your Achilles audit would have

25 carried on. That wouldn't have been a major duplication of work at that time?

26 **A.** It wouldn't have been a major duplication of work, no.

1 **Q.** Thank you. That's everything I wanted to ask. Thank you, Mr Matthews.

2 **MR WENT:** Nothing from me. Thank you.

3

4 **Questions from THE TRIBUNAL**

5 **THE CHAIRMAN:** Mr Matthews, could you explain again why in paragraph 34 of  
6 your witness statement you say that it is inherently more likely that principal  
7 contractors who are required to be assured by RISQS would in turn use  
8 RISQS for their own procurement needs? Why do you say that?

9 **A.** I say that because I believe that when I was writing it at the time Network Rail  
10 were recognising RISQS. So if their main tier 1 suppliers were the big  
11 players, the big, principal contractors, they would just use RISQS. It seemed  
12 sensible to me that their supply chain, like our company, would need to have  
13 RISQS as well. It wouldn't need to use Achilles or anybody else. I don't  
14 understand why we would need to go venturing anywhere else and get  
15 Achilles Link-Up if what we have already got does the job.

16 **THE CHAIRMAN:** Well, they wouldn't need to but they may perceive there are  
17 advantages in using Achilles.

18 **A.** Well, there is that, yes, yes. I accept that.

19 **THE CHAIRMAN:** Okay. Thank you very much, Mr Matthews.

20 **A.** Thank you.

21 **(Witness withdrew)**

22 **MR WOOLFE:** Sir, I will be pretty short with Miss Bate. No longer than with  
23 Mr Matthews. It is marginally past 4.30. Are you able to continue?

24 **THE CHAIRMAN:** Let's carry on.

25 **MR WENT:** If I can then call Ms Bate.

26 **AMANDA BATE (affirmed)**

1 **Examination-in-chief by MR WENT**

2 **MR WENT:** If Miss Bate, can be passed folder D, please, tab 5. Do you recognise  
3 that statement?

4 **A.** Yes.

5 **Q.** And if you just turn to the back end, is that your signature?

6 **A.** Yes.

7 **Q.** And is this the evidence you are wanting to give in these proceedings?

8 **A.** Yes.

9 **Q.** Thank you.

10

11 **Cross-examination by MR WOOLFE**

12 **MR WOOLFE:** Good afternoon, Miss Bate. End of a long day.

13 At paragraph 4 you say that Fusion People is a recruitment agency. It is one of the  
14 top 40 largest.

15 In paragraph 5 you say 70% of your work is in the rail industry, and you set out  
16 a split between rail and non-rail and so forth. What comes via RISQS and  
17 what doesn't I think you deal with at paragraph 8. Now, in non-rail work you  
18 use other supplier assurance systems. Is that right?

19 **A.** Yes, for the construction industry and for utilities.

20 **Q.** You say at paragraph 34, which is towards the end of your statement, that you  
21 generally use Construction Line for the non-rail part of the business, as  
22 required by clients in that context. So Construction Line is a generic  
23 construction supplier assurance scheme, isn't it. It is not specific to the  
24 utilities sector. Yes?

25 **A.** That's right.

26 **Q.** Am I right in understanding that Fusion People is also registered as a supplier on

1 UVBD?

2 **A.** That's right.

3 **Q.** So you use that as well. At 34 you refer to having 30% of your business in the  
4 utilities sector, but then you refer to Construction Line, which is generic  
5 business rather than UVBD, which is Achilles. Okay.

6 Paragraph 33, I think you say all your rail clients require you to use RISQS. But at  
7 35 you say your strong preference is for suppliers not to obtain supplier  
8 assurance from more than one supplier assurance provider.

9 "It would increase our cost and audit burden."

10 But at the moment you do take assurance from three supplier assurance providers.

11 You have got RISQS, Construction Line, UVBD. Yes?

12 **A.** Yes.

13 **Q.** Do you have any more?

14 **A.** Yes. We have CHAS, Construction Line, Builders --

15 **Q.** BuildingConfidence?

16 **A.** No. It is a builders one as well, and a new one that has just come out, CQMS.

17 **Q.** So CHAS is also a construction --

18 **A.** Yes.

19 **Q.** So you do have multiple supplier assurance providers at the moment?

20 **A.** Yes.

21 **Q.** So it is not a huge additional burden to be on one more, is it?

22 **A.** Yes. So with the other ones in the construction it is normally uploading  
23 information on to a system and it is time-consuming. So to join another  
24 assurance scheme for rail, I assume we'd have to go through two to three  
25 days of audits, as well as keeping the information updated on the system.

26 **Q.** But you are a member of the UVDB, so a lot of your information is already with

1 Achilles, isn't it?

2 **A.** It is not the same sort of information with rail and utilities.

3 **Q.** There is some overlap.

4 **A.** There is some overlap. It is not exactly the same.

5 **Q.** At 35, you say basically in order to be I think -- 36, sorry, I should say. Basically

6 you need to get sufficient actual work to justify the costs and hassle of adding

7 one more?

8 **A.** Yes.

9 **Q.** That's what has happened with these multiple schemes. You have joined them

10 because it has been worth your while?

11 **A.** Yes.

12 **Q.** You are talking about the situation now, aren't you, where at the moment, for the

13 last three years, it has only been RISQS and Achilles has not before offering

14 assurance in rail. You are a member of RISQS. To could join Achilles now

15 would be a lot of cost and hassle but Fusion People was registered as

16 a supplier with Achilles prior to 2018?

17 **A.** Yes.

18 **Q.** So they already had all your up-to-date information in their system, didn't they, at

19 that point?

20 **A.** They did at that point, yes.

21 **Q.** It wouldn't have been a great deal of hassle to roll over membership at that point,

22 would it?

23 **A.** It wouldn't have been hassle, but we would have had to change to RISQS

24 anyway, because we do work for Network Rail, so we would have done.

25 **Q.** You would have had to join RISQS because Network Rail require it --

26 **A.** Yes.

1 Q. -- but Network Rail didn't require you to cancel your Achilles' membership, did  
2 they?

3 A. They didn't require us to cancel it, but there's extra cost and the audit burden.

4 Q. So was providing new information to the new RISQS system a hassle?

5 A. It was different, yes.

6 Q. Okay. Were you aware when you were signing up in May 2018 for the RISQS  
7 system that you were entering into a new agreement with a new provider?

8 A. Yes.

9 Q. Okay. If Achilles had stayed in the market in May of 2018, you wouldn't have  
10 needed a further audit immediately, would you?

11 A. We were due an audit shortly after the changeover.

12 Q. When was your changeover date -- your audit date rather?

13 A. Everybody changed over on 1st May and I think our audit was within two months  
14 of --

15 Q. Two months after. Okay. But even if you had done nothing, you could have  
16 remained visible on the Achilles' system for a couple of months, couldn't you?

17 A. We could have done for a couple of months, but ...

18 Q. As you say, if one of your major -- if within that time one of your major buyers had  
19 said, "We want you to use Link-Up, there wouldn't have been any immediate  
20 cost to you in staying on the system, would there?"

21 A. We still would have had to join RISQS for the Network Rail and other clients as  
22 well.

23 Q. Right, yes, but there wouldn't have been -- a buyer saying, "We want you to stay  
24 on Link-Up" would not immediately have added cost at that point?

25 A. For that client, no, but for the other clients we still had to change over.

26 Q. Okay. Those are all the questions I have for Miss Bate. Thank you.

1 **MR WENT:** I don't have anything. Thank you.

2 **THE CHAIRMAN:** Thank you very much, Miss Bate.

3 **A.** Thank you.

4 **(Witness withdrew)**

5 **MR WOOLFE:** Sir, obviously that's the end of today. We have done all the factual  
6 witnesses.

7 In terms of time perhaps we should have a discussion. I am comfortable I can do  
8 Mr Law in half of tomorrow. So if my learned friend is comfortable he can do  
9 Mr Parker tomorrow morning, we are still on schedule and don't need to start  
10 sitting early or late, but perhaps ...

11 **MR WENT:** I anticipate that being fine.

12 **MR WOOLFE:** Thank you, sir.

13 **(4.34 pm)**

14 **(Hearing adjourned until 10.30 am**  
15 **on Thursday, 14th October 2021)**

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### Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?