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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1166/5/7/10

Victoria House,
Bloomsbury Place,
London WC1A 2EB

24 October 2012

Before:

VIVIEN ROSE
(Chairman)
TIM COHEN
DTKCP LANDERS

Sitting as a Tribunal in England and Wales

BETWEEN:

ALBION WATER LIMITED

Appellants

– v –

DWR CYMRU CYFYNGEDIG

Respondent

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HEARING (DAY 8)

Note: Excisions in this transcript marked “[...][C]” relate to passages excluded.

APPEARANCES

Mr Thomas Sharpe Q.C., Mr Matthew Cook and Mr Medhi Baiou (instructed by Shepherd Wedderburn LLP) appeared on behalf of the Claimant.

Mr Daniel Beard Q.C., Mr Meredith Pickford and Ms Ligia Osepciu (instructed by Hogan Lovells International LLP) appeared on behalf of the Defendant.

1 Wednesday, 24 October 2012

2 (10.30 am)

3 MR JEFFREY DAVID WILLIAMS (continued)

4 Cross-examination by MR SHARPE (continued)

5 THE CHAIRMAN: Good morning. Good morning, Mr Williams.

6 A. Good morning.

7 MR SHARPE: Good morning. Mr Williams, we are back again.

8 You will recall where we ended up yesterday. I had

9 taken you first to MD154. I had then taken you to

10 Dr Brooker's reply to that. Do you remember that?

11 A. Yes.

12 Q. And his concern about average pricing blunting the

13 efficiency incentives and you remember that?

14 Nevertheless he pursued average costs in his reply

15 because that appeared to be Ofwat's guidance at that

16 time. That's right, isn't it?

17 A. Yes.

18 Q. Even though he had explained he thought that approach

19 was incorrect in his reply?

20 A. He did point out the difficulties with it, yes.

21 Q. Yes, he did.

22 Then I drew your attention to the Ofwat guidance as

23 to the exercise of its concurrent powers under the

24 Competition Act, where, quite expressly, they made it

25 clear that excessive pricing would be judged by

1 reference to measures of profitability or, in their
2 words, "the stand-alone costs of an activity". I won't
3 take you to it but you will recall that was bundle 3,
4 tab 39 at 496, paragraph 4.14.

5 So having received a response from Welsh Water and
6 presumably, for all I know, others, explaining why
7 average costs was not an efficient basis for pricing,
8 they were prepared in future to exercise their powers in
9 relation to common carriage, it being an essential
10 facility on the basis of the stand-alone costs of those
11 activities. Was that your understanding?

12 A. I don't think Dr Brooker was saying exactly that, to be
13 honest.

14 Q. I think I was referring to Ofwat.

15 A. Ofwat, apologies, yes.

16 My recollection of it that Ofwat weren't disallowing
17 regional averages in access pricing.

18 Q. I'm drawing your attention to how they were going to
19 judge whether a price was excessive or not, however it
20 was calculated and they were going to repeat the point
21 to you again. They were measuring excessive prices by
22 reference to the stand-alone costs of an activity?

23 A. Okay.

24 Q. That's when it says at paragraph 4.14?

25 A. Okay.

1 Q. Let me take to you bundle 3, tab 35.

2 We are not entirely sure when this document was
3 created. We had two dates at the bottom. Perhaps you
4 could help us. Common carriage prices, 14.1, 2000 and
5 bottom right, 10.15, 7 February 2000.

6 Any help as to --

7 A. I'm sorry, no.

8 Q. All right. It's speculation, but one might be the date
9 of its creation, the other one might be the date of its
10 printing?

11 A. I don't know.

12 Q. Understood. Let's accept that it's in either
13 mid-January or early February 2000 and you, of course,
14 at this time, among your other responsibilities had
15 responsibility for common carriage, hadn't you?

16 A. And definitely competition, yes.

17 Q. Thank you.

18 A. Excuse me, I don't actually recognise this document.
19 Who produced it? There is no reference on it, is there?

20 Q. Actually, Mr Williams, it is, of course, a Welsh Water
21 document, very properly disclosed to us and I was going
22 to ask you the same question.

23 A. I don't remember it.

24 Q. You don't remember it?

25 A. No.

- 1 Q. You don't remember seeing it?
- 2 A. I just don't remember it.
- 3 Q. But it seems to be, among the disclosed papers, the very
4 first indication, the beginnings of some internal
5 calculations to calculate common carriage. I won't
6 detain you very long with it, then, because you really
7 can't help us, can you?
- 8 A. No.
- 9 Q. But you see at the top it says:
10 "Top-down."
11 Do you see that?
- 12 A. Yes.
- 13 Q. "Top-down calculation of prices" in those years.
14 At the very bottom we have a figure of 47.36.
15 47.36p per cubic metre. Do you see that? Water
16 distribution, "WD" and it's the last but one figure at
17 the bottom right of the page. Do you see?
- 18 A. 47.36, sorry, yes.
- 19 Q. That's for potable water, isn't it, that's the cost of
20 potable distribution for all potable customers, isn't
21 it?
- 22 A. I don't know. To be honest, I can't tell from here. As
23 I said, I'm not familiar with it, so ...
- 24 Q. In the words of my learned friend Mr Pickford, "Take my
25 word for it."

1 THE CHAIRMAN: Where does it say it's potable water?

2 MR SHARPE: It doesn't, but we know from other sources which
3 I could somewhat laboriously take you to.

4 THE CHAIRMAN: Is it accepted that it deals with potable
5 water?

6 MR BEARD: We would have to have a look through what is
7 being talked about here. It seems a slightly strange
8 line of questioning if it's based on a complete
9 hypothesis that would require a whole chain of evidence
10 to deal with. We would have to go back and have a look.

11 THE CHAIRMAN: Why don't you do that?

12 MR SHARPE: I'm grateful. I'm going to go ahead on the
13 basis that it is potable because that's the only way it
14 makes sense of the numbering. It is the price for all
15 potable customers.

16 Perhaps you are going to say you don't know the
17 answer to this. It isn't the cost of distribution for
18 large potable customers, is it?

19 A. I don't know, to be honest.

20 Q. And it's not the cost of distribution for large
21 non-potable customers, is it?

22 A. I don't know.

23 Q. Over the page, you see bottom-up prices. You can see
24 that questions are being asked internally -- these are
25 your colleagues writing this and you see the reasoning

1 there, which don't need to detain us. Then we go to the
2 question:

3 "To what extent do current cost centres, objective
4 codes allow this split" the above split amount between
5 activities to be achieved. "To what extent can this
6 split be achieved on a geographic basis: by resource
7 zones, north Wales/ south Wales or regional costs only?"

8 You see it's a question being posed internally,
9 isn't it?

10 A. Yes.

11 Q. And at the bottom:

12 "Are there any services I have missed? Do you agree
13 with the first cut split?"

14 And we see the first cut split, resources and these
15 categories -- ultimately I guess the cost. Do you see
16 that?

17 A. Hm-mm. Do you know who produced this?

18 Q. I haven't a clue, Mr Williams. You were responsible for
19 this. This is the first document in the bundle.

20 I don't know, I was going to ask you. We know it's
21 a Welsh Water document. We know it is the first
22 disclosed document setting out how the calculation for
23 common carriage -- it's the beginning of the common
24 carriage FAP story and you have never seen it before?

25 A. I don't recognise it.

1 Q. You do not recognise it, no. There is not a great deal
2 I can do --

3 THE CHAIRMAN: Given your responsibilities at the time,
4 assuming the time is the beginning of 2000, and given
5 the apparent content of it, do you think it's a document
6 that you are likely to have seen because it was relevant
7 to your job?

8 A. It's possible. This is the difficulty I have. You
9 know, when dealing with questions of that nature, for me
10 to say at this point in time, because I don't recognise
11 it, I don't remember it, it's therefore practically --
12 it is impossible for me to say I don't remember it now
13 but I remembered it then, because I just don't remember
14 it. I just cannot answer it.

15 MR SHARPE: So we have the company, your colleagues, at the
16 outset proposing two-ways of looking at it, top-down,
17 bottom-up. Right? And that bottom-up point was rather
18 important, isn't it, in the light of what Ofwat were
19 telling about how it was going to exercise its powers.

20 A. Hm-mm.

21 Q. The stand-alone element. So you stand alone, you look
22 at the bottom-up assets which are involved?

23 A. Hm-mm.

24 Q. Thank you. Now, this was plainly an important first
25 step, wasn't it?

1 A. Well, it's clearly something our people were doing,
2 considering the options, which frankly they should have
3 been anyway.

4 Q. Absolutely, yes.

5 A. But it didn't necessarily mean that determined a way
6 forward. I would have expected them to explore these
7 elements.

8 Q. Absolutely and questions are being posed, aren't they,
9 as you see expressly?

10 A. Yes.

11 Q. Can you think of any good reasons why these questions
12 were not answered?

13 A. No. But on the other hand, I don't know what part of
14 any process this was involved in.

15 Q. Looking at it as a reasonable man, even in the light of
16 hindsight, this is the beginnings of an internal
17 process, and questions are being posed and, expressly,
18 questions to what extent the current -- you want to lay
19 out, "What's available? Are there any services I have
20 missed?"

21 You see, I would be expecting the next page of the
22 bundle to have some replies to this. It's an important
23 document. It was a request for information from
24 colleagues. Would it come as a shock to you to discover
25 that we have had no replies disclosed in the bundle?

1 A. Well, no, because I don't know what it came from and it
2 may well -- it may be not other documents. This is the
3 problem in terms of -- you know, I don't recognise it
4 now. It's impossible for me to comment on, "I therefore
5 remember it going back then." I don't, it would be
6 misleading for me to say anything different.

7 Q. I understand, but you would expect your colleagues to
8 have been engaged in a dialogue following from this
9 document and you would have expected, wouldn't you,
10 somebody to have answered those questions, wouldn't you?

11 A. It wouldn't be unreasonable to expect that. Clearly it
12 is part of an internal process, they have definitely
13 been kicking around ideas, exploring.

14 Q. I don't think I can take it any further.

15 Can we go a couple of tabs on, bundle 3, tab 41? It says
16 there that the reference to bottom-up means that
17 somebody was sensitive to the stand-alone activity and
18 was asking for information about it?

19 A. I know at the time there was an ongoing debate about
20 various approaches, so inevitably people would have
21 been, you know, looking at those elements.

22 Q. How do you know that?

23 A. Well, you know, at the time, clearly with the debates
24 and discussions going on because competition, as we
25 agreed yesterday, was new --

- 1 Q. Of course.
- 2 A. -- in that regard and there were various, you know,
3 different views on it, as has been discussed, so people
4 were talking about these different elements.
5 Welsh Water had a particular way of doing it but that
6 didn't preclude them from considering, you know, other
7 dimensions.
- 8 Q. No, I accept that entirely but I was interested to hear
9 that you were privy to those debates internally; is that
10 right?
- 11 A. I wouldn't have been involved in them in detail but
12 I know people in the organisation were talking about the
13 various approaches.
- 14 Q. And they talked to you about various approaches?
- 15 A. No, not in detail. You know, when I was actually
16 talking and saying to Dr Boarer about the various Ofwat
17 elements, it would have come out then in discussion,
18 whereas, as I have explained to you yesterday, I wasn't
19 into the detail of that but that doesn't mean I was
20 unaware of the debate that was going on. I wouldn't
21 claim for one moment --
- 22 Q. So you spoke to Dr Boarer. Who else did you speak to?
- 23 A. I may well have spoken to Dave Holton. I don't recall
24 the detail of that.
- 25 Q. Well, I don't think we can take it any further.

1 THE CHAIRMAN: Did you speak to anybody more senior than you
2 about it?

3 A. I don't recall doing so, to be honest, no. The most
4 senior would have been, obviously, Dr Brooker and
5 I don't recall speaking to Dr Brooker. Last night I was
6 trying to, you know, piece together the logic of, you
7 know, why we were -- sorry, where we were in terms of
8 who had various responsibilities because one of the
9 questions you asked me about the finance representative
10 attending the Licence Company Executive and I couldn't
11 remember it and I certainly did last night because one
12 of the senior accountants used to attend and that came
13 back.

14 I can only think in terms of Dr Brooker's dimension
15 and I couldn't swear to this but this is what I think
16 happened --

17 THE CHAIRMAN: You are on oath, so you are swearing to it.

18 A. I can only tell you what I think. I can't say to you
19 this is a matter of fact, Madam Chairman. I think what
20 happened, when the -- when certain people left the
21 business, the regulatory director left, I think his
22 responsibilities devolved to the -- the regulatory
23 elements devolved to the finance director, who had
24 a background in that and of course, he then got taken
25 out of the business. This was all happening around the

1 times of Welsh Water being sold, WPD coming in, the Glas
2 initiative happening. So the two people I actually
3 refer to were the two people who were taken out of Hyder
4 and put into Glas. Just to use a phrase, they were
5 being put offside, in effect. So I couldn't speak to
6 them. They were effectively starting a new company and
7 I think --

8 THE CHAIRMAN: Who were those two people?

9 A. That's Nigel Annett and Chris Jones. And they are the
10 two, along with Lord Burns, who ultimately brought to
11 fruition the Glas initiative.

12 THE CHAIRMAN: What's their relevance to this? Are you
13 saying that you --

14 A. The only relevance is the sort of sequence of events --
15 the regulatory elements devolved to Chris Jones and
16 I think when Chris left, I think Mike Brooker filled in
17 for that period on regulation. As I say, it's my
18 recollection. I'm not absolutely certain.

19 MR COWEN: Can I just ask a question. When you say they
20 left, they went upstairs because they went to Glas Cymru
21 and Chris Jones became the finance director of the
22 ultimate decision maker.

23 A. They were effectively completely outside of the Hyder
24 entity. What happened, I think, Hyder put them outside
25 the business to try and initiate the sale of Welsh Water

1 and I think -- again because of the time and the
2 sequence, I think what happened was it was done on the
3 basis that whilst in effect Hyder loaned them the money
4 to do, you know, what they needed to do, which, as we
5 all know now did it very successfully, any costs of that
6 incurred would then be recovered from the costs of the
7 sale of the business. That's my understanding.

8 MR LANDERS: So essentially there were Chinese walls between
9 you and the people who were setting up Glas Cymru. When
10 did the deal actually finish? When did Glas Cymru come
11 to buy Dwr Cymru? What stage of the proceedings?

12 A. Well, what happened was just sequentially, as
13 I understand it, WPD acquired Hyder in September. So
14 lots of these dates -- 2000. A lot of these dates are
15 quite concurrent. September 2000 was the month, of
16 course, in which Albion applied for the access. In
17 November of 2000, I think, the sale of Welsh Water --
18 yes, of Welsh Water -- was agreed between WPD and Glas.
19 I also believe that as a part of that one of the
20 conditions for the Ofwat approval of that sale was the
21 outsourcing of two very major contracts. Ofwat took the
22 opportunity to really promote competition in a very big
23 way. I think this was a first in the industry and what
24 I'm talking about in saying that, that required us to
25 outsource all the operations business and all the

1 customer service business and that was a part I was
2 involved with.

3 So the then chairman of Welsh Water, who had been an
4 appointee of WPD's parent companies in the States,
5 a chap called Mark Lynch, there the focus for the
6 business at that point in time and thereon was to get on
7 and let those contracts and at the time it was being
8 said, it has never been done before in the industry.
9 The timescale, we would never achieve it, and in actual
10 fact we did but it took a great deal of focus and in
11 saying that, I will emphasise that didn't take any eyes
12 off the ball of competition in the other domain.

13 So there was a huge amount going on.

14 THE CHAIRMAN: The managing of the operations side, was that
15 put out to tender, that contract?

16 A. What had happen in developing the business, we started
17 to go down the route of an asset director and an
18 operations director. So the business had begun to be
19 split, both on the water and electricity side in that
20 way. So we had a clear asset set-up. So in effect the
21 idea was obviously Welsh Water retained the assets but
22 the running of those assets then went out to tender and
23 similarly with the customer service side.

24 THE CHAIRMAN: Who won that?

25 A. The operations contract was won mainly by

1 United Utilities. I think I'm right in saying that part
2 of the sewage side, I think that went to Yorkshire and
3 the customer service contract certainly went to
4 Thames Water. But there were other elements involved as
5 well --

6 THE CHAIRMAN: I think we don't necessarily need to go into
7 those.

8 A. So there are other smaller contracts. So in effect all
9 of what we were about as a business, like Welsh Water,
10 went down from -- I don't remember the exact number but,
11 you know, towards the figure 2,000, a big figure, 1,500.
12 I don't know the exact number. I think on the
13 operations side there were over 1,000 people when they
14 took it over and on the customer services side they were
15 in the region of about 300. The operations contract I
16 think was worth in excess of --

17 THE CHAIRMAN: We do not necessarily need those details.
18 But are you saying this was what was absorbing people at
19 the time?

20 A. It certainly took a lot of our time to do it but in
21 saying that I really do want to emphasise that, didn't
22 mean we took our eye off the ball in terms of running
23 the company and it certainly didn't influence in any way
24 shape or form attending to Albion's application. That
25 was made in September and, as we all know, the first

1 access prices went through until March of the following
2 year, 2001.

3 MR COWEN: And the potential loss of £23 million would be
4 quite a significant matter for all of this moving
5 around, you know, with all the other companies coming
6 in.

7 A. Yes, there was a lot going on. Anyway -- and of course
8 people were concerned about their jobs, the whole frenzy
9 of the change, as you can imagine. Well, I honestly
10 think it had never been done in the industry before. So
11 it was new.

12 MR COWEN: Thank you.

13 MR SHARPE: I'm very grateful for that. Perhaps I can now
14 take to you bundle 3, tab 41.

15 A. Yes.

16 Q. Page 517. Do you see this? It is a letter from
17 Dr Bryan to Mr Brooker and it is actually Albion
18 applying for your statement of principles. It's dated
19 3 February. Are have you seen this before?

20 A. I don't recall it. It's very possible I would have done
21 but I don't recall it.

22 Q. Mr Brooker wouldn't have come through and asked your
23 view and opinion on it?

24 A. I don't recall speaking with Dr Brooker about it. I may
25 well have done, I really can't help you on it.

1 Q. But it was the first application for common carriage, as
2 I understand it, and certainly the most important. So
3 he didn't see fit to bring you in on the event and ask
4 your advice?

5 A. I don't remember it.

6 Q. Still less did he ask you to send the statement of
7 principles once it was ready, did he?

8 A. Well, because I don't remember this, I certainly have no
9 recollection of what he would have asked me.

10 Q. If we go back to a document you won't have seen, so you
11 won't remember it, it's Dr Bryan's monthly directors
12 report, tab 40. Will you do that? Just to pick it up
13 at page 515:

14 "CA98 Access Codes."

15 Do you see that?

16 A. Yes.

17 Q. This is Dr Bryan saying:

18 "Requests were sent to 25 water companies and the
19 three Scottish water authorities. By 10 March we had
20 received 16 statements of principle from the English
21 companies and none from Scotland. Notable defaulters
22 were Dwr Cymru, Thames Water and Wessex. Codes vary
23 from brief (typically smaller water companies) to comprehensive,
24 South West Water and ..."

25 As he puts it:

1 "... from naive to considered."

2 So you see then you were one of the back runners on
3 this, weren't you?

4 A. We certainly haven't replied according to this, on
5 March 10th. But we did issue in March, didn't we?

6 Q. Well, we will come on to that. What you did, you issued
7 your statement of principles on 1 March and we can see
8 that if we go over to -- you will see that at tab 45.
9 Would you like to go over to that?

10 This is obviously an important next step in the
11 common carriage story and you see the letter from
12 Mike Brooker to Ian Byatt, dated 25 February?

13 A. Yes.

14 Q. Just somewhat before publication.

15 A. Yes.

16 Q. Do you remember this letter?

17 A. No, I don't remember the letter.

18 Q. Had you seen it before it was sent?

19 A. I don't know. I don't recall it.

20 Q. You don't recall it. All right. I see it has got
21 a "DJH" reference. I presume that's Mr Holton. Is that
22 right?

23 A. Yes.

24 Q. It's underneath the enquiries, any enquiries go to
25 Mr Holton?

1 A. Yes.

2 Q. So this is Dr Brooker sending out the statement of
3 principles and before we deal with that, let's go
4 forward to see Albion's side of it, to tab 63. Just
5 keep the dates in your mind, the letter to Ofwat dated
6 25 February, the publication to the world on 1 March and
7 here we have at tab 63 a letter to Dr Bryan from
8 Mike Brooker. We don't need to worry about the letter
9 that preceded it. We see in the first indent:

10 "Dwr Cymru's statement of principles was sent to you
11 by email on 19 June and a hard copy was posted to you on
12 21 June."

13 So for some reason or other, you delayed sending it
14 to Albion way after the formal date of publication on
15 1 March and well aware from Dr Bryan's earlier letter
16 that they wanted to have a site of the principles. Can
17 you explain that delay?

18 A. No, I can't but wasn't it published anyway, because we
19 had to submit it to Ofwat?

20 Q. Well, you don't deny in this letter dated 2 October, do
21 you, that it was sent on to you by email on 19 June.
22 There has been a specific request in February, it was
23 available to the regulator at the end of February. The
24 response to Albion's request was on 19 June.

25 A. Right.

- 1 Q. And I'm asking you why that was the case?
- 2 A. I can't remember that.
- 3 Q. No. Perhaps an oversight?
- 4 A. No, I can't explain it.
- 5 Q. You can't explain it?
- 6 A. No, because it was available.
- 7 Q. It was available to be sent, yes, of course, but it
- 8 wasn't sent, was it?
- 9 A. Well, not according to this, no.
- 10 Q. We have no reason to doubt the letter of Dr Brooker, do
- 11 we?
- 12 A. No.
- 13 MR LANDERS: Can I just check, Mr Sharpe, it was sent to all
- 14 these people that are listed at the bottom, the First
- 15 Secretary of the Welsh Assembly and so on. Who are the
- 16 other ones on there, any of those? Is that a way of
- 17 getting them into the public domain?
- 18 THE CHAIRMAN: What page are you on?
- 19 MR LANDERS: Tab 45, the letter to Mr Byatt. That's copied
- 20 to various people at the bottom.
- 21 MR SHARPE: No, I think these are bodies that have, as
- 22 I understand it, specific responsibility in Wales to
- 23 Welsh Assembly Ministers and I don't think that's a way
- 24 of getting it in the public domain. I think it's
- 25 a means of acquainting them with when is happening

1 within their area of responsibility.

2 Either way. So we have an unexplained delay and
3 a convenient delay, of course, because by this time you
4 were well aware that Albion was seeking to compete with
5 you, wasn't it?

6 A. Yes and they applied in September.

7 Q. Yes. So all that seems to do is, whether by accident or
8 design, was to push further away the prospect of robust
9 competition from Albion, doesn't it?

10 A. Not necessarily. First of all, I don't understand why
11 there was a gap. It was there, the information.

12 I can't explain why Albion didn't have a copy or there
13 wasn't a copy available through the public domain
14 because I thought it was available through Ofwat. I'm
15 pretty sure if Dr Bryan had been in touch with us
16 earlier, if we hadn't --

17 Q. Forgive me, he had been in touch with you earlier. He
18 had made a formal request for it?

19 A. Followed up on his request then.

20 Q. I see.

21 A. There would have been no reason why it shouldn't have
22 been available, certainly not one I am aware of.

23 Q. No, but nevertheless the fact remains he didn't get it.
24 Now, if we go to your internal guidelines at tab 44 of
25 the same bundle, I'm not going to detain you long on

1 this for obvious reasons, but do you recognise this
2 document at tab 44?

3 THE CHAIRMAN: Some of the tab numbering is not consistent,
4 so perhaps you could just say --

5 MR SHARPE: I'm so sorry.

6 THE CHAIRMAN: Is it the common carriage statement of
7 principles you are looking at?

8 MR SHARPE: No, I'm looking at common carriage -- my draft
9 has "Common carriage 12 November, 154. 158 common
10 carriage 28 January."

11 Do you have it?

12 THE CHAIRMAN: Yes, we have it at tab 43 but I don't know
13 what the witness -- I think you are looking at the right
14 document, Mr Williams, from what I can see.

15 MR SHARPE: Do you recognise the document?

16 A. Sorry, I don't actually recognise it per se, no.

17 Q. I see. Would it surprise that this constituted an early
18 draft of the statement of principles?

19 A. No, it wouldn't.

20 Q. It wouldn't. Notwithstanding the fact that it was an
21 early draft of the statement of principles, nobody saw
22 fit to give it to you for approval or review?

23 A. I don't remember it, so, however you might wish to
24 describe that.

25 Q. Well, I don't think we can take it very much further

1 except --

2 THE CHAIRMAN: Can I just try and understand your answers in
3 this regard? Because I'm trying to understand what your
4 role was within the company in relation to this whole
5 exercise. What did you understand your role in the
6 preparation of the statement of principles was when you
7 took on your job as, was it, the end of -- towards the
8 end of 1999, beginning of 1999?

9 A. Beginning of 1999, yes and then particularly -- during
10 the 2000 period with the statement of principles,
11 et cetera.

12 THE CHAIRMAN: Your job was something to do with the
13 introduction of the competition?

14 A. Yes, competition fell within my remit.

15 THE CHAIRMAN: Within your remit, right.

16 A. I think what I said yesterday was I did not have the
17 background.

18 THE CHAIRMAN: You came from human resources, yes.

19 A. So I did not have the detailed understanding of this
20 sort of side of the business. I knew what needed to be
21 done by way of our obligations and -- under competition,
22 you know, as a result of the DG's letters.

23 THE CHAIRMAN: Did you know that within those obligations
24 was the production of the statement of principles for
25 the network access code?

1 A. I knew we had to produce the statement of principles,
2 I think we saw March and the network access code for
3 August. So --

4 THE CHAIRMAN: Was it your responsibility to get that done?

5 A. Yes, it would have ultimately. Whilst Dr Boarer fell
6 within her team, I think I described yesterday that the
7 way I used to operate in terms of understanding how
8 progress was being made in her department across the
9 whole spectrum of the things they were involved was on
10 a monthly -- I used to meet on a monthly basis, for
11 example, on statement of principles, as that was being
12 processed, she would have been keeping me apprised of
13 its progress: were we on track to deliver it, et cetera.
14 I wouldn't have necessarily got involved in the detail
15 at that point in time because I did not have the
16 background and obviously --

17 THE CHAIRMAN: What do you describe as "detail"? I think
18 that's what we are struggling with. How long would your
19 monthly discussion with her on the evolution of this
20 statement of principles take? Would it be -- is that
21 coming along, yes, it is, or would you look at the work
22 which she was doing, would she ask you questions about
23 what to do, not remembering the detail but just --

24 A. Yes, she would tell me exactly, you know, what was going
25 on by way of progress and if there were any impediments

1 to progress that I needed to know about. But in terms
2 of consulting me on how it should be developed, I wasn't
3 in a position to be able to do that.

4 So it was not monitoring progress rather than sort
5 of professional input. I think what I said yesterday
6 was we had people to do that for us.

7 THE CHAIRMAN: I see. But in the course of those monthly
8 meetings, would she show you drafts of where they were
9 up to or not?

10 A. Possibly not, I don't recall. If this was produced for
11 discussion within that team, I think Paul Edwards was
12 primarily involved in producing the statement of
13 principles and the network access code. I think I'm
14 right in saying that. I wouldn't necessarily have seen
15 the document that Paul had produced for discussion with
16 himself, Dr Boarer, Dave Holton. Other than, she may
17 have brought along a piece of work and shown it to me.
18 I probably wouldn't have got into the detail of it
19 because I wouldn't have been able to add anything.

20 I was more concerned with doing what needed to be done.

21 THE CHAIRMAN: Yes. That's clearer, I think.

22 MR SHARPE: I won't detain you long, but we have agreed that
23 this is an earlier draft of the statement of principles,
24 that's right?

25 A. Quite likely, yes.

1 Q. And we note the date, 12 November 1999. That's about
2 11 months before Albion's carriage application, wasn't
3 it?

4 A. Yes.

5 Q. And just very briefly, over the page at 529, just look
6 and see the sort of issues that the team, your team, was
7 putting out as their intentions at that time. If we go
8 to access pricing, the first one is:

9 "Charge broadly reflects cost of use."

10 And the cost of use, presumably, means the cost
11 actually --

12 A. Actually incurred, yes.

13 Q. Yes, thank you. Then if we take it more quickly to 533,
14 top of the page, "Competition Act Application",
15 "Specific Applications", "Issues in Pricing" and
16 "Pricing Conduct". Then we have under "Excessive
17 Prices" a rather familiar formula:

18 "To look at excessive prices in relation to
19 Stand-alone costs."

20 So the team at that time understood what Ofwat were
21 saying how they were assessing whether costs were
22 excessive. And Mr Williams, that's all I wanted to do,
23 take you to that internal draft reflecting the thinking
24 at that time, 11 months before common carriage.

25 MR LANDERS: Sorry, at what time? What was the date of

1 these documents? I'm still struggling with the date of
2 these documents.

3 MR SHARPE: The date? Well, I'm looking at page 528 and
4 I was guided by first of all that date, 12 November, in
5 relation to the first quotation. If we go to page 533.

6 MR LANDERS: That's when 154 came out, isn't it?

7 MR SHARPE: That's right, yes, that's 31 January. So it
8 appears to have been a document that's in two parts,
9 although it's by no means clear from it, dated on
10 different dates.

11 MR LANDERS: But this is a summary of what's in 154, which
12 came out in November. What's --

13 MR SHARPE: Mr Landers, you are absolutely correct. What we
14 have got here respectively, 154 -- that's the date at
15 which 154 came out. 28 January is the date at which
16 that came out.

17 MR LANDERS: 158.

18 MR SHARPE: 158, sorry.

19 MR LANDERS: Yes. 31 January is when something else came
20 out.

21 MR SHARPE: The Ofwat guidance to the exercise of its
22 concurrent powers, I think that's right.

23 MR LANDERS: Do we know when this was compiled?

24 MR SHARPE: We do not. We may get some comfort from the
25 footer "Common Carriage 24 February."

1 And if there is an issue, PJE, I suspect is
2 Mr Edwards, and we can put it to him, if he remembers.

3 MR LANDERS: That's the day before the statement of
4 principles was sent.

5 MR SHARPE: Sent to Ofwat, yes, exactly.

6 MR LANDERS: Everybody except Mr --

7 MR SHARPE: Exactly. So when I said 11 months before the
8 application for common carriage, I misspoke; it's nine
9 months or so, but well before.

10 Before we move away from that point, there was an
11 issue that has been raised earlier about the
12 dissemination of the statement of principles and will
13 you go to tab 43, the covering letter, the one to
14 Dr Bryan. Do you see it? Dated 17 February?

15 A. Yes.

16 Q. Page 526, the second paragraph:

17 "I will ensure that my key customer and competition
18 manager ..."

19 That's Mr Holton?

20 A. Correct.

21 Q. "... will place your enquiry on the list of companies
22 interested in using our range of facilities. We will be
23 sending our statement of principles to all interested
24 companies on 1 March."

25 He even goes so far as to say, "What's your

1 preferred method of dispatch?"

2 So this wasn't a public document; it was just sent
3 to interested parties.

4 Then he says:

5 "As soon as possible in March I will send you our
6 access code to enable your company to prepare its
7 application for access. Your status as a licensed
8 undertaker is recognised as a critical first step in the
9 process of reaching agreement to use our essential
10 facilities."

11 And we know from subsequent correspondence -- I'm
12 not going to take you back -- he did in fact get it
13 in June. And we don't know the reason for that and
14 there is no point in exploring it with you, is there,
15 Mr Williams?

16 A. I don't know the reason for it, no.

17 Q. Now we can go to the statement of principles at tab 45,
18 the same tab, over the page. Did I ask you whether you
19 had seen this before it was sent? Do you recall?

20 A. I think -- didn't you ask me that yesterday?

21 Q. Could you remind me of the answer, then?

22 A. I would have seen it.

23 Q. You haven't seen the letter to Ofwat?

24 A. I don't recall the letter to Ofwat.

25 Q. You don't recall the letter to Ofwat, did you?

1 A. I believe I would have seen this.

2 Q. You believe you would have seen the final version, the
3 version as sent to Ofwat, Wales and interested parties
4 with the exception of Albion. Right.

5 Now, let's quite quickly go to paragraph 9 on
6 page 542. You will remember Dr Brooker's response to
7 Ofwat in relation to average costs. We have dealt with
8 that quite a bit.

9 A. Yes.

10 Q. Here Welsh Water has taken out any reference to average
11 cost. It essentially thought it had prevailed in its
12 debate with Ofwat.

13 "Access and use charges will be consistent with the
14 charges levied to existing customers of DCC and will
15 reflect DCC's method of recovering its costs from its
16 customer base."

17 Do you see that?

18 A. Yes.

19 Q. Unless average costs is in the water mark -- and we have
20 explored that -- he is -- and in fact that's an
21 interesting difference, isn't it, from the document that
22 Welsh Water sent Ofwat, Dr Brooker's reply in
23 December 1999. I don't intend to take you back to it
24 but I think we all recall the reference to "average
25 costs". It has disappeared here, at least expressly and

1 the reference to the earlier Brooker letter is bundle 3,
2 tab 32 at page 416. And Welsh Water had explained to
3 Ofwat that average costs were not efficient or
4 appropriate and Ofwat's more recent guidance has
5 accepted that by regarding excessive prices in relation
6 to stand-alone costs. That would be fairly reflected in
7 this document, wouldn't it?

8 A. I think so.

9 Q. Thank you. The document itself is not a major piece of
10 work and sets out some very, very broad principles.
11 What do you think is meant by "consistent with charges
12 levied to existing customers"?

13 A. Well, I took that to be a reference to average pricing
14 to be honest, because that's the basis upon which
15 charges were determined.

16 Q. I took you yesterday, Mr Williams, to quite a long list
17 on your Special Agreements Register, which showed
18 nothing of the sort, didn't it?

19 A. But that was the Special Agreements Register.

20 Q. Yes. They are customers, aren't they?

21 A. They are indeed.

22 Q. And they are large customers?

23 A. Yes, they are.

24 Q. And some of them are large customers of non-potable
25 water, aren't they?

1 A. I think I explained also yesterday that when those
2 special agreements came up for review, they were being
3 taken over on to an average pricing basis.

4 Q. Mr Williams, if there is any evidence to that effect,
5 I have not the slightest fact that my learned friend
6 will re-examine you on it?

7 A. That's certainly my understanding.

8 Q. If there is any evidence, no doubt we will hear it?

9 A. Okay.

10 Q. But certainly at that time existing customers were being
11 charged at prices which had enormous variations between
12 them. Certainly they are explained by anything other
13 than local circumstances; in other words local
14 bargaining relationships, they were not subject to some
15 consistent average cost methodology, were they?

16 A. No, and I think, as we talked about yesterday, they were
17 pre-existing agreements and when they come up for
18 review --

19 Q. You have told us that and I'm grateful for that.

20 A. I'm sure --

21 Q. And that's a piece of new evidence. I'm not going to
22 take you to it because I don't know where to go. But
23 the fact is when this document refers to "existing
24 customers", it's talking about their existing
25 customers and their existing charges. Some of these

1 contracts could have lasted for many years. So we
2 weren't talking about the basis on which we are
3 charging. The basis on which you were charging appears
4 to have been manifestly de-averaged.

5 A. For that list.

6 Q. Yes.

7 A. For the vast majority of Welsh Water's customers, it
8 would have been on the average pricing.

9 Q. That may or may not be correct but that's not our
10 discussion. I'm concerned about a particular class of
11 customer, large, industrial, non-potable partially
12 treated water, which is a well-defined class,
13 consisting, as we know in this case, of just three
14 customers.

15 Let me rephrase it. I can read your principles to
16 charging our existing customers to mean charging them on
17 the basis of charging those three customers, couldn't I?

18 A. I suppose you could, yes.

19 Q. And it wouldn't be silly either, would it?

20 A. I don't think it's meant to be that and this was
21 obviously further refined then for the network access
22 code application.

23 Q. We are coming on to the story as quickly as we can,
24 believe me, Mr Williams. The fact is these are very
25 high level -- perhaps understandably so -- principles.

1 I'm going to put it to you that if you were a potential
2 competitor, looking for guidance as to the likely range
3 of charges and how charges are to be calculated, unless
4 you had some knowledge as to how charges were indeed
5 calculated, you would have been no wiser at all in
6 planning your entry strategy. Would that be fair?

7 A. No, I think it would give you an indication of where it
8 was going then under the network access code, which was
9 required for the end of August that year. That put in
10 more of the detail.

11 Q. Right. So you would agree --

12 A. That's my understanding.

13 Q. You would agree with me that this document by itself is
14 essentially a very unhelpful document?

15 A. It was a document required by Ofwat, you know, which we
16 complied with, obviously, but high level in principles
17 terms, hence its title.

18 Q. Right. Then we go to tab 59 of the same bundle --

19 THE CHAIRMAN: Are you moving on to the network access code?

20 MR SHARPE: I'm going on to MD163 briefly, and then I will go
21 on to the access code. I'm taking you through the
22 chronology.

23 THE CHAIRMAN: You are moving off this document?

24 MR SHARPE: I am.

25 THE CHAIRMAN: Can I just ask you in relation -- you say you

1 saw the statement of principles. Did you sit down with
2 the team and work through what it meant or was -- did it
3 just land on your desk or to what extent at the time did
4 you put yourself in a position to know what were -- what
5 was the method for recovering costs from the DCC
6 customer base or what were the ways in which charges
7 were levied to existing customers? What was your state
8 of knowledge at the time this came out of those issues?

9 A. Right. I certainly would have gone through it, probably
10 in one of my sessions with Dr Boarer. I can't honestly
11 say to you, you know, I sat down with her and went
12 through it piece by piece because I can't remember doing
13 it and therefore I can't say it but I would have gone
14 through it. That I'm confident of. How much knowledge
15 I would have had and how much understanding and how far
16 I would have gone into that with Dr Boarer, again
17 I don't know at this distance in time, to be honest.

18 THE CHAIRMAN: Is your evidence that "I can't remember it
19 now but I'm sure I would have understood it all at the
20 time," or that you don't think you did understand it all
21 at the time?

22 A. This dilemma for me is -- I don't remember it now and as
23 I said earlier on this morning, I can't therefore say
24 but I would have remembered it then. I just don't
25 remember it. But that doesn't mean, given the way

1 I operated with Dr Boarer, that I would not have gone
2 through it. But I can't say to you, "Look, I have
3 absolutely gone through it, I absolutely understood all
4 the detail."

5 THE CHAIRMAN: Did you think that you would have to go to
6 the LCE.

7 A. The Executive.

8 THE CHAIRMAN: Or the board and talk them through this? Did
9 you have to prepare yourself for --

10 A. I don't recall doing that, to be honest.

11 THE CHAIRMAN: -- questions from Dr Brooker, saying, "Can
12 you come up and explain to me, go through this with me?"
13 You do not think that happened?

14 A. Dr Brooker -- I mentioned earlier on that I'm fairly
15 confident that he had that regulatory hat on for reasons
16 that I talked about. So he would have been --

17 THE CHAIRMAN: He would have been more au fait with it than
18 you were?

19 A. He would have because of his background as well. So he
20 was a very good backstop for me given my level of
21 knowledge. So he certainly would have understood the
22 detail. I can't say to you, "Look, I understood the
23 detail and principles", you know. It was a question of
24 building my knowledge given where I had started in that
25 role.

1 THE CHAIRMAN: So this point you have mentioned a couple of
2 times now about contracts coming up for renewal and
3 moving on to regional average pricing, where does that
4 knowledge come from? When did you first hear about
5 that? Is that something that you knew at the time or
6 that you have been told more recently of?

7 A. I certainly knew about the special agreements register,
8 going back into that time. I have refreshed my memory
9 about that more recently because I asked one of my
10 former colleagues, you know, what had happened and what
11 was happening and what is happening, as I understand it,
12 is as they come up for renewal, then the process he is
13 going through is translating that on to a regional basis
14 calculation.

15 THE CHAIRMAN: Who told you that?

16 A. Miss Cross.

17 THE CHAIRMAN: When did you have that discussion?

18 A. It would have been within the last couple of months.

19 MR LANDERS: When you said Dr Brooker would have been more
20 familiar with this, this was drafted by Dr Boarer's
21 team, the statement of principles contract.

22 A. Yes, the statement of principles and I think the network
23 access code -- I'm pretty sure -- was Mr Edwards who did
24 most of the work on that.

25 MR LANDERS: He worked for Dr Boarer?

1 A. No, he was actually part of the economic regulation but
2 there was a virtual team created because of this sort of
3 work went across departments, then Mr Edwards became
4 part of that sort of wider team. I'm sure that he would
5 have done most of the work on those two elements that
6 I have referred to, obviously in conjunction.

7 MR LANDERS: He would have discussed it with Dr Brooker?

8 A. He may well have done.

9 MR LANDERS: You say Dr Brooker was more familiar than you
10 were?

11 A. He would have had a better understanding of this than me
12 at the time.

13 MR LANDERS: He would have got that by talking to your team,
14 Mr Edwards or Dr Boarer or somebody --

15 A. Probably, yes. I can't say exactly what happened
16 because that's the difficulty I have. But I'm conscious
17 of, you know, saying that to you. I know it's not very
18 helpful but I can't comment on things that I really
19 can't remember. I know it's not helpful and I'm sorry
20 for that.

21 THE CHAIRMAN: Yes, carry on, Mr Sharpe.

22 MR SHARPE: Let me take you to something I'm sure you do
23 remember. That's back to tab 59 of bundle 3. Do you
24 have this? I sort of set you some homework last night.

25 A. That's very kind of you. I did.

1 Q. I know you were given an unmarked copy of it for which
2 I'm most grateful to my learned friends. This is dated
3 30 June 2000, isn't it? And that's some three or four
4 months before common carriage, an application for
5 Albion. Let's go over the page to page 610. Under the
6 heading -- do you see it?

7 A. Yes.

8 Q. Under the heading "Principles":

9 "Each company should charge entrants as it would
10 charge itself and should be able to demonstrate this
11 both to entrants and to the regulator if asked to do
12 so."

13 A. Right.

14 Q. So you were well aware that you had to provide the
15 justification to Albion, weren't you?

16 A. Yes, that's what it says.

17 Q. That's not my question. I know what it says. Were you
18 aware that you had to justify your calculations to
19 Albion?

20 A. At the time, probably yes. I'm beginning to sound like
21 a broken record. I can't remember it now. I honestly
22 couldn't look anybody in the eye and say -- I can't
23 remember it now but I obviously remembered it then.
24 It's just completely paradoxical.

25 Q. Have you any reason to believe that your colleagues

1 reading this document in June 2000 would have ignored
2 it?

3 A. No.

4 Q. So we can assume from that that they would have prepared
5 a justification and given it to Albion if asked to do
6 so. That would be right, wouldn't it?

7 A. When appropriate, yes.

8 Q. Sorry?

9 A. When appropriate. When were they asked?

10 Q. We will come on to that question. It doesn't say "when
11 appropriate", it says "if asked to do so". It's an
12 absolute obligation. If they asked, you provide the
13 justification. That's right, isn't it?

14 A. When appropriate, I meant when they were asked.

15 Q. Oh, good. I see. You weren't implying that in some
16 sense you could say no to Albion?

17 A. I would not have thought it was discretionary.

18 Q. I would not have thought it was discretionary either.
19 We will go on and see what happened in a minute.

20 At the bottom of page 610, we pick up something we
21 encountered yesterday:

22 "If companies respond to competition by adjusting
23 their tariffs to reflect local costs more closely, they
24 will need to do so by reference to the directors' duty
25 and their own responsibilities to protect customers'

1 interests and particularly the interests of customers in
2 rural areas."

3 Do you see that?

4 A. Yes.

5 Q. Mr Williams, as I understand the theory of averaging
6 water prices, especially in relation to potable water
7 prices, policy of Ofwat and companies have tried to
8 avoid a situation where somebody pays far more for their
9 water in a rural area, notwithstanding the higher costs
10 of distribution and so forth, than somebody living in an
11 urban area. That's right, isn't it?

12 A. Yes.

13 Q. And the logic behind that is if costs are very low in
14 one area, that might encourage cherry-picking. It's
15 a variation of the common carriage theme and therefore
16 the revenue required to sustain losses, which might be
17 losses, in that the higher cost areas with uniform
18 tariff would not be recouped. Is it that a fair summary
19 of the theory?

20 THE CHAIRMAN: It's the universal service.

21 MR SHARPE: Sorry, what did I say?

22 THE CHAIRMAN: You said common carriage.

23 MR SHARPE: I didn't mean common carriage. Exactly.

24 I meant universal service obligation and perhaps we
25 could strike the record of my silliness.

1 Do I need to rephrase the question or do you
2 understand it?

3 A. Could you rephrase?

4 Q. Areas of high cost, areas of low cost?

5 A. Okay, you don't need to say it, I understand.

6 Q. That's a theory, one of the justifications for averaging
7 prices generally for potable water but of course when we
8 are looking at Heronbridge, you will remember the
9 configuration of Heronbridge. There is a river, there
10 is a pumping station which you didn't own, there is
11 a pipe, there is Ashgrove Treatment Works, there is
12 a gravity-fed pipe of some antiquity, there is a rotor
13 valve, there are a couple of meters and that's it. If
14 Welsh Water had charged by reference to the stand-alone
15 costs there, given this configuration is discrete, would
16 it have had the effect of increasing costs anywhere else
17 in the Welsh Water network?

18 A. Probably not.

19 Q. I'll just leave the point. Thank you for that.

20 On page 611 you see "Main approaches to access
21 pricing":

22 "In assessing disputes for complaints about access prices,
23 Ofwat will focus on the effect of the price on
24 competition in individual cases."

25 What did you mean by that when you read it?

- 1 A. I'm sorry?
- 2 Q. It didn't mean a thing to you?
- 3 A. No, it doesn't at the moment, no.
- 4 Q. And you can't remember what it meant at the time?
- 5 A. No.
- 6 Q. Right. Then we have the three bases -- do you see that
- 7 underneath?
- 8 A. Yes.
- 9 Q. Now, these are fundamental to the future calculation.
- 10 We have seen how this issue has evolved, haven't we?
- 11 A. Yes, these are the -- as I understand it, based on my
- 12 homework, these were three of the main approaches the
- 13 companies had considered as a way forward --
- 14 Q. Thank you. And one is an accounting costs. "The book
- 15 value of assets to which access is sought."
- 16 What do you think that means?
- 17 A. That is described as scenario.
- 18 Q. Yes, so what Albion is making an application for common
- 19 carriage, is it in the discrete Heronbridge network
- 20 seeking access to Welsh Water's network or is it seeking
- 21 access to that discrete element called
- 22 Heronbridge/Ashgrove?
- 23 A. Those are the assets that would have been involved.
- 24 Q. Yes.
- 25 THE CHAIRMAN: What were the assets?

- 1 A. The pipe and the treatment works.
- 2 THE CHAIRMAN: The Ashgrove System?
- 3 A. Yes.
- 4 MR SHARPE: They were the assets which were involved in the
5 application for common carriage, and I think you are
6 agreeing with me that they do not include the other
7 assets of Welsh Water?
- 8 A. I think they are discrete.
- 9 Q. They are, yes. But my point is when we talk about the
10 book value of the assets to which access is sought, it
11 means and can only mean the Ashgrove System; is that
12 right?
- 13 A. Yes and that's one of the three approaches the companies
14 were considering.
- 15 Q. Then we have got long run marginal costs and efficient
16 component pricing, rural. Once again we have the same
17 point, do not we, when we look at LRMC, that part of the
18 incumbent system to which access is sought that, part
19 does rather suggest something less than the whole of
20 Welsh Water's system. That's right, isn't it?
- 21 A. Yes.
- 22 Q. Signing and therefore in all probably this should be
23 interpreted to mean Ashgrove, shouldn't it? So we are
24 looking here at accounting costs or the long run
25 marginal costs of the Heronbridge/Ashgrove System,

- 1 aren't we?
- 2 A. I have to say to you I would not understand long run
3 marginal costing.
- 4 Q. You are in very good company, Mr Williams. But I think
5 for the moment all we need to say is that, whatever the
6 LRMC may be, it's the LRMC of that part of the incumbent
7 system to which access is sought. So you have agreed
8 with me that this can only mean the Ashgrove System?
- 9 A. Yes, I think so. Certainly those approaches could --
10 you know, could be followed --
- 11 Q. Thank you.
- 12 A. -- if Dwr Cymru had chosen so to do.
- 13 Q. I hope we can speed things up now.
- 14 A. It's worth making an observation. The same MD letter
15 did acknowledge under 6 "Relationship with general
16 tariff policy", it actually acknowledges the companies
17 actually might bring their regional average tariff
18 structures more closely into line with local costs as
19 competition develops. So there is a recognition in this
20 document that companies were using regional averages
21 which is what we did.
- 22 Q. I don't think it quite says that, Mr Williams. It
23 simply says that you start off with the principles set
24 out, main approaches to access pricing, at page 611 and
25 over time, once you have allied your charges to costs of

1 the assets involved, then maybe the next step would be
2 to try and bring your regional average tariff structures
3 more closely into line with local costs?

4 A. The way I understood it is that as competition develops,
5 which is what it says exactly, companies may wish to
6 bring their regional average tariff structures, the
7 structures that they are using, and bearing in mind,
8 whilst yesterday, you know, I thought this ticked the
9 regional average approach box earlier in the document
10 and you pointed out to me it doesn't, you are absolutely
11 correct, the document doesn't preclude regional
12 averaging and within a couple of months of this, with
13 Welsh Water issuing its network access code, it did so
14 inclusive of regional averaging.

15 Q. I'm going to come on to that in a moment if I may, but
16 just to round off the point, this paragraph 6 doesn't
17 trump the general principles laid out in 3, does it?

18 A. I'm not suggesting it trumps it.

19 Q. It deals with a different situation that having allied
20 your tariffs for common carriage to cost, once you have
21 done that as competition develops, companies may then
22 wish essentially to bring what were regional average
23 tariff structures more closely into line with the local
24 costs. The tail doesn't wag the dog. Once the local
25 cost dog has got running, as it were, then this could

1 follow subject to what he says later: any de-averaging
2 would have could be consistent with the rural/urban
3 issue that we discussed a moment ago?

4 A. Just to go back to those main approaches to access
5 pricing, what he is saying there is he is giving
6 a summary of approaches the companies have considered.
7 It doesn't necessarily mean they are going to apply them
8 at this point in time but they are possibilities, as
9 I understood it.

10 Q. Well, the director acknowledges expressly there are many
11 different ways of calculating access but the list of
12 alternatives can be grouped into three main approaches,
13 all right "can be based"?

14 A. Hm-mm.

15 Q. Are you saying that notwithstanding this clear guidance
16 in MD163, it was open to Welsh Water and any other water
17 company to ignore it and to use the fourth access price
18 basis. Is that your point?

19 A. No, what I understood the main approaches under 3 to
20 indicate was Ofwat was summarising ideas that had been
21 put forward by companies as to how it could be addressed
22 in the future. It didn't say that they would be applied
23 from thereon in.

24 Q. I think that's an imaginative and rather hopeful
25 interpretation of this document. This document is meant

1 to guide managing directors, it wasn't a think piece, it
2 was actually the conclusion of a series of
3 consultations, wasn't it?

4 A. I don't think the outcome is anything like that, to be
5 honest, because within -- this document also required
6 water companies to issue network access code --

7 Q. Yes, we will come on to that.

8 A. -- by the end of August, which Welsh Water did and
9 Welsh Water based it on regional averages. We wouldn't
10 have done that if we knew we were flying in the face of
11 what Ofwat was telling us to do.

12 Q. That's one interpretation.

13 A. And Ofwat -- again, as I understand it, Ofwat never
14 actually came back and said, "You can't do that".

15 Q. We are going to have a discussion about what's meant by
16 averaging yet again. I just want to make it absolutely
17 clear. Have you acing that Welsh Water could have
18 looked at this and said, no we have got an alternative
19 way of proceeding?

20 A. Welsh Water clearly didn't take that as an instruction
21 to base its NAC on at that point in time and actually
22 applied average costing in its NAC. That's my
23 understanding.

24 Q. Thank you. That's new evidence and we are most grateful
25 for it.

1 If we go briefly to page 613, the director is
2 talking about -- prior to that on page 612 -- acceptable
3 pricing conduct. Do you see that? We don't need to
4 worry about the first paragraph. The second condition
5 corresponds -- applying dissimilar conditions to
6 equivalent transactions. Do you see that at the top,
7 second bullet point?

8 A. Yes.

9 Q. "The second condition corresponds with principle 2 in
10 section 2 above."

11 Right?

12 "Each company should charge entrants as it would
13 charge itself. In order to demonstrate that their access
14 charges meet this criteria, companies will need to make
15 significant progress to ensure that their cost
16 allocation is robust and transparent."

17 Then he goes on about cost allocation and so forth.
18 What steps did Welsh Water take in accordance with this
19 paragraph?

20 A. I don't know.

21 Q. And we see in the document that the access code had to
22 be prepared no later than 31 August. That's right,
23 isn't it?

24 A. Yes.

25 Q. No need to take to you that. Then we go straight now,

- 1 please, to tab 61. Do you recognise this document?
- 2 A. Yes.
- 3 Q. What is it?
- 4 A. It's Dwr Cymru's NAC, network access code.
- 5 Q. Yes and it was produced in August 2000. Just so we
- 6 understand the chronology, this was came out in August.
- 7 Albion applied for common carriage on 28 September 2000.
- 8 That's right, isn't it?
- 9 A. Yes, a month after --
- 10 Q. Yes and we find that -- but I'm not going to take to you
- 11 it -- at bundle 3, tab 62.
- 12 As a matter of fact -- excuse me a moment.
- 13 This document came out in August. If in fact we can
- 14 just nip over to tab 63, to the letter we have seen
- 15 already; do you have it?
- 16 A. Yes.
- 17 Q. Albion had actually made a number of applications for
- 18 sight of the network access code but even though it was
- 19 published in August, we see in the last paragraph of
- 20 Mr Brooker's letter at page 643 that he attaches the
- 21 common carriage network access code. So he had to wait
- 22 from August until 2 October; is that right?
- 23 A. That's what that would suggest, yes.
- 24 Q. Can you explain that delay?
- 25 A. No, I can't.

1 Q. It's an oversight?

2 A. I don't know.

3 Q. Perhaps a convenient oversight because it's one step
4 a few months away from trying to resolve common
5 carriage, isn't it? Well, that's one interpretation,
6 isn't it, that this delay isn't entirely an oversight
7 because you were too busy reorganising yourselves?

8 A. No.

9 MR BEARD: Madam, I have resisted so far but in relation to
10 questions that are being put to Mr Williams in relation
11 to the 2 October, my learned friend has studiously
12 avoided going to the letter to which it's a reply,
13 showing that to the witness, in circumstances where that
14 letter may be material to the way in which the response
15 should be interpreted.

16 MR SHARPE: I'm happy to do that but I'm also very conscious
17 of the time. I had thought I would finish Mr Williams
18 by now and if my friend wants me to take --

19 THE CHAIRMAN: If you want to take him to it in
20 re-examination, Mr Beard, then ...

21 MR BEARD: Certainly.

22 MR SHARPE: Let's go to it and make my friend happy.
23 Tab 62. In fact, the Tribunal has actually seen this
24 letter before, I believe. Have you got it? At 62?

25 A. I have.

1 Q. So it's dated 28 September and Dr Bryan states:

2 As you are aware, Albion has an inset appointment.
3 Licensed supplier.

4 And explaining what he has in mind about water and
5 then to pick it up:

6 "We are therefore seeking network access to your
7 pipeline that will carry the water from Heronbridge to
8 our site at Weybridge Shotton, the arrangement would be
9 for a very simple application of the common carriage
10 concept with no apparent hydraulic quality or liability
11 concerns."

12 Okay? So this is the application:

13 "Copies of your network access ..."

14 So:

15 "To progress this arrangement, I would be grateful if
16 you could undertake to supply the following by
17 6 October: copies of your network access code and
18 statement of principle. I have requested this
19 information on two previous occasions and have not
20 received a response."

21 He secondly asks for the price of access:

22 "... which I expect will reflect the dedicated
23 nature of the pipeline, where there are only two sites
24 served ..."

25 I presume he means Shotton Paper and Corus. That

1 would be right, wouldn't it, Mr Williams?

2 A. I believe so.

3 Q. "... and there are no apparent hydraulic quality or
4 liability concerns. I believe that this price should
5 also reflect the fact that you have voluntarily
6 de-averaged the tariffs for this supply and that the
7 appropriate costs are those relating to this system
8 alone."

9 Is that right?

10 A. That's what it says.

11 Q. Then he wants a contract name and so forth. So I hope
12 I have satisfied my friend. Now we go back to the
13 simple point I was making. Dr Brooker replies within
14 the time period specified and he encloses a copy of the
15 common carriage network access code?

16 A. What tab are you on there?

17 Q. I'm on tab 63, where we started and I'm simply pointing
18 out that he had intimations that the network access code
19 had been requested, that we know it was published in
20 August. He has to ask for it again in September and he
21 gets it in October. It's not a very impressive
22 performance actually, when one thinks about it, within
23 Welsh Water at the time, was it?

24 A. I can't explain it.

25 Q. No, nor can I.

1 MR LANDERS: Could I just ask, what does the word
2 "published" mean in that context? You say it was
3 published in August. Does that not mean it was
4 available to Albion in August, because it was published?

5 MR SHARPE: No, I don't think it meant this was a public
6 document. We know it had to be given to Ofwat and my
7 working assumption throughout the case has been, though
8 no doubt I will be corrected, that it was not a public
9 document. This was sent to parties -- interested
10 parties -- in much the same way and consistent with the
11 treatment of the statement of principles.

12 MR BEARD: I wouldn't want my learned friend to proceed on
13 a misapprehension. MD162 at tab 54 says:

14 In relation to the statement of principles
15 specifically because of that time that was all that was
16 provided. "Reference copies can be inspect in the Ofwat
17 library."

18 MR SHARPE: Are we talking about the statement of
19 principles?

20 MR BEARD: Yes, I'm just pointing out -- I think the point
21 was being made about publication and I am just
22 highlighting that in being provided to Ofwat that MD162
23 specifically talks about publication and availability in
24 the Ofwat library and I'm instructed that the case is
25 also true in relation to the network access code.

1 I will check whether or not there is any specific MD
2 letter in relation, to it but I only have it in relation
3 to the principles.

4 THE CHAIRMAN: Is that a physical library or a virtual
5 library?

6 MR BEARD: I'll have to check that. I'm sorry I don't have
7 that. I'm sure it is a physical library. Whether or not
8 it was also virtual back in 2000 is a separate question.

9 MR SHARPE: I'm instructed it was a physical library. The
10 point wasn't of course put to Dr Bryan and these are
11 late issues --

12 THE CHAIRMAN: Mr Williams, your point is that insofar as it
13 looks as if Dr Bryan was asking for these documents and
14 they weren't sent until Dr Brooker's letter of
15 2 October, you don't know why there wasn't an earlier
16 reply to Dr Bryan?

17 A. I don't. I can't understand why there would have been
18 a delay. There is no need.

19 MR BEARD: I'm sorry, Madam, in relation to the statement of
20 principles, I think it's common ground that it was sent
21 in June. Indeed my learned friend's questioning
22 proceeded on that basis.

23 THE CHAIRMAN: I'm sorry, yes. Is that a convenient moment
24 for us to take a break?

25 MR SHARPE: Of course. I'm so sorry.

1 THE CHAIRMAN: We will take a short break and come back at
2 five to 12.

3 (11.48 am)

4 (Short break)

5 (11.56 am)

6 MR SHARPE: Mr Williams, let's see if we can increase the
7 run rate, shall we? I'm sure you don't want to be here
8 all day and I'm sure I don't. Let's pick it up at
9 bundle 3, tab 65. This is the reply, is it not, to
10 Dr Bryan's application, isn't it?

11 A. Yes.

12 Q. And it's a questionnaire, isn't it?

13 A. It is, yes.

14 Q. It is. We don't need to worry about the details,
15 I don't believe. Were you involved in the preparation
16 of this questionnaire?

17 A. No.

18 Q. You weren't?

19 A. No.

20 Q. Okay. Can you explain why it took three weeks to be
21 sent to him?

22 A. No.

23 Q. You imagine it was designed solely for Albion or did you
24 have it on the stocks for every applicant for common
25 carriage?

1 A. We would have produced it for general use.

2 Q. So it should have come down off the shelf and been sent
3 back to him but it wasn't, was it? Okay.

4 A. It took three weeks, I can't explain it.

5 Q. Fine. Dr Bryan responds within two days and we see that
6 at Folder 3 Tab 66 and I'm not going to take you to that. But
7 nevertheless it notes here that it was a full reply to
8 the question. Then at Folder 3 Tab 68 we have a letter once again
9 from Mr Holton to Dr Bryan. We will have a look at it?

10 THE CHAIRMAN: That's bundle 3, tab 68?

11 MR SHARPE: No, bundle 3, tab 67, I'm so sorry. So we have
12 the application on 28 September. We have the
13 questionnaire sent out three weeks later. Then a few
14 days after that we have Mr Holton writing back to
15 Albion:

16 "I refer to your letter. I agree the best way to
17 progress this application is to meet and discuss the issues. However,
18 in
19 order to expedite matters ..."

20 The word "expedite" there, Mr Williams, has a sort
21 of faintly ironic quality viewed historically, doesn't
22 it, in view of how long it was to take:

23 "... I believe it's appropriate to progress both
24 prices and ..."

25 Sorry. I have made a mistake and not the first one,
26 I'm sure.

1 THE CHAIRMAN: This is a letter from Dr Bryan.

2 MR SHARPE: I beg your pardon, this is Dr Bryan to
3 Mr Holton. The irony still remains in the word
4 "expedited" and:

5 "... to progress this is to meet and discuss the
6 issues."

7 And there has been an offer to attend at the meeting
8 and so forth. So from Dr Bryan's perspective, there is
9 an intention to have a meeting and get a move on.
10 That's fair, isn't it?

11 A. Yes.

12 Q. I take it you didn't see this letter to Mr Holton?

13 A. I don't recall, no.

14 Q. No?

15 A. I knew there was a meeting around that time.

16 Q. You did? Thank you. Then we go on to tab 68. This is
17 where I was going to go. Do you recognise this
18 document?

19 A. No.

20 Q. What it actually describes is -- it's a tender document
21 and we found it in the bundle. We don't know quite when
22 it was dated but I would guess in the order of
23 October 2000 but you might like to read it quickly.

24 (Pause)

25 A. Okay.

1 Q. You see what's being proposed here?

2 A. Hm-mm.

3 Q. We know that work had started on common carriage
4 December/January/early February, from the documents
5 I took you to earlier this morning. But here we are in
6 October saying that:
7 "At this stage ..."
8 This is, we think after you had received at least
9 one application for common carriage:
10 "... Welsh Water would like to calculate local costs
11 in order to be ready to respond to competitive threats."
12 Do you see that?

13 A. Yes.

14 Q. Local costs might be called bottom-up costs, mightn't
15 they? And this was -- presumably you may remember the
16 request -- the internal request, one colleague to
17 another in the documents, the two questions I took you
18 to earlier this morning and you remember that, don't
19 you?

20 A. Yes.

21 Q. To which we have not seen any answer. Here we are now
22 in October, where those issues of local costs are to be
23 researched by:
24 "... one of a small number of selected consultants
25 to bid for the provision of a methodology for

1 determining these local prices and a report detailing their quantum."

2 Right. Working methods, submission of tenders and
3 we get some idea of date because the tenders must be
4 submitted by 31 October to Dave Holton. Do you see
5 that?

6 A. Yes.

7 Q. Were you involved in the idea of retaining consultants,
8 for instance?

9 A. I don't recall it. I really don't.

10 Q. You don't recall it? They are not cheap, consultants,
11 are they?

12 A. No.

13 Q. So this expenditure would have been authorised by
14 Mr Holton?

15 A. It would have been within his budget. I can only
16 assume, because no one asked me for any additional funds
17 for anything like that that I can recall.

18 Q. Did Dr Brooker mention it would be a good idea to retain
19 consultants?

20 A. I don't recall.

21 Q. Do you think Dr Brooker had spoken to Mr Holton about
22 this?

23 A. I really don't know.

24 Q. You do not know?

25 A. No.

1 Q. Either way, neither Brooker or Holton discussed the
2 notion of retaining consultants by late October, and of
3 course consultants, with the best will in the world, and
4 the highest quality, do not produce a report by return
5 of post, do they?

6 A. Not normally.

7 Q. And they would have taken a reasonable time presumably
8 to do this?

9 A. Hm-mm.

10 Q. You knew all about common carriage, probably a year
11 before that, it was at least one of the things that you
12 needed to consider. And we know from the documentation
13 you knew all about the necessity to look at bottom-up
14 costs. You attempted to do so yourself. We also know
15 that requests were made within the organisation for
16 information about that but we haven't seen the results?

17 A. Yes.

18 Q. And since then we have had MD163, we have your access
19 code -- principles access code and we have also got an
20 application in September, which I don't think would have
21 come as a shock to Mr Brooker, would it?

22 A. Not at all.

23 Q. Not at all. Here we are at the end of October, pushing
24 the resolution of a common carriage price into --
25 I won't say the long grass but quite a way from instant

1 resolution because these chaps will take time to produce
2 their report, won't they?

3 A. I really don't understand the timing other than on the
4 basis of gleaning further information about an
5 alternative approach. More than that, I can't offer any
6 explanation for it because I don't remember this.

7 Q. But it's fair to say you aren't on top of the game here
8 because this is precisely the sort of numbers that you
9 would have needed to create a common carriage charge and
10 you knew you were going to have to do that, months
11 before and you had -- Mr Holton, you say it was in his
12 budget?

13 A. I presume so, yes.

14 Q. We don't know any different. I'll take your word for
15 it. I have no reason to think otherwise. Yet he didn't
16 go into his budget, nobody thought of doing this. The
17 mystery is that we don't know what happened, do we?

18 A. No.

19 Q. Because we don't have a consultant's report. We don't
20 even have invitations to tender. We don't know if there
21 was a report or if there was a report on local prices or
22 local charges -- local costs, rather, in order to be
23 ready to respond to competitive threats, which would
24 have been the brief, we have no idea what those costs
25 would have come out at from the consultants, do we?

- 1 A. Well, as you point out, I certainly don't have any
2 recollection. I don't recall any tender going out.
3 I don't recall any work being done and a report coming
4 back. So I'm at a loss to be able to give you any
5 explanation, being perfectly frank.
- 6 Q. I think we have taken it about as far as we can, haven't
7 we? I simply observe you recall earlier on, our
8 exchange before we broke, how important it was to look
9 at the assets, the actual assets, involved, and at its
10 most charitable, it may have been an attempt to try and
11 cost those actual assets which --
- 12 A. Yes, to begin to certainly help formulate our thinking,
13 for sure.
- 14 Q. Before we leave this, just look at the working method:
15 "Our revenue and capital costs are held on a SAP R3
16 based system."
- 17 I suppose you don't know what a SAP R3 based system
18 is, do you?
- 19 A. I do, actually.
- 20 Q. Please forgive me but whatever it is, I assume it's some
21 sort of accounting software system?
- 22 A. Absolutely, it costs a fortune.
- 23 Q. And:
24 "Our asset configuration is held in a GIS system, an
25 asset database to which the successful bidder will have

1 access."

2 Am I right in thinking that it would have been
3 relatively easy to identify the Ashgrove assets from
4 this data?

5 A. I would have thought so. A lot of work went into the
6 GIS system.

7 THE CHAIRMAN: Whenabouts was that work done?

8 A. Good question.

9 THE CHAIRMAN: Roughly?

10 A. It would have been prior to and in the post
11 privatisation period because clearly one of the things
12 companies were required to do was to get a better
13 understanding of their assets. Prior to privatisation
14 that sort of information wasn't as cost-critical as it
15 became under -- companies had to get on and do it. So
16 a lot of effort went into it and I think it's reasonable
17 to assume based on your question that the sort of
18 information in relation to this system would be there.

19 MR SHARPE: Thank you, Mr Williams. Can we now turn to
20 a document again you haven't seen but it gives you
21 Albion's perception of the company's conduct at that
22 time, at tab 70. This is in one of Dr Bryan's managing
23 director reports and can we just pick it up at the
24 bottom of 659, please. Do you have it?

25 The date for this is slightly vague but it is

1 November. So there we are:

2 "The common carriage negotiations with Dwr Cymru
3 have stalled with its refusal to advise us on access
4 price and the derivation of this price."

5 So no price had been calculated and we know that
6 because we are planning to put things out to consultants
7 to find out what the price should be or an element of
8 the price should be and the derivation of this price.

9 "Derivation". What do you think he meant? Methodology?

10 A. I presume so. Could I ask you the date of this?

11 Q. November. It's dated on --

12 A. Would it have been before or after the meeting with
13 Dave Holton?

14 Q. After.

15 A. Fine. That helps to explain some of the context.

16 Q. So his description:

17 "Have stalled" gives you his impression of utility
18 of the meeting, I think?

19 A. Yes.

20 Q. And more importantly:

21 "Refusal to advise on the price."

22 And even how the price was to be calculated?

23 A. I think, if I recall what happened -- I wasn't at that
24 meeting but what I was aware of was, when it got on to
25 the discussion of average pricing, in terms of network

1 access code, Dr Bryan made it absolutely clear in that
2 meeting that he was totally opposed to that particular
3 position, so we ended up as a result of that meeting,
4 you know, with not just a failure to agree. It was
5 opposite ends of the spectrum. So that would certainly
6 account for the "stalled" comment. I think at that
7 meeting, as well, Mr Holton --

8 Q. Sorry, were you at the meeting?

9 A. No, I did say that.

10 Q. Was Mr Edwards at the meeting?

11 A. He may have been, I don't know. You will have to ask
12 him.

13 Q. I will, but unless you are saying that Mr Holton came
14 back from the meeting and told you what took place --
15 are you saying that?

16 A. I can't look anybody in the eye and say yes, immediately
17 after that meeting they were standing on my doorstep.

18 Q. So you can't really give evidence of what took place in
19 the meeting, can you?

20 A. I can recount what my understanding was.

21 THE CHAIRMAN: When did you form that understanding?

22 A. That would have been, you know -- I can't tell you
23 whether it was immediately a day or so after but I knew
24 of the meeting that was going to happen at the time,
25 a very vague memory, and it was quite a -- it was

1 a critical meeting in the sense that we were actually
2 beginning to get together, face-to-face and there was
3 a very clear stand-off and that's the bit I remember.
4 There was just a complete disagreement over the
5 approach. And then equally there was discussion about
6 price because that became an issue and I think at the
7 time Mr Holton said he wasn't in a position to actually
8 talk about pricing at that time and then that went on
9 through until January the following year.

10 Q. We will come on to the story. So you are saying that
11 either -- somebody at the meeting, Mr Holton?

12 A. I think it is Mr Holton, yes.

13 Q. Jackie Boarer?

14 A. Jackie Boarer might have been there.

15 Q. Might have been?

16 A. I can't say for definite. I think she probably was,
17 actually, but I can't say for definite.

18 Q. It's not in your witness statement, that's the point and
19 I don't recall my learned friend taking Dr Bryan to give
20 evidence as to what took place at the meeting. So
21 I don't think we can take it very much further?

22 A. Fine.

23 Q. What I'm doing here is expressing Dr Bryan's
24 contemporaneous frustration, not having a price, not
25 even being told how the price was to be calculated.

1 Let's see what was going on inside Welsh Water now
2 and we will go over to tab 75. Do you have it?

3 A. Yes.

4 Q. Do you recognise it?

5 A. I do, yes. The DCC --

6 Q. It's a board minute?

7 A. It's a board meeting, yes.

8 Q. It's a board minute of a meeting that was held on Monday
9 6 November 2000 and we have got, no disrespect, Brooker
10 in the chair. Then are you the Williams? JD Williams?

11 A. That's me.

12 Q. But Edwards isn't Paul Edwards?

13 A. It is Graham Edwards, Ops Director.

14 Q. So Lynch, Illidge, Miles, Edwards, Thomas and?

15 A. Moriarty.

16 Q. And Brooker not giving evidence but you are and we see
17 Mr Curtis the company secretary who would keep the
18 minutes.

19 A. Hm-mm.

20 Q. All right. It's redacted recently. Let's go over the
21 page and you see -- can you read it -- at page 686?

22 A. Yes, with difficulty.

23 Q. Yes, me too, but I think I can read 4.4.1:

24 "All arrangements necessary to implement common
25 carriage are now in place. Proposals submitted

1 by Aqua Resources ... are thought to be prohibited by the
2 terms ..."

3 Don't worry about that.

4 Then 4.4.3:

5 "Application has been made by Albion for common
6 carriage of water acquired from North West Water to its
7 customer at Shotton Paper. This will have a relatively
8 neutral cost effect for DC for as long as the average
9 cost of distribution can be applied to such
10 arrangements."

11 A couple of points about this. First of all, would
12 I be right in thinking you are the only person on the
13 board who would have any direct knowledge of the common
14 carriage application because it was your patch, wasn't
15 it?

16 A. I wouldn't have been the only one who would have had
17 knowledge.

18 Q. So what's reported here would be essentially what you
19 told the board. Would that be right?

20 A. Yes, and -- yes, essentially, and indeed, you know, with
21 Dr Brooker's involvement because he would know. So
22 whichever one of us reported that I wouldn't like to
23 say.

24 Q. I think Mr Brooker, as you mentioned earlier, was on top
25 of the regulatory side of things at this stage?

- 1 A. I don't want to be pedantic, but it is Dr Brooker.
- 2 Q. Oh, of course. Who is well-known to me and I will call
3 him Dr Brooker from now on because I call Dr Bryan
4 Dr Bryan. Dr Brooker, thank you. So he was on top of
5 the regulatory side. So he would have known all about
6 the common carriage application as well, wouldn't he?
- 7 A. He would have, yes.
- 8 Q. So what we see here:
9 "All arrangements necessary to implement common
10 carriage are now in place."
11 Would it be fair to say that's not strictly
12 accurate?
- 13 A. No, I don't think it would be, actually.
- 14 Q. What arrangements had you in mind?
- 15 A. The network access code was the vehicle to take it
16 forward, as I understood it. That was issued in August.
- 17 Q. Hm-mm.
- 18 A. Therefore we were then in a position to move forward
19 with it. That is my understanding.
- 20 Q. But there was no price?
- 21 A. There was no price, no.
- 22 Q. But not all arrangements, all arrangements except price?
- 23 A. Except within the NAC it clearly stated our approach
24 was, as I understood it and that was regional averaging.
25 Hence the disagreement at the November meeting.

1 Q. If we go to 4.4.3, it reports the application from Albion
2 and then we have:

3 "This will have a relatively neutral cost effect for
4 DC for as long as the average cost of distribution can
5 be applied to such arrangements."

6 Was this the product of some financial analysis that
7 you had had done for you?

8 A. I don't recall. I don't think so but I can't comment.
9 I don't know is the only answer I can give.

10 Q. Was there anybody with a finance function on the board
11 who could have spoken to that?

12 A. Again, G Miles, for example.

13 Q. Sorry?

14 A. Gedwyn Miles, GJ Miles.

15 Q. Did he attend? Of course he did. Did he make
16 a contribution to this discussion?

17 A. I couldn't possibly say, I can't remember. I'm
18 completely open about Mr Miles, so you can understand
19 his involvement. This board -- here we are in November
20 of 2000. This is a board in effect that reflected the
21 ownership of Western Power, I talked about earlier on.
22 Mr Lynch was the chairman brought in from America.
23 I think I said about Chris Jones being offside as we
24 termed it, the Chinese wall. I think Gedwyn Miles(?)
25 filled that capacity as the then Dwr Cymru Finance

- 1 Director.
- 2 Q. The board had already been informed some months before
3 of the substantial impact on profits and revenue, more
4 technically, of common carriage and inset appointments,
5 hadn't it? I took you to it yesterday?
- 6 A. Are you referring to £23 million?
- 7 Q. Yes.
- 8 A. Yes, the potential of -- yes, we established that
9 yesterday.
- 10 Q. So it would be quite natural for the board to be
11 concerned about the financial consequences of
12 a successful application for common carriage and the
13 terms under which it would be granted. That would be
14 right, wouldn't it?
- 15 A. We would certainly be concerned about the loss of
16 income, yes.
- 17 Q. But was it you who told the board:
18 "It will have a relative neutral cost effect for as
19 long as average costs of distribution can be applied to
20 these arrangements."
- 21 A. I don't know honestly.
- 22 Q. Who else could it have been?
- 23 A. It could have been Dr Brooker.
- 24 Q. I see, all right.
- 25 A. But I can't say for definite who it was.

1 Q. Would you have had any knowledge of the numbers involved
2 here?

3 A. I think it's more likely to be Dr Brooker but I can't
4 say with absolute certainty. It was he or me.

5 Q. But you think it's more likely to have been Dr Brooker?

6 A. I think it probably is more likely to have been.

7 Q. He would have been -- had an --

8 A. He had a better understanding of the financial
9 administrations in terms of the pricing --

10 Q. Thank you. He would see the Albion application in its
11 financial context?

12 A. Not just in its financial context but he would
13 understand it and I understood the potential loss of
14 income. You know, no one is denying that there would be
15 that loss.

16 Q. But it does seem to have been, as it were, quantified
17 here, otherwise nobody would be in a position to say it
18 would be relatively neutral provided that the average
19 cost of distribution could be applied. Does that sound
20 like Dr Brooker or do you think you --

21 A. I think I have said, it's more likely to have been
22 Mike Brooker, yes.

23 Q. Thank you.

24 MR LANDERS: Just so I can be clear, the application in
25 (inaudible) itself went to Dr Brooker, didn't it? It

- 1 was addressed to Dr Brooker.
- 2 A. Yes.
- 3 MR LANDERS: Was there anybody he might have asked for
- 4 financial quantification other than your team?
- 5 A. I wouldn't have thought so.
- 6 MR SHARPE: I think I go back to the letter in reply. There
- 7 is a reference to Mr Holton being responsible and
- 8 carrying it forward but I'll come back to you on that.
- 9 But that would be reasonable, wouldn't it?
- 10 A. Hm-mm.
- 11 Q. It seems clear from the bundle that Dr Brooker and
- 12 Mr Holton are working quite closely together?
- 13 A. Yes, I think we talked about that yesterday. It's
- 14 almost certain that would have happened.
- 15 Q. May I ask: would it be normal for a board meeting like
- 16 this on an issue of this importance for a paper to have
- 17 been put up to the board in advance to the directors --
- 18 any director would have some warning of what was going
- 19 to be said?
- 20 A. Well, clearly, papers obviously, when available, went up
- 21 in advance. Whether there was a paper attached to this,
- 22 I can't recall.
- 23 Q. You can't recall?
- 24 A. No I would have thought, just to add a point of
- 25 clarification -- I would have thought paper would have

- 1 been referenced and there is no reference there.
- 2 Q. Referenced in the minute?
- 3 A. In the minute, yes.
- 4 Q. Thank you. The obvious question: if all the
5 arrangements were in place -- and we go from
6 6 November 2000 -- why did it take another four months
7 for a common carriage price to be offered to you?
- 8 A. It just took us that time to get to the price. I can't
9 explain, you know, exactly why it took all that long.
10 It did. I can't recall any impediment to doing it.
11 I know -- one of factors was with Paul Edwards not being
12 available. Paul Edwards took over the work, I think,
13 that was being completed --
- 14 Q. By Mr Henderson?
- 15 A. Mr Henderson.
- 16 Q. Mr Henderson was available?
- 17 A. And I think what happened was that -- there are too many
18 Pauls here -- Paul Edwards took the work on from
19 Paul Henderson in January. So where there was an
20 indicative price produced, that price was refined
21 I think that was the process and then that price became
22 available in March.
- 23 Q. I think we were aware of the chronology. I'm just
24 asking you why it took so long to arrive at that price?
- 25 A. I can only think it was because of the availabilities of

1 people involved but I don't know. I can't give you
2 a definitive answer.

3 Q. You were not given regular reports as to the changes in
4 the basis of the manner in which the price was to be
5 calculated, were you?

6 A. I can't honestly answer that.

7 Q. When you were referring to average costs of distribution
8 to your board colleagues, what did you mean?

9 A. In the context of this reference?

10 Q. Yes. What did you mean?

11 A. I can only say -- well, the regional averaging approach.
12 But I don't know.

13 Q. You do not know?

14 A. No. It's a pretty cryptic minute. From this -- I can't
15 remember, given the time involved.

16 Q. But I think it's -- actually you meant the average costs
17 of all distribution, distribution of all water. Would
18 that be reasonable?

19 A. It could be.

20 Q. Including expensive distribution of potable water,
21 wouldn't it?

22 A. It could be. I don't know.

23 Q. So therefore, it was essential to include the high costs
24 of potable water distribution in order to preserve
25 revenue neutrality. Would be that right?

- 1 A. I don't know.
- 2 Q. That's what it said:
- 3 "Average cost of distribution can be applied to such
4 arrangements."
- 5 Average costs of distribution, I think you agreed
6 with me, is likely to have included all water. You do
7 not qualify that. So let's say it's all water?
- 8 A. That's probably right, yes.
- 9 Q. And if it includes all water distribution, it means the
10 distribution of potable water, doesn't it?
- 11 A. Yes, I imagine it does. I don't actually know is the
12 truth.
- 13 Q. No and we established yesterday, when we looked at the
14 large industrial tariff, which was exclusively potable
15 water, there was a clear recognition by the company --
16 I don't think it's in dispute -- that the distribution
17 of non-potable water takes place at a much lower cost.
18 That's right, isn't it?
- 19 A. Yes.
- 20 Q. So in order to achieve revenue neutrality, you had to
21 provide a methodology which would include irrelevant
22 higher potable water distribution numbers. That's
23 right, isn't it?
- 24 A. If that was included in the regional averaging, then
25 yes.

1 Q. Thank you.

2 MR BEARD: Just to be clear for the Tribunal, there is
3 a dispute about the relative costs of potable and
4 non-potable distribution but I'm not sure that that
5 matters for these purposes.

6 THE CHAIRMAN: We have had Mr Williams' evidence on that,
7 which we will no doubt hear submissions on as to the
8 weight to be placed on it.

9 MR SHARPE: We have heard Mr Williams agreeing that the
10 large industrial tariff document was accurate. I was not
11 aware of any dispute and I'm much obliged to my learned
12 friend for drawing my attention to it but I'm not going
13 on detain you with it any more.

14 A. Thank you.

15 Q. So let us quickly go to tab 76.

16 THE CHAIRMAN: Could I just ask a short question on this
17 board meeting, which you were attending? We have seen
18 the earlier board minutes where there -- the board is
19 being alerted to the fact that quite a substantial
20 amount of income was under threat from common carriage
21 arrangements.

22 A. Yes, if we lost all ...

23 THE CHAIRMAN: It's not if you lost it because you would be
24 moving from a bulk supply arrangement to a common
25 carriage arrangement in relation to that, those

1 customers. You weren't going to get no money --

2 A. No.

3 THE CHAIRMAN: -- in relation to those, but you were just
4 going to get whatever you could charge for common
5 carriage rather than for the bulk supply?

6 A. Hm-mm.

7 THE CHAIRMAN: Was the effect or the intention of what's
8 being said here along the lines of "don't worry about
9 that any more, we are not going to lose all that money,"
10 or, "We might not lose all that money," or did it not
11 indicate anything to do with whether, in the intervening
12 period since that last meeting, that threat had
13 heightened or the risk of losing that money was being
14 mitigated in some way? Is that the flavour of this or
15 can you remember anything about how this -- this is
16 being put to the board and what they got from this as to
17 was that threat still serious or more serious or less
18 serious?

19 A. As a board member not involved in it, so just
20 receiving this information afresh, that -- reading that
21 in the way -- cryptic as it is, suggests -- looks like
22 a "don't worry about it" scenario but I'm stuck on this
23 problem of memory. I don't know what it was intended to
24 impart because it is so cryptic.

25 THE CHAIRMAN: Yes, sorry, Mr Sharpe, you were --

1 MR SHARPE: Not at all, I'm most grateful.

2 Just allow me a moment, if you would.

3 So we go to, if we can go quickly, tab 76. Do you

4 it? A letter from you, Welsh Water, to Dr Bryan. Do

5 you see it, 7 November?

6 A. Yes 688, is it?

7 Q. Page 688, yes. I can take you to the previous letter to

8 refresh your memory which is at tab 71. If you would

9 like to look at tab 71, briefly. Do you have it?

10 A. Yes.

11 Q. The key point here is:

12 "Firstly, we have assumed a locally de-averaged

13 basis for charges because the mass of evidence

14 supporting the contention that DC have voluntarily

15 de-averaged the terms of supply to Shotton Paper and

16 Corus."

17 What do you think he was referring to there?

18 A. Dr Bryan to Mr Holton?

19 Q. I know.

20 A. Trying to set out an agenda, clearly making his view --

21 Q. Do you think he might have meant -- let me test this

22 with you:

23 "DC have voluntarily de-averaged the terms of supply

24 to Shotton and Corus."

25 That meant that rather than applying a unique

1 average regional price methodology they charged, as we
2 know, very different prices and a very low price for
3 Shotton, up to 6 megalitres a day -- to Corus, Corus,
4 and a very high price to Shotton Paper of some at that
5 time 26 megalitres a day, so in other words there was
6 a big imbalance for a much greater volume. So you
7 couldn't be said, could you, to be applying a consistent
8 average regional charge to those two customers?

9 A. Clearly Dr Bryan was making a case for application for
10 a case of being treated to the same basis. Dwr Cymru
11 were saying we will address this on regional averages.
12 Hence, and we have already established, opposite ends of
13 the spectrum.

14 Q. Yes, but you can see his point. You are saying that for
15 him, the charges should be based upon regional average
16 and therefore as we know Heronbridge -- Ashgrove is
17 a relatively low cost operation, but when it comes to
18 charging for water in relation to Shotton and Corus, the
19 prices are dramatically different, so therefore could
20 not have been calculated on the basis of any regional
21 average cost. So why could they not be treated --
22 Albion not be treated in the same way?

23 A. I believe Corus were on the special agreement list,
24 I think that's right in saying, when that comes up or
25 came up.

1 Q. It did come up, Mr Williams. The tribunal has already
2 seen that it came up in Corus' own evidence, the
3 document that I think I took you to yesterday. We saw
4 that that contract had expired in 1996 and had been
5 renewed on the same terms.

6 A. That's right.

7 Q. I think from memory roughly 14p --

8 A. Yes, something of that order.

9 Q. Yes. Against 26p, there is no argument they had
10 dramatically different prices. Are you telling me both
11 prices were calculated on the basis of region average?

12 A. No, you did bring my attention to it.

13 Q. You can see --

14 A. I can see where he is coming from.

15 Q. You can perhaps have some sympathy with it because
16 prices charged to his customer at one level are based
17 upon one methodology and the prices offered to him in
18 relation to common carriage are based upon an entirely
19 different and infinitely less favourable methodology.
20 Would that be right?

21 A. If I was Dr Bryan I would probably be saying the same
22 thing, but from a Dwr Cymru perspective we had an
23 approach --

24 Q. Well --

25 THE CHAIRMAN: From a Dwr Cymru perspective what?

1 A. The approach for dealing with network access pricing was
2 set out in the access code, clearly stipulated it would
3 be on regional average pricing. So that's what we were
4 applying. I understand the point about the difference.
5 I can understand another individual saying: for me that
6 doesn't seem very fair, nevertheless, that's the way it
7 was being done.

8 MR LANDERS: You said right at the beginning of that your
9 responsibilities were customer policy. Perhaps this is
10 not a fair question, but would say that Shotton Paper
11 was being charged a fair price for its water?

12 A. It's a good question. Looking at it from their
13 perspective, I can understand the perception and the
14 statement they are not being treated fairly. From
15 a Dwr Cymru perspective terms of the application of its
16 tariffs, it was based on the regional average approach
17 and, you know, I think I said yesterday, anybody who
18 would have applied for an access price, the price would
19 have been driven by the methodology; in other words,
20 regional averaging, it could have been Albion or
21 anything else. The price would have been the price.
22 And that's the bit that strikes home for me, when I was
23 asked about did I recall Dwr Cymru acting maliciously.
24 I know it didn't happen but the fact that it was
25 applying a policy consistently to me demonstrates that

1 it wasn't acting maliciously. Applying a policy for it
2 to be malicious would have required Dwr Cymru to deviate
3 and not operate consistently. Dwr Cymru was trying to
4 operate consistently with regional averaging. That's
5 my -- to me, that confirms my belief that -- it's
6 evidence that we weren't operating in a way that was
7 adopting a policy different from the norm so that we
8 could prevent this application or making it uneconomic
9 or in whichever way, shape or form it would be
10 described. That's my interpretation on it. As I say,
11 when I was asked about my recollection of this whole
12 sequence of events and did Dwr Cymru adopt a position of
13 well, we must find a way of confounding these approaches
14 to protect the income, it was never to my recollection
15 at any level in the organisation involved in any
16 discussion, suggestion or anything else that that's what
17 we were doing. It just didn't happen, as far as
18 I understand.

19 MR LANDERS: But did you ever ask yourself: are we being
20 fair to Shotton Paper? One of your responsibilities was
21 ensuring that prices are fair, you said.

22 A. Yes, fair across the whole of Wales. There might be,
23 you know -- what people might regard as local
24 discrepancy, but some of this was an overhang from the
25 past, as Mr Sharpe has pointed out. The Corus pricing

1 and not being attended to, my understanding -- I think
2 I said earlier -- based on information that I checked --
3 that I think I mentioned the name Ms Cross -- was as
4 these things were coming up for renewal, they were being
5 moved on to regional averaging. I can't explain why the
6 two and a half years existed but for me the bit that
7 confirms my belief or offers evidence of my belief of
8 not behaving maliciously is our consistency.

9 MR LANDERS: Could I just ask who Ms Cross is? Was that in
10 evidence somewhere?

11 A. I don't know.

12 MR LANDERS: I'm so sorry. Could I just ask who Ms Cross is
13 that you referred to a couple of times?

14 A. She is a member of the Dwr Cymru staff involved in
15 customer issues.

16 MR LANDERS: Thank you. I think a current member.

17 A. She is currently still employed.

18 MR SHARPE: I think she is the lady that Mr Williams
19 conferred with a couple of weeks ago in relation to --

20 MR LANDERS: I missed that.

21 A. I just want to check because that was very distant in my
22 memory.

23 MR COWEN: Just to understand it, your intention to be
24 consistent was -- that was your objective, if you like,
25 despite these things that people had said about

1 stand-alone costs and the possibility that you could be
2 treating different circumstances differently. You
3 decided that you weren't going to do that, that you were
4 going to be consistent -- and do everything on an
5 average cost basis?

6 A. My understanding is that -- take the scheme of
7 charges -- that is the generality of costs to the
8 majority of our customers. I understand that's built on
9 regional averaging for reasons we have talked about,
10 local costs, you know, rural, urban, that sort of
11 dimension. I understand that's built into our approach
12 across the business including the industrial area,
13 except where there are those special agreements and
14 I think I have said my understanding is as they come up
15 for renewal, there were attended to. Clearly there is
16 a bit of a two and a half year gap alluded to. So
17 everything Welsh Water were doing, as I understand it,
18 in moving forward on its tariff policy and tariff
19 application, was built on regional averaging.

20 You know, if someone says that's not entirely true,
21 then I have made a mistake. I don't believe I have.

22 MR COWEN: I'm not suggesting at all that it's not true, I'm
23 just trying to understand what the intention was and
24 that you were very clear in your mind that you weren't
25 going to go to any form of local costing. It really

1 didn't matter what was being said by the Regulator and
2 its advice on, you know, these sort of costing
3 methodologies. You had decided that you were going to
4 go to the regional averaging and that's the decision
5 that you took?

6 A. Yes, you know, at that time, with competition, you know,
7 being new, I think in MD163 the Regulator pointed out
8 that, you know, companies might want to give
9 consideration to moving away from, you know, regional
10 averaging in terms of their tariffs, as competition
11 develops.

12 I can't really offer an opinion on where we were in
13 terms of our level of sophistication, probably getting
14 more sophisticated, I guess, in terms of, you know,
15 developing our prices, but clearly at that time we were
16 determined to stick with the regional averaging.

17 MR COWEN: And it's totally consistent with your board
18 position that if you didn't do that, you would have lost
19 quite a lot of money potentially?

20 A. Yes, we would do but we weren't applying that as
21 a protective, you know, measure; it was that's the way
22 we did things, so to speak, and just to repeat that
23 point about the consistency, for me that -- the
24 knowledge I have, to repeat myself. Nothing went on at
25 the board level that I was aware of or involved with,

1 nothing went on at an exec level that I was aware of or
2 involved with. Nothing went on with me and my team. So
3 across any of those three levels I was never involved or
4 aware of an approach that was going to be adopted to
5 confound Albion or anybody else. And for us to have
6 confounded would have meant that we would have had to
7 move away from the way we were doing things. The move
8 away would have suggested, yes, we were being malicious
9 but I don't think we were moving away; we were sticking
10 with regional averaging.

11 THE CHAIRMAN: You say sticking with regional averaging.

12 What did you understand the process was on arriving at
13 a regional average price for a particular customer?

14 A. You have me in terms of my -- you know, the detail of my
15 knowledge. So I couldn't explain to you how it was all
16 put together and the average derived. But I understood
17 the principle.

18 THE CHAIRMAN: My understanding is that you look at whole
19 company costs and then you take away from that things
20 that the customer is not going on use, so that you get
21 from the top-down to a figure of the costs of what they
22 are going to be using.

23 A. Yes.

24 THE CHAIRMAN: I think it's common ground that within that
25 computation of what those costs are, what you take away

1 in order to get to the regional average price for your
2 particular customer that you are looking at, there is
3 quite a lot of room for people to debate what should
4 stay in, what should go out, how you arrive at that
5 price.

6 Now, were you ever party to any discussions in
7 relation to Albion's application as to what it was
8 appropriate to include or exclude from the regional
9 average price calculation for Albion?

10 A. I don't believe there was. I don't recall being
11 involved in that sort of detail and given, as I have
12 said, my level of knowledge, I probably wouldn't have
13 been. I would have relied on the team of experts that
14 we had to do that for me and, you know, to do it
15 properly. So I certainly don't recall any involvement
16 in doing that.

17 MR SHARPE: For the record, I don't think I have ever using
18 the word "malicious".

19 A. I think I have read it somewhere.

20 Q. You read it because you used it yourself?

21 A. Did I?

22 Q. It's not my task to say you were malicious. That's
23 irrelevant. It is the Tribunal's task assessing all the
24 evidence to say whether a claim for exemplary damages
25 exists. The Tribunal is well aware of that

1 responsibility because for some of your answers, you
2 seem to have, as it were, airbrushed out the fact that
3 the way you did it and the price you charged was
4 ultimately declared to be an abuse of a dominant
5 position. You are aware of that, aren't you?

6 A. Yes, that happened how long afterwards.

7 Q. I don't know. Its determination was made lamentably
8 later for Albion's purposes. But that doesn't change
9 the fact that the justification and arguments in favour
10 of consistency that you have been giving us were lawful;
11 they were illegal, weren't they?

12 A. Well, if determined by the Competition Commission, then
13 clearly they were. I think you are missing my point.

14 THE CHAIRMAN: I think we understand your point.

15 MR SHARPE: Good. So if we may, let's move on. I haven't
16 forgotten, we were at page 688, tab 76. I have already
17 taken you to the 2 November letter and you see
18 Mr Holton's reply:

19 "I note your comments about the basis of charging
20 within the Albion bulk supply agreement."

21 And he wants Albion's evidence:

22 "... so we can understand and explain why it is our
23 assertion that charges are based on whole company
24 averages."

25 That reflects presumably the discussion, part of

1 which at least was reported to you?

2 A. Hm-mm.

3 Q. Then he says:

4 "I have no issue with discussing the methodology
5 that would be used to set the price for treatment and
6 transportation for water within the licensed area."

7 So he is laying down -- how can I put it? --
8 a marker that will be given to you:

9 "However, for this particular application we have
10 not completed our investigation with all interested
11 parties and therefore will not be in a position to make
12 a specific offer on Friday, 10 November 2000."

13 Do you read that?

14 A. Yes.

15 Q. Pausing there, the clear impression that Mr Holton is
16 giving to Dr Bryan, in saying "for this particular
17 application", how many other applications for common
18 carriage existed on 7 November 2000?

19 A. I don't think there was.

20 Q. No, nor do I. In fact, I know there weren't any others.
21 So "for this particular application", the impression
22 given that somehow or other there are others which might
23 be going forward. Anyway:

24 "We have not completed our investigation with all
25 interested parties."

1 Pausing there, what do you think he meant by "all
2 interested parties"?

3 A. I don't know.

4 Q. No, nor do I. The only interested parties of Albion and
5 Welsh Water. They wouldn't have had to discuss common
6 carriage at Ashgrove with United Utilities, at least not
7 above a technical level, metering and so on, would they?

8 A. Probably not.

9 Q. Probably not, no. So you are in the dark about who the
10 interested parties are. And therefore in justification.

11 Then he goes on:

12 "Please be assured that your application will be
13 concluded as quickly as possible however, there are
14 issues to be resolved with other parties, in particular
15 North West Water, who wrote to us only yesterday. That
16 may prevent a conclusion to negotiations with Albion
17 before the end of November 2000."

18 Let's be charitable and let's assume he is talking
19 about the technical matters, shall we? You didn't see
20 this letter, did you?

21 A. I don't recall it.

22 Q. You don't recall it or you didn't see it?

23 A. I don't recall it.

24 Q. In the ordinary way of things, would you have been
25 copied in on correspondence like this? Would you have

1 seen it before it went?

2 A. No, not necessarily.

3 Q. And you didn't see it afterwards?

4 A. I don't think so. I don't remember it.

5 Q. You don't remember it. Mr Holton is now commercial
6 manager. Is that a different role from the one he
7 played earlier?

8 A. No.

9 THE CHAIRMAN: Is that no or you don't know?

10 A. I can't remember changing his job title. He had the
11 competition brief.

12 MR SHARPE: I think he was called something differently
13 earlier on.

14 A. Yes, he was Key Customer and Competition
15 Manager.

16 Q. Okay. We note also that these comments to Dr Bryan,
17 indicating a willingness to discuss the method were also
18 copied to Ofwat. That's Julie Griffiths at the bottom?

19 A. All right.

20 Q. Got that?

21 A. Yes.

22 Q. We go to the meeting. My learned friends have
23 questioned Dr Bryan in relation to this meeting.
24 Forgive me, I'm editing on the run, here.

25 THE CHAIRMAN: Could you just wait a moment, Mr Sharpe?

1 MR SHARPE: I'm so sorry. (Pause).

2 THE CHAIRMAN: Mr Sharpe, I'm wondering about the value of
3 putting all these documents to Mr Williams, who, with
4 the best will in the world, isn't able to remember very
5 much about them. I can't imagine that, given the way
6 the evidence has come out so far, Mr Beard could take
7 a point at the end of the case, along the lines of
8 because you hadn't put some inference that you were
9 trying to draw from these letters to Mr Williams that
10 you shouldn't be able to make a submission in relation
11 to that and I'm aware that we have Mr Edwards coming,
12 who is, we hope, going to be able to respond more
13 fruitfully to this kind of journey through the
14 documentation.

15 I don't wish to cut you back on any points that you
16 think could usefully be gleaned from this witness but
17 insofar as the rest of your cross-examination is going
18 to be going through these documents and Mr Williams
19 saying that he can't really help you because of his lack
20 of memory, it doesn't seem to me a very valuable use
21 of our time.

22 MR SHARPE: I'm immensely grateful. I had come to that
23 conclusion probably yesterday, with respect. I put
24 it -- I wouldn't repeat it -- I didn't ask Mr Williams to
25 be here and I am sympathetic to his dilemma --

1 THE CHAIRMAN: No, well --

2 MR SHARPE: We may well be questioning Mr Edwards on
3 a number of -- there will be some overlap. There are
4 some areas where Mr Edwards plainly didn't have any
5 direct knowledge, but it's becoming apparent Mr Williams
6 had even more direct, but the moments where Mr Edwards
7 wasn't involved in this and Mr Williams was the fixed
8 point in a world of change.

9 Can we proceed like this? I have been editing on
10 the hoof because there is no point asking questions
11 where I know what the answer is. I will, over the short
12 adjournment, edit further and undertake to complete
13 Mr Williams' ordeal as soon as I can and then I think
14 it's quite likely we will be reserving a significant
15 number of questions I would have put to Mr Williams to
16 Mr Edwards.

17 I am concerned, however, on the point you mention
18 that had no point need be taken. I don't want to be
19 told that Mr Williams was not challenged on this when it
20 is absolutely apparent that if I challenged him, he
21 would have said he didn't know.

22 THE CHAIRMAN: That's my point, Mr Sharpe. As far as I'm
23 concerned we have had a lot of evidence from
24 Mr Williams. I think we have formed a view as to his
25 role in the company and his involvement in the events

1 which we have been discussing and any further
2 cross-examination should be aimed at highlighting areas
3 that you are fairly confident he can usefully extend our
4 knowledge.

5 MR SHARPE: There will be a period of cross-examination of
6 Mr Williams this afternoon. It will be less than an
7 hour but I can't guarantee at the moment and then
8 subject to his availability, I invite my friend to bring
9 along Mr Edwards.

10 MR BEARD: That all seems eminently sensible. I haven't got
11 up and said anything although Mr Sharpe has on a number
12 of occasions said that we brought Mr Williams here, we
13 put in evidence from Mr Williams. The limitations and
14 scope of that evidence are set out in his witness
15 statement.

16 THE CHAIRMAN: Let's not have submissions about Mr Williams'
17 evidence.

18 MR BEARD: The point I was simply going to make, Madam is
19 that in relation to the point we are making in relation
20 to the documents being put upon which Mr Williams is
21 unlikely to be able to comment, we entirely agree there
22 is no issue there. The point I was making was actually
23 that's relatively clear from the witness statement.

24 THE CHAIRMAN: We will break at that point and come back at
25 2 o'clock.

1 (12.58 pm)

2 (The short adjournment)

3 (2.00 pm)

4 MR SHARPE: Madam, what I intend to do, following your
5 guidance earlier, is to take Mr Williams to a very small
6 number of selected document, most of which have his name
7 on them and some relate to board meetings at which he
8 attended.

9 Then we will proceed with -- subject to my friend's
10 re-examination -- Mr Edwards and what I have had to do
11 over the short adjournment is make sure that the
12 questions I was not going to ask Mr Edwards but
13 Mr Williams have been caught.

14 So if I'm less than fluent in this approach --

15 THE CHAIRMAN: We will make appropriate allowances,
16 Mr Sharpe.

17 MR SHARPE: Thank you. We left off, didn't we at bundle 3,
18 tab 79. Would you like to go back to that, please.

19 I won't detain you long. This was the meeting I think
20 you were discussing earlier and you had a report from
21 it, from maybe Dr Boarer, who certainly attended and you
22 see at the bottom of the page on page 696:

23 JB of Albion making out its case.

24 And over the page at 697 you have a disagreement
25 that:

1 "Ofwat access charges guidance clearly states
2 that companies should charge entrants as it would
3 charge itself and any charge based on regional average
4 will run counter to this and will be challenged to the
5 full."

6 Then he gives his then estimate on which he was
7 cross-examined. Then we have Mr Holton:

8 "... stated that Albion's understanding was
9 misplaced and that the tariffs for non-potable water
10 including Shotton was based on average price
11 methodology" which you have already told us about
12 Mr Williams.

13 Then:

14 "... adapted to individual circumstances."

15 What did he mean by that?

16 A. I'm sorry, I don't recall it.

17 Q. I can understand that, but the fact is hitherto in your
18 cross-examination you have referred routinely to
19 regional price methodology but you have not introduced
20 a qualification "adapted to individual circumstances"?

21 A. No, I haven't.

22 Q. No. So was Mr Holton telling Dr Bryan something that
23 wasn't true?

24 A. I don't know, I'm sorry.

25 Q. Or something that was true but hadn't been indicated to

1 you?

2 A. I don't know.

3 Q. All right. And I don't think we need to detain you any
4 further in relation to that document.

5 What I want to do now is to get nearer to the first
6 access price and the various calculations that were made
7 leading up to that. Your paragraph 14 of your witness
8 statement refers to yourself as having a high level
9 understanding of the issues that ultimately you
10 presented to the board and discussed in the LCE. That's
11 true? Are you going to stick by that?

12 A. Yes, that's what my witness statement said. You know,
13 high level -- it certainly wasn't involved in the detail
14 of it.

15 Q. One of the problems we have is we didn't quite
16 anticipate the high level to be quite so high?

17 A. Yes.

18 Q. But anyway. So we can kick off at an internal email,
19 bundle 3/90. We will be cross-examining Mr Edwards on
20 this later but this is quite a striking email. Had you
21 seen it at all?

22 A. I don't recall seeing it, to be honest.

23 Q. Okay. It's the one that says:

24 "Please eat this once you have read it."

25 A. Okay, right.

1 Q. Of course, you do not make that kind of comment unless
2 you are concerned about leaving a record, do you?

3 A. You could certainly read it like that. I don't think
4 I would have eaten it.

5 Q. No, I don't think you would have taken it literally.
6 But at the time you recall -- here we are now in the end
7 of November -- would it be fair to say that your team
8 were busy trying to find a suitable price for common
9 carriage, weren't they?

10 A. They were certainly busy, yes, processing the
11 application.

12 Q. And you were supervising that process?

13 A. Yes, I was keeping an overview on where were we with it.

14 Q. Quite. You asked them questions, "Where are we?"

15 A. Yes.

16 Q. And would it be fair to say that where we are means:
17 where are we in relation to neutrality? That is to say
18 where are we in relation to that sum of money which you
19 would ensure what you reported to the board would be
20 true?

21 A. I don't think I ever got into that, to be honest. It's
22 back to that point again -- and I'm not going to repeat
23 it, but it's the issue of time and degree of
24 involvement. I can't tell you when I remember now in
25 terms of what I remembered then.

1 Q. All right but you might remember the December 2000 board
2 meeting?

3 A. Hopefully, yes.

4 Q. Do you?

5 A. I would have been at the meeting. I would need to refer
6 to any minutes.

7 Q. We haven't got any minutes.

8 A. Right.

9 Q. We haven't got any minutes at all. We know there was
10 a board meeting, and thank for confirming that, but
11 Mr Edwards in his evidence states that the access price
12 was shelved and not discussed at the December board
13 meeting. He must have discussed that you?

14 A. I really don't know.

15 Q. I'm putting it to you that the key board agenda item
16 that had been discussed in November was not taken to the
17 board in December?

18 A. I don't remember the December board meeting.

19 Q. No, no.

20 A. If there should one, I would have been there, but
21 I really don't remember the content of any meeting that
22 went on at that time.

23 Q. Hm-mm. So nothing was put up to the board, even though
24 at that time, of course, you had a price, hadn't you?

25 A. I honestly don't recall.

- 1 Q. All right.
- 2 A. It's back it this issue, this was 12 years ago. And
3 I have retired for the last seven.
- 4 Q. I can understand. I'm not going to take to you the
5 documentary record which shows you had prices which
6 ranged from 19, 27 and 16p as candidate common carriage
7 prices. I think you ended up with 19. 19, of course,
8 being significantly lower than the price which would
9 have guaranteed revenue neutrality. That would be
10 right, wouldn't it?
- 11 A. I think so, yes.
- 12 Q. Yes. Because it's quite a simple calculation: 26p minus
13 water resources, 3 point something, and any figure above
14 the difference would mean quite simply that it wouldn't
15 have been economic for Albion to have engaged in common
16 carriage. Thank you.
- 17 May we go briefly to bundle 9A? Bundle 9A, tab 354
18 my guess is your understanding of network access prices
19 would be quite good because you have relayed adherence
20 to the network access charge prices as a justification
21 for the methodology you have adopted?
- 22 A. The regional averaging.
- 23 Q. That would be right?
- 24 A. That's what I understood we did.
- 25 Q. Okay. There are two internal calculations in this

1 rather complicated document. Did you see the document
2 at the time?

3 A. I don't recall it.

4 Q. Well, it may jog your memory just to take you to
5 page 3285, then over the page at 3286. Here we say:

6 "The minimum price for non-potable is resource plus
7 bulk distribution and the maximum price is less than
8 resource plus bulk distribution plus treatment. The
9 only way we currently have to then estimate partial
10 treatment prices to Ashgrove is the 30 per cent
11 allocation made in the DT submission."

12 Do you understand that, Mr Williams? How to
13 calculate a figure for partial treatment?

14 A. I haven't been through this so at this point in time,
15 no, I would need to go through it again.

16 Q. All right.

17 A. You know, I have tried to explain I was never that close
18 to the detail. I don't need to go over that again.

19 Q. I won't go over it again. I'm just going to forewarn
20 you your witness statement says you had a high level of
21 understanding of both the papers that went to LCE and
22 the board?

23 A. In terms of the general approach.

24 Q. From which I infer that the calculation and inclusion of
25 a figure for non-potable treatment is sufficiently low

1 down not to have hit your high level understanding. Is
2 that right?

3 A. I would haven't have gone into this detail with the
4 people preparing this work. There's no point -- with my
5 level of knowledge, there is no point me trying to
6 second guess the way they have done it. I wouldn't have
7 been able to contribute to it. So I wouldn't have been
8 able to question them on the content.

9 Q. So you took it on trust?

10 A. Yes.

11 Q. I don't think there is a great deal of point taking you
12 in further in relation to that document.

13 THE CHAIRMAN: Do we know whose handwriting it is on this
14 document?

15 MR SHARPE: We think it's Mr Edwards and he will in due
16 course be able to help us.

17 What we have learnt is that it will be fair to say,
18 Mr Williams, that you really didn't have any
19 involvement -- can I be a bit stronger than that,
20 involvement or interest in how the numbers were
21 calculated as long as somebody you trusted and who was
22 competent did them.

23 A. I certainly had the interest. My interest was that we
24 had someone competent and trusted to do it and I trusted
25 them to do it with very professional people.

1 Q. But the interest, it was exhausted fairly early on.
2 There is a distinct lack of curiosity as to how the
3 numbers were calculated and you were under no illusion,
4 were you not, as to how important this was?

5 A. I was certainly under no illusion. There's no point in
6 me getting involved in the detail if I couldn't have
7 contributed to it.

8 Q. But there was no one at your side or over your shoulder
9 saying: we have to be careful here, this could be an
10 abusive price; is that right?

11 A. There was nobody over my shoulder but clearly the people
12 we had involved in doing the work, that's exactly what
13 they were doing. They were looking after the interests,
14 that we weren't stepping in the wrong direction, so,
15 yes, I wasn't involved in the detail and we trusted the
16 people to do the work properly, which they did.

17 Q. No, but they didn't?

18 A. Ultimately.

19 Q. Sorry, one mustn't airbrush the decisions of the
20 Tribunal. They didn't do it properly?

21 A. So far as we were concerned at the time, they did.

22 Q. Let's not say they did it properly, they didn't it
23 dreadfully badly.

24 Now we go to bundle 3, tab 110. It's the very last
25 tab in the bundle. This was addressed to the Licence

- 1 Company Executive. Do you see it?
- 2 A. Yes.
- 3 Q. You were serving on the License Company Executive,
4 weren't you?
- 5 A. Yes.
- 6 Q. And you were the sponsor of this particular common
7 carriage application, weren't you?
- 8 A. I was.
- 9 Q. So it's all very clear and it's from Mr Holton?
- 10 A. That's right.
- 11 Q. This is an important document to you and your colleagues
12 and you would have presumably been expected to
13 understand it and then convey any significant aspects of
14 it to the board; is that right?
- 15 A. Yes, but quite likely -- I can't be certain whether it
16 happened but I explained it would have been quite likely
17 that Mr Holton might have been there. I don't recall
18 that, but that was entirely possible.
- 19 Q. What difference does that make, Mr Williams?
- 20 A. He would quite likely have talked to the paper having
21 been involved in this development. As I said yesterday,
22 we did encourage people to come along to meetings.
- 23 Q. You don't know whether he attended any board meeting, do
24 you?
- 25 A. At this point in time I cannot.

- 1 THE CHAIRMAN: You are talking about the LCE meeting or the
2 board meeting or both?
- 3 A. It could be either and I explained yesterday about the
4 sponsoring of how I managed that.
- 5 MR SHARPE: It begs the question, are you saying because
6 Mr Holton might have been there -- there was no evidence
7 that he was -- at the board meeting that you really
8 didn't have to understand anything at all?
- 9 A. I'm not saying that at all.
- 10 Q. So you do understand that?
- 11 A. I would at the time.
- 12 Q. We have taken it as far as I want to take it. You are
13 telegraphing your level of interest and understanding of
14 the topic and if I understood this correctly if
15 Mr Holton was there, you trusted his judgment?
- 16 A. He wouldn't have been there if he hadn't but I would
17 have understood this paper before I went there.
- 18 Q. Let's go to page 80/81. Do you see under the column C the
19 calculation of 19.94p per cubic metre?
- 20 A. Yes.
- 21 Q. Was that the common carriage price that was being
22 discussed in this paper?
- 23 A. This was the indicative price, wasn't it, so, yes.
- 24 Q. At the moment it's actually the fifth calculation you
25 have identified in the crab-like progression within

1 Welsh Water to arrive at a common access price and you
2 are right, this is something that did go forward but you
3 are jumping the gun. It is indeed the calculation which
4 led to the indicative price of 20p per cubic metre.

5 That was the price, wasn't it, that was approved by
6 the board -- approved for release to Albion on
7 16 January 2001, wasn't it?

8 A. This was approved at the Executive and there was --
9 I think it would have gone to the January board.

10 Q. That's fine, thank you. So obviously you had seen it,
11 probably twice, once at the LCE and secondly, at the
12 board meeting?

13 Let's go back briefly to tab 103, before I take you
14 to one or two points arising from this paper, tab 103.
15 Obviously, this is going to form the subject of --
16 I would be surprised if Mr Edwards wasn't cross-examined
17 on this exchange but I just want to show you and get
18 your comments. What seems to have happened is that
19 Mr Holton sent a draft to Boarer and Edwards. Edwards
20 then responds and copies his response to Boarer, Holton
21 and then that then goes to Boarer, who then copies in
22 Paul Henderson. So that's the sort of chain. What I'm
23 particularly interested in is you see Mr Edwards' reply
24 in the middle of page:

25 "Sorry, I'm not in until tomorrow evening. However,

1 I have had a quick look at the paper and re-arranged it
2 Slightly. This paper would be used in any formal
3 competition case and has been rewritten with this in
4 mind."

5 Let me just leave it there for a moment. What do
6 you think that meant?

7 A. Exactly what it says.

8 Q. Yes. It has been written with that in mind. The trouble
9 is -- unfortunately we are not in a position to see the
10 original paper or the revision, are we?

11 A. If it's not in the bundle.

12 Q. It's not in the bundle, no.

13 Does the phrase "document retention policy" mean
14 anything to you?

15 A. Yes.

16 Q. It wasn't meant as a joke. What does it mean to you?
17 What did it mean to you during your senior tenure at
18 Welsh Water?

19 A. We all kept, you know -- kept documents that were
20 relevant.

21 Q. Yes. So if Mr Edwards thinks it's relevant to
22 a Competition Act investigation, one would have thought
23 potentially at least there would have been some attempt
24 it keep the file full and accurate, wouldn't you, yes?

25 A. Not unreasonable.

1 Q. Not unreasonable, no. If we go back to page 801, you
2 recall this is the note that you will have seen and had
3 a high level understanding of. And you will see at
4 page 801 it refers to the current scheme of charges.
5 That's the second arrow, about the fourth line up. Do
6 you see that?

7 A. Yes.

8 Q. "Standard potable rate and largest LIT."

9 Right? Yesterday you didn't know what potable LIT
10 was, the Large Industrial Tariff, did you? I took you
11 to it?

12 A. I take your word for it.

13 Q. No, no, my word is no use in this Tribunal, I promise
14 you. It's your word I'm interested in. Do you recall
15 not understanding what "Large Industrial Tariff" was and
16 your furnishing Ofwat with the Large Industrial Tariff?

17 A. I knew what an LIT was, but the detail of it I probably
18 wouldn't know.

19 Q. You knew that it was confined only to potable water?

20 A. I think so, yes.

21 Q. The Tribunal will have to make up its own mind as to
22 your level of understanding of the LIT when they refresh
23 their memory from the transcript of my questions
24 yesterday. In fact, my recollection is you weren't even
25 aware of the document at all quite apart from not even

1 understanding. If that's right -- and I think it is --
2 how can you possibly have an understanding of the broad
3 issues in your work including this document?

4 A. I understood, as I have said so many times, at the high
5 level. I wasn't into the detail. My level of knowledge
6 at this time was a product of time in the role, so to
7 speak, and I did not have that level the detail.

8 Q. So the essential building block in the construction of
9 the first access price, namely -- at this stage in the
10 proceedings, the LIT is something you didn't know
11 anything about?

12 A. Okay. I knew what an LIT was. I didn't understand the
13 elements that go with it.

14 Q. And you didn't seek to question your colleagues as to
15 what they were doing, did you?

16 A. No, because I wouldn't have had the background to be
17 able to do that.

18 Q. You trusted them?

19 A. Indeed I did.

20 Q. And there was no nobody to go back leaning over your
21 shoulder to make sure this was a legal price?

22 A. It wasn't checked in that way as I understand it,
23 although I think I said earlier on, Dr Brooker would
24 have also had an overview of this.

25 Q. Really?

1 A. Yes, he would have a better understanding of this than
2 I would have done.

3 Q. Did he serve on the LCE --

4 A. Yes.

5 Q. -- as managing director? Thank you.

6 It's clear from the statement that Welsh Water was
7 going to charge Albion, based on potable prices with
8 a reduction for treatment?

9 A. Right.

10 Q. So you would try and find the appropriate potable cost
11 for treatment and then apply an adjustment factor to get
12 it down to non-potable treatment. That was the method
13 that was used. Did you understand that at the time?

14 A. I can't remember.

15 Q. And you had no detailed knowledge of the costs involved
16 at the time?

17 A. I wouldn't have, no.

18 Q. Okay. So you couldn't have questioned whether in fact
19 they were comparing apples and pears?

20 A. No, I couldn't have.

21 Q. Just one point in the document then. Let me take you to
22 it. Do you see a treatment, capital T?

23 A. Yes.

24 Q. You see three numbers, 29.48, 8.84, 8.84. Do you see
25 that?

1 A. I do.

2 Q. The A column is the standard potable rate. Do you see
3 that?

4 A. Yes.

5 Q. We are not interested in standard potable rate, are we?

6 A. No.

7 Q. We are interested in non-potable and we are interested
8 in non-potable large users. So that's column B.

9 A. Hm-mm.

10 Q. Do you see that?

11 A. Yes.

12 Q. Column B has resources in it, 4.02 and then a figure of
13 treatment of 8.84, with an asterisk. Do you see that?

14 A. Yes.

15 Q. That comes up at 23.96 and underneath that you see an
16 asterisk explanation:

17 "Using the 30 per cent multiplier as per inset
18 price."

19 A. Yes.

20 Q. What they have done is taken the 29.48, multiplied it by
21 0.3 and arrived at 8.84, I hope. Are you with me?

22 A. Yes.

23 Q. Then underneath that:

24 "The 30 per cent multiplier was calculated from
25 talking to operational managers and asset managers at

1 the time the initial Shotton Paper/Albion Water
2 Agreement 1996 was being negotiated. Work is currently
3 being carried out to produce a robust asset value based
4 upon price for the non-potable portion of the treatment
5 price."

6 Do you see that?

7 A. Yes.

8 Q. I'm putting it to you, when you read that were you happy
9 for a non-robust price to go forward to Albion as common
10 carriage?

11 A. Well, I can't remember any debate around it. So
12 I presumably didn't question them on it.

13 Q. And Dr Brooker didn't question it either, did he?

14 A. It wouldn't seem so, no.

15 Q. No. And Mr Holton, I think, was the author of the paper
16 and he was obviously happy putting forward a non-robust
17 price, wasn't he?

18 A. This is what went forward, yes.

19 Q. Yes, thank you. And work is currently being carried
20 out. Were you aware of that work?

21 A. No.

22 Q. And that's in January 2001. Of course, as you well
23 knew, Welsh Water had only partial treatment carried out
24 at two sites. You knew that, didn't you?

25 A. I don't recall it now. Whether I knew it at the time --

1 Q. Llanwern and Corus Shotton Paper. They were the only
2 three customers who had non-potable treatment.

3 A. Right.

4 Q. I described it -- it may not have been in the opening
5 but I described it as tanks and the addition of alum as
6 a coagulant, which dropped the gunge to the bottom,
7 a very simple process. Tell me again, did you know
8 that?

9 A. Probably not.

10 Q. Probably not. If you had known there were only three
11 sites, effectively two sites, for partial treatment,
12 would you have said, "Well, look, come on, why don't we
13 get some robust figures? It's quite a simple matter."

14 The odds are they could go to one of them and
15 determine what the costs are?

16 A. I don't recall saying that.

17 Q. You don't recall? Yes, right, okay. Even though Albion
18 had applied for common carriage three months before and
19 flagged its intention before that and this is a very
20 important element of the total cost stack, isn't it?

21 A. It's certainly something to be considered, isn't it?

22 Q. Can I rephrase it: something that perhaps should have
23 been considered at the time?

24 A. Well, it wasn't.

25 Q. It wasn't, no. So notwithstanding the clear internal

1 record it wasn't robust, you went ahead and effectively
2 you and Dr Brooker endorsed this as a way forward,
3 leading up to the 19.94 indicative price of 20p. That's
4 right, isn't it?

5 A. It would seem so.

6 Q. But, of course, we haven't quite finished. Underneath
7 the heading of "Risks" what do we see, the first item of
8 importance:

9 "Potential loss of income because of this
10 challenge."

11 Then we go further, that:

12 "Albion or Ofwat can formally make a challenge under
13 the Competition Act. In reality, we currently don't
14 have the correct information to supply an average price
15 that we would want to be held to longer term."

16 Do you see that?

17 A. Yes.

18 Q. So there is some concern about the possibility of the
19 competition -- anyway, but the key item there is loss of
20 income?

21 A. Well, yes.

22 Q. One assumes, if anybody needed to be reminded of the
23 loss of income, then the note in the paper will make
24 sure that they won't forget it. That's the function,
25 isn't it?

1 A. Yes.

2 Q. Thank you.

3 THE CHAIRMAN: So you accept that you understood at the time
4 that there was a risk that if the 19.9 figure was used
5 as a price for common carriage, that would lead or might
6 lead to a loss of income to Dwr Cymru?

7 A. Yes, it notes that but it also noted the fact it was
8 indicative and there was further work to be done. That
9 was my understanding I think at the time. I think this
10 is when Paul Edwards became involved in the New Year and
11 took on that work and produced the price that went
12 forward.

13 THE CHAIRMAN: But as far as this method of working out the
14 partial treatment costs by applying a multiplier to
15 potable treatment costs rather than going to the plant
16 and working out what it actually cost to partially treat
17 the water, was that an instruction you had given the
18 team, that that was how they should do it? How did it
19 come about that they decide to do it like that?

20 A. I wouldn't have given an instruction because it wouldn't
21 have been within my sort of knowledge base. So how they
22 went about it, I don't know.

23 THE CHAIRMAN: Nobody ever asked you whether that was
24 a sensible way of going about it?

25 A. Not that I recall.

1 MR SHARPE: But of course Dr Brooker was present and we
2 heard earlier that he had a very firm grasp of the
3 financial implications of Albion's application, didn't
4 he?

5 A. He had certainly a better understanding than me and he
6 would have had a good understanding in fairness.

7 Q. You told us earlier that he was the one in all
8 likelihood who raised the issue of revenue neutrality in
9 the November board meeting, didn't you?

10 A. It was more likely to be him than me.

11 Q. Thank you. So what we have got here is a figure of
12 19.91. My back of an envelope calculations -- and this
13 is not evidence but it's in the order of £400,000 lost
14 revenue. That's quite a lot, isn't it?

15 A. It is.

16 Q. From 23.2 down to 19.6. So the risks here are potential
17 loss of income because of this challenge. Then we read
18 on and take the last one:

19 "The possibility of coming under competitor and
20 regulatory pressure to de-average prices for large user
21 non-potable customers on predominantly dedicated
22 systems."

23 This is identified as a very specific concern and on
24 my note I have put "like Heronbridge".

25 A. Right.

1 Q. My question to you is that Mr Holton and then the LCE
2 were then more than aware, not only of the consequences
3 in relation to Albion, Albion's applications, but the
4 growing competitive pressure to de-average prices on
5 predominantly dedicated systems. So it was very, very
6 important to you, wasn't it, to hit Albion hard so that
7 they didn't enter the market because if they did, others
8 might follow. That's right, isn't it?

9 A. No, no, what you are saying is we have adopted the
10 position to confound their application and I said
11 earlier on we didn't. We adopted -- or applied our
12 established methodology. The methodology produced the
13 price. Whether you have a view of the bits and pieces
14 of that --

15 Q. Mr Williams, I think I'm aware and I expect the Tribunal
16 is aware of precisely your views because you have
17 repeated it several times. I'm also aware that your
18 understanding of the situation is, to put it mildly,
19 infirm, having regard to your level of seniority and
20 your direct access to the documentation and the
21 individuals involved. So you can say to me you didn't
22 intend to do something when it was manifestly clear that
23 when you were faced with -- I have given a very obvious
24 example here, where you are told it's not robust and
25 simple arithmetic will tell you how important it is, you

1 decided to let them get on with it because you trusted
2 them.

3 A. Hm-mm.

4 Q. That seems to me to be bordering on reckless
5 indifference, bearing in mind what your legal
6 obligations were?

7 A. You are entitled to your opinion.

8 Q. It's not my opinion at all. It is what I have deduced
9 from the facts and I take it you disagree?

10 A. I do.

11 Q. I didn't expect you to agree.

12 MR COWEN: Can I ask a question. If you look at the final
13 sentence that you took us to:

14 "The possibility of coming under competitor and
15 regulatory pressure to de-average prices for large user
16 non-potable customers on predominantly dedicated
17 systems."

18 Would that have been understood by the members of
19 the LCE or the board members as a reference back to the
20 £23 million and all of those inset and cc references that
21 we heard about earlier?

22 A. I don't know at this point in time. Going back to then
23 I can't comment on that.

24 MR COWEN: Thank you.

25 MR LANDERS: Could I ask a similar question. I may get the

1 same answer. Just above that, the first risk is:

2 "Potential loss of income because of this
3 challenge."

4 Mr Sharpe has interpreted that as to mean the
5 situation that you are offering 19.9 for -- or 20 is
6 a common carriage price. Could this challenge actually
7 mean the challenge that is referred to earlier in the
8 paper from Albion to the whole pricing basis?

9 A. No, I don't think so.

10 MR LANDERS: You don't think so?

11 A. No.

12 MR SHARPE: It wouldn't exclude that interpretation,
13 although, of course, the last line makes it much more
14 explicit, doesn't it? It seems to me on a natural
15 reading of this, there was an immediate concern about
16 Albion coming in and then there was a more generalised
17 concern that what must be said to be the highly
18 favourable view of preserving revenue through original
19 pricing might itself be under threat.

20 A. Right.

21 Q. Thank you. What's not clear from any of the
22 documentation we have seen so far is what the importance
23 of average pricing actually was; in other words, how
24 much difference would there be between local cost based
25 price, which was Albion's argument, and average cost

1 based price. Had you done any internal work on that?

2 A. I don't know.

3 Q. So we are back to my earlier questions regarding the
4 absence of any understanding of what the local costs
5 were --

6 A. Right.

7 Q. -- that we have seen. Before we move on from that
8 table, under column A -- do you see it? This is the
9 standard potable water. We have a number of "for bulk
10 distribution", BD. Do you see it?

11 A. Yes.

12 Q. Which is 11.1p per cubic metre and that is the cost of
13 bulk distribution of potable water. Is that right?

14 A. Yes, I think so.

15 Q. Let's quickly turn, please, to bundle 4, tab 112. You
16 will recognise this, won't you?

17 A. The board minute, yes.

18 Q. It's a board minute and it's a minute of the
19 Welsh Water's board meeting of Monday, 15 January 2001
20 and we see it was attended by -- the names are given
21 here -- do you see them?

22 A. Yes, indeed.

23 Q. And Mr Curtis, the secretary. I don't see any reference
24 to any of your team being in attendance, which I think
25 would be normal in a board minute, wouldn't it?

- 1 A. Probably, yes.
- 2 Q. Yes. So I'm going to assume that Mr Holton and
3 Mr Edwards did not attend that meeting. That would be
4 right?
- 5 A. It probably is, yes.
- 6 Q. Over the page at 6.1 -- the only bit that we have.
- 7 A. Yes.
- 8 Q. There is reference to a progress report being noted;
9 yes?
- 10 A. Yes.
- 11 Q. Is that the paper we have just seen, the LCE paper?
- 12 A. I don't know, to be honest.
- 13 Q. Well, I'm going to assume it is because nothing else has
14 been disclosed and I have no reason to believe that the
15 LCE document we have just seen isn't the paper that went
16 to the board. If I'm wrong in that, my friend no doubt
17 will correct me, perhaps in re-examination.
- 18 You will recall you or probably Dr Brooker told the
19 board that revenue neutrality would be ensured if you
20 had your average regional prices. That's right, isn't
21 it?
- 22 A. Yes.
- 23 Q. But on the other hand you must have told them, I would
24 have thought, that any other pricing methodology would
25 have resulted in the loss of revenue and in particular

- 1 local pricing. That's reasonable, isn't it?
- 2 A. Yes.
- 3 Q. So the board was fully appraised of the choice between
4 average regional pricing and local pricing. That's
5 right, isn't it?
- 6 A. Yes, I would hope they would on that basis but I also
7 understood the pricing methodology we applied, regional
8 average.
- 9 Q. Indeed. The only thing we can get from page 811 is this:
10 "The content of the progress report was noted. The
11 issue of de-averaging of costs of supply remains
12 a complex issue."
- 13 I think you have described these minutes as cryptic
14 this morning or the other minutes but this is no less
15 cryptic, is it?
- 16 A. No, that's quite cryptic.
- 17 Q. Recalling this board meeting, if you can, can you recall
18 the discussion that took place?
- 19 A. I most certainly can't.
- 20 Q. You were the sponsor of the LCE paper?
- 21 A. Yes.
- 22 Q. And you would have advanced the thinking in that paper?
- 23 A. Yes. Or it equally might have been Mike Brooker
24 speaking to it. It might have actually been Mike giving
25 a verbal report, but clearly I don't know.

- 1 Q. Mike Brooker is the managing director?
- 2 A. Yes.
- 3 Q. Okay. But, you see, we can only speculate but plainly
4 the issue of de-averaging of costs remains a complex
5 issue, the whole business was being discussed,
6 de-averaging against your preferred method, discussed by
7 the board and you are saying really the person who led
8 that was Dr Brooker?
- 9 A. What I'm saying is that I actually don't know but I made
10 the point it could be Dr Brooker. In fact if he was on
11 something of that nature, it would have been more likely
12 to have been him than me.
- 13 Q. Okay. He is not giving evidence. But what had gone to
14 the board was the figure of just under 20p, 19.6p. From
15 Dr Brooker's standpoint, from Welsh Water's standpoint,
16 you stood to lose still several hundred thousand pounds
17 and wouldn't have achieved the revenue neutrality that
18 was being discussed and presumably desired in
19 the November board meeting. That's right, isn't it?
- 20 A. Yes, I think, so.
- 21 Q. So by those standards this isn't a satisfactory result,
22 is it?
- 23 A. The loss of income?
- 24 Q. The 19.6 don't get you there?
- 25 A. No.

1 Q. No. I presume, because your team went ahead to do more
2 work, to move on from that indicative price, that people
3 internally -- you, Dr Brooker -- were unhappy with the
4 19.94 figure. Otherwise you would have accepted it,
5 wouldn't you?

6 A. I don't think it was done on that basis at all. My
7 understanding at the time was that the indicative price
8 was a simple indicative price and Mr Edwards did further
9 work on it when he was -- became available and there was
10 a firmed-up price at that went forward as the first
11 access price.

12 Q. You are, I think, not the right person for me to ask
13 questions about what went on but we do know from the
14 documents which have been disclosed that there wasn't,
15 how shall I put it -- a change of emphasis in the manner
16 in which the next round the calculations were proceeded
17 with. That's right, isn't it?

18 A. I couldn't comment.

19 Q. You either know or you don't?

20 A. I don't know.

21 Q. You don't recall?

22 A. I don't recall that.

23 Q. You don't recall the movement from 19.94 to 23.2 pence?

24 A. I know it moved.

25 Q. It moved up.

1 A. But there wasn't a motivation. It wasn't driven by, as
2 you are suggesting, we have to get to that figure.

3 Q. You know, Mr Williams, I have got to stage now -- and
4 I am just about completing my cross-examination of
5 you -- that I don't think you knew what was going on?

6 A. You are entitled to your opinion.

7 Q. I think I'm more inclined to believe that Dr Brooker,
8 who was well in control of the financial aspects of this
9 and who seemed to have your teamworking with him, in
10 particular Mr Holton, were more than aware that 19.94
11 just wouldn't do the trick, for two reasons: one
12 a significant loss of revenue and, secondly, it might
13 ease the path for other competitors to challenge
14 successfully your average regional pricing methodology.

15 It may be, you see, putting it fairly to you, that
16 what took place was something you didn't know anything
17 about.

18 A. So you are suggesting, if I can make sure I understood
19 what you are saying --

20 Q. I think you understand perfectly well?

21 A. No, I would like to confirm my understanding.

22 Q. Do.

23 A. You are basically saying I didn't know that there was
24 cheating going on, to put it in a vernacular.

25 Q. I didn't use the word "cheating"?

1 A. All right, a manipulation or whatever word --

2 Q. Mr Williams, we have established there was a target
3 price which would render the company for which
4 Dr Brooker was ultimately responsible as managing
5 director, financially neutral. We will have -- and we
6 will have in more detail with Mr Edwards -- a whole
7 range of different attempts to try and create a price.
8 I have cut the story short as far as you are concerned
9 and got you to 19.94. There is nothing in the LCE
10 document that says that's a trial price or a guess.
11 It's actually fairly detailed as to how it's achieved
12 and the methodology is broadly clear. I'm not sure you
13 understood the methodology because it related to the
14 matters like the Large Industrial Tariff, on which,
15 yesterday, you demonstrated complete ignorance. Now,
16 when we get to that position, you arrive at a figure
17 which still does not achieve anything approaching
18 revenue neutrality. So the obvious inference I draw
19 from the board minute, it remains a complex minute, yes,
20 it did, was the instruction to the team to go away and
21 do a better job of it and make sure the next iteration
22 is such that Albion couldn't come into the market
23 profitably.

24 A. What I say to you is what I said earlier on. I have no
25 recollection of anyone taking a position that a figure

- 1 has to be changed. That is contriving --
- 2 THE CHAIRMAN: When you said you answered it was an
- 3 indicative price, what does that mean, "an indicative
- 4 price"?
- 5 A. It was -- the first stab is understating it, but it was
- 6 done, as I understand it, with the recognition that
- 7 there was further work to do and when Mr Edwards was
- 8 able to join, having completed a project he was on, he
- 9 actually took that figure on and firmed it up, so to
- 10 speak, and came up with the first indicative price.
- 11 THE CHAIRMAN: First access price.
- 12 A. First access price, sorry.
- 13 THE CHAIRMAN: What changes did he make to get that 19.94 to
- 14 the 23.2?
- 15 A. That I don't know.
- 16 Q. It's worth emphasising, am I right, that the so-called
- 17 indicative price only emerged as an indicative price the
- 18 day after the board meeting?
- 19 A. I don't know. I take your word for it --
- 20 Q. You have no need to take my word for it. I'm just
- 21 looking at the LCE paper. It doesn't say this is an
- 22 indicative price. It says this is the price?
- 23 A. You have to take my word for it there was an indicative
- 24 price.
- 25 Q. It became an indicative price the next day?

1 A. That's my understanding of it.

2 Q. My understanding of is that it was a price that your
3 team had evolved. It was taken via the LCE to the board
4 by you and Dr Brooker and I'm putting it to you that it
5 just didn't do the trick. The next day, pressed by
6 Ofwat -- which I think Mr Edwards will probably give
7 better evidence than you, because you had delayed
8 unduly -- you were required to give some price very
9 quickly. So you gave your offer as the indicative price
10 with the caveat that it wasn't going to be your final
11 price then, but when it went to the board there is no
12 indication that it was anything other than a firm final
13 price, one that the board would regard as deeply
14 unsatisfactory?

15 A. That is not my understanding.

16 Q. No, all right.

17 THE CHAIRMAN: Not your understanding or it's not your
18 recollection?

19 A. It's not my recollection. I'm struggling with, you
20 know, the amount of time that has gone past, as I keep
21 saying. I'm not trying to avoid answering any
22 questions. I can only answer them based on what I know.

23 THE CHAIRMAN: Yes, thank you.

24 A. I don't know.

25 MR SHARPE: Well, there is no reference in the minutes to

1 approval being given for that to be issued as an
2 indicative price and there is no reference in the LCE
3 document itself that it is anything other than a price
4 which emerged as a result of these calculations.

5 Anyway, we do know that it was issued the next day.

6 Sorry, Mr Williams, please allow me a moment to edit.

7 It's very much in your interests. (Pause)

8 Right, bundle 4, tab 121. Do you have it?

9 A. No, I don't, I'm sorry.

10 Q. Bundle 4, tab 121.

11 A. Right, got it.

12 Q. Have you got it? This is a second go at it, isn't it?

13 This is the new LCE paper, is it not?

14 A. That's right, yes, this is the February paper, is it?

15 I think.

16 Q. Yes and my learned junior just reminded me -- I don't
17 think we will necessarily go to it immediately -- there
18 is a draft of this paper in the previous tab, right?

19 But I give him notice that Mr Edwards will need to reply
20 to some of that. What we are seeing here at 121 is the
21 paper that -- you and your colleague considered at that
22 time your meeting, I hope, some time in February, wasn't
23 it, February 2001?

24 A. I believe so, yes.

25 Q. And you are still the sponsor?

- 1 A. Yes.
- 2 Q. And I presumed you would have been presenting this to
3 the board but earlier you said that Dr Brooker might
4 have taken a hand because of his understanding of the
5 issues?
- 6 A. That may well have happened, yes.
- 7 Q. When you got this paper, you must have realised there
8 had been a fairly significant change in methodology,
9 hadn't there?
- 10 A. Yes.
- 11 Q. And that had led to an increase in the price from 19.94
12 to 23.4 per cubic metre; yes?
- 13 A. Yes.
- 14 Q. Yesterday you went to some pains to tell the Tribunal
15 that Welsh Water was just doing what it had always done?
- 16 A. That was my understanding.
- 17 Q. Yes. So how does that square then with the adoption of
18 a totally different methodology now?
- 19 A. This is based on regional averaging.
- 20 Q. Is it?
- 21 A. That was my understanding, yes.
- 22 Q. Hm-mm. Let's look at the first page. It's page 848.
23 I'm look at the beginning first page of the schedule at
24 845. Forgive me, we are going back to the earlier tab,
25 which is somewhat more detailed.

- 1 Do you have it 845 at the bottom of the page?
- 2 Appendix 1?
- 3 A. Tab 120, is it?
- 4 Q. Tab 120?
- 5 A. Yes, I have got it.
- 6 Q. We see on the first page here at 845:
- 7 The methodology is now calculating the cost of
- 8 potable bulk distribution.
- 9 Do you see the figure? Look at the top --
- 10 A. Yes.
- 11 Q. -- under schedule A. You see under "Large User". Then
- 12 "Potable", "Bulk Distribution". Do you see that?
- 13 A. Yes.
- 14 Q. The bulk distribution here is 16.3p per cubic metre. Do
- 15 you see that?
- 16 A. Yes.
- 17 Q. If you remember just a few moments ago, I asked you to
- 18 note the figure from the previous LCE paper which was
- 19 11.1 per cubic metre?
- 20 A. Yes.
- 21 Q. Do you agree?
- 22 A. Yes.
- 23 Q. So the new method was giving the potable bulk
- 24 distribution cost nearly 50 per cent higher than the
- 25 previous method. That's right, isn't it?

- 1 A. That's what the figures suggest, yes.
- 2 Q. It must have alerted you to the fact that something was
3 going on here?
- 4 A. I don't recall it alerting me.
- 5 Q. You didn't just compare one with the other and say,
6 "Wait a minute, bulk distribution seems to have gone
7 up." You didn't put them on notice that you wanted to
8 find out why?
- 9 A. As I have explained a couple of times, I wouldn't have
10 gone into the detail. I would have accepted this
11 information.
- 12 Q. Hm-mm. Well -- so -- all right.
13 So how do you satisfy yourself the work was being
14 done correctly?
- 15 A. Because I trusted the people to do it.
- 16 Q. By "correctly" I also mean lawfully. So you trusted
17 them ...
- 18 Let's put it crudely: you didn't even notice the
19 difference, did you?
- 20 A. At this point in time, I really cannot remember.
- 21 Q. But we do know if you did notice it you didn't put them
22 to proof, did you?
- 23 A. I wouldn't have done actually, I guess, because I would
24 have accepted the information.
- 25 Q. No. So there is no request to go back and do a better

1 job, go back and prove this to me because it looks a bit
2 suspicious?

3 A. I think I would remember something like that and that
4 didn't happen.

5 Q. All right. Now we can go quickly to page 851. This is
6 schedule B. Headed "Breakdown of the average cost of
7 water service." Do you see it?

8 A. Yes.

9 Q. This uses the same 30 per cent multiplier -- do you see
10 it? Look at "Water Treatment":

11 "Non-potable treatment at 30 per cent of potable."

12 Do you see that?

13 A. Yes.

14 Q. Do you have that? We saw from the December paper that
15 you knew that this figure was first of all five years
16 out of date and, secondly, it was based on conversations
17 with managers in any event, because that was the
18 explanation given to you in December?

19 A. That was in the --

20 Q. Yes, the earlier LCE. So by your own admission it was
21 not robust and those were the reasons for it. Didn't
22 you query that they were coming back with duff numbers?

23 A. I didn't go into the figures.

24 Q. But you knew that somebody had been tasked to look at
25 the actual costs involved in non-potable treatment,

- 1 didn't you?
- 2 A. Yes, it said so in that paper.
- 3 Q. From the previous paper. You didn't follow it up, did
- 4 you?
- 5 A. Probably not. I can't remember but it looks like
- 6 I wouldn't have done, yes.
- 7 Q. Is there any reason why you neglected to do so?
- 8 A. No.
- 9 Q. It's now on the timeline four months after Albion's
- 10 application for common carriage. It's over a month
- 11 since the original paper recorded the work was to be
- 12 undertaken. So can you begin to explain why four months
- 13 after the application and a month after you said you
- 14 were going to do it, nothing had happened?
- 15 A. No, I can't explain it.
- 16 Q. And recalling there were only two plants, it would have
- 17 been really quite a simple matter to ascertain what the
- 18 costs were, wouldn't it?
- 19 A. I don't know what it would have entailed, to be honest.
- 20 Q. And earlier today you mentioned you had this whizzy
- 21 accounting system?
- 22 A. SAP.
- 23 Q. SAP and I put it to you that that would have had the
- 24 costs data for Ashgrove and you said yes?
- 25 A. It would have contained the information. I'm not an SAP

1 expert so I don't know what it actually would have
2 contained but one would hope it would have the
3 information.

4 Q. You see, we now know largely from disclosure, disclosure
5 of previous proceedings, that Welsh Water had separate
6 local accounting data for the Ashgrove Water Treatment
7 Works. So it actually knew what the actual costs were.

8 A. Oh, right.

9 Q. Is that a revelation to you?

10 A. I wouldn't describe it as a revelation, no.

11 Q. It also had an asset register for Ashgrove showing
12 capital expenditure, didn't it?

13 A. I don't know.

14 Q. Well, it did. That was also disclosed to Albion in
15 proceedings, I believe, in 2006.

16 MR BEARD: I'm sorry but evidence in relation to this stuff
17 from the bar is not appropriate.

18 THE CHAIRMAN: He is entitled to put these questions --

19 MR BEARD: Not questions, it's the codas to the responses.

20 THE CHAIRMAN: Carry on.

21 MR SHARPE: I don't understand my friend's objection.

22 With that information readily available, the work
23 should have been done quite quickly, shouldn't it?

24 A. If it was that readily available, then I can't fault
25 your logic.

1 Q. But the truth of the matter is, notwithstanding being
2 alerted by your own staff that it was not robust and
3 reasons given for it and that work was in progress to
4 try and get some robust numbers, you and your company
5 just went ahead and said well, the common carriage price
6 must be incorporate bad numbers. That's right, isn't
7 it?

8 A. That number hadn't put in different information so
9 clearly that work hadn't been done.

10 Q. No. May I go very quickly to the beginning of this
11 document at page 848 so this is argument, so-called,
12 5.3. Do you have it?

13 A. Yes.

14 Q. That states that:

15 The reason behind the new price contained is that
16 the indicative price was "a simple estimate."

17 5.2, I beg your pardon:

18 "The indicative price released to Albion Water was
19 a simply estimate produced to give Albion Water an idea
20 of the likely price. The calculation has now been
21 revisited and a firm price has been calculated."

22 Right? I'm putting it to you again there is no
23 evidence at all that the earlier document considered by
24 the board, both the LCE and the board, was anything
25 other than a considered price and there is nothing in

1 those documents that says, "This is a simple estimate,
2 read with care." And a health warning, was there? All
3 right. I take that to be a yes.

4 Let's, in conclusion, look at the final LCE
5 document. This is carrying on here at tab 121 at 5.5.
6 Let's just describe just put your eyes further down the
7 same page. You see:

8 "The level of the prices means Albion Water's common
9 carriage application is not economic. It is therefore
10 expected that Albion Water will challenge the price with
11 Ofwat. Obtaining their approval would weaken any
12 challenge."

13 "Obtaining their approval" would mean obtaining
14 Ofwat's approval?

15 A. Ofwat, yes.

16 Q. But, of course, you were well aware what the impact on
17 competition of this level of price would have?

18 A. Hm-mm.

19 Q. That's right, isn't it?

20 A. Yes.

21 Q. I'm not going to take you to it but I think you are now
22 an expert on MD163. I asked you to read it overnight,
23 and you will recall -- and I took you to it this
24 morning -- that one of the considerations Ofwat would
25 consider would be the effects on competition and here

1 you are well aware of the effects on competition.

2 Over the tab, 122, letter dated 2 February from
3 Mr Holton to Ofwat. You see him saying, the last
4 paragraph, halfway down:

5 "The current negotiations ... are being conducted on
6 a commercial basis with the full knowledge of Ofwat.
7 Everything is open and ..."

8 Where are we?

9 "Our position always has been to conduct these
10 negotiations in an open and communicative manner ..."

11 And so on. That's not true, is it? You see,
12 Dr Bryan had asked for the methodology underlying the
13 calculation of the indicative price. That's right,
14 isn't it?

15 A. Yes, he had asked for it, yes.

16 Q. There is no point saying it's all to do with average
17 pricing because you have got much more than that on the
18 board, didn't you, at the time, didn't you?

19 A. In that paper, yes.

20 Q. And you didn't tell Albion the average cost of whatever
21 it is you were averaging, either, did you?

22 A. No.

23 Q. No. And as we have seen, in relation to bulk
24 distribution -- I will be taking Mr Edwards in more
25 detail -- there was a massive difference between your

1 earlier calculation and the later one, something of the
2 order of 50 per cent?

3 A. Yes, there was a difference.

4 Q. Yes. Which you either failed to spot or didn't care
5 about, because you trusted your staff?

6 A. I did, yes.

7 Q. Okay. Of course, Ofwat at this time were pushing you
8 hard to arrive at a final price. You had been hanging
9 around since September. You should have had one of
10 these things in place well before then. I think that's
11 fair comment, isn't it? There had been an undue delay
12 and you explained the delay this morning by Mr Edwards'
13 unavailability; is that right?

14 A. Yes, certainly when Mr Edwards came aboard we were able
15 to move on with that work.

16 Q. And what we see at tab 127, we have Mr Holton going to
17 Ofwat, dated 9 February:

18 "We are refining our work on the price and
19 cross-referencing the work against figures and documents
20 which we have already received and agreed."

21 It's not quite clear what he means but I'm sure you
22 won't be able to help me so I won't bother you with it?

23 A. No.

24 Q. "We hope to get board approval for the price within the
25 next week, board agenda allowing and then be in

1 a position to issue a price to Albion Water with a copy
2 to yourself."

3 Okay. So he let's the progress report, if that's
4 the right word in this context, dated 9 February; yes?

5 A. Okay, yes.

6 Q. Over the page we have her reply:

7 "I'm pleased to hear that you have finally reached
8 agreement on your access price figure."

9 This is 15 February. It's somewhat after the 9th
10 and you see she relates to a phone call of that day?

11 A. Yes.

12 Q. Okay:

13 "You have finally reached agreement from your access
14 price after your board meeting. I hope that now puts you
15 in a position to answer the questions in my letter."

16 We won't worry about that. Okay. So there was
17 a board meeting in February, which gave the sign-off for
18 the issuing of this common carriage price; is that
19 right?

20 A. This says so. I can't recall it.

21 Q. You can't recall.

22 A. And if there was -- there should and would be a record
23 of it. So don't ask me to explain it.

24 Q. Well, Mr Holton is telling Ofwat we need board approval
25 and that chimes true, doesn't it, because it would have

1 been discussed in November, would have been discussed
2 in December, discussed again in January and Mr Holton is
3 telling Ofwat there is going to be board approval and
4 that seems, if I may say so, be absolutely plausible and
5 right. The only problem is, Mr Williams -- and this is
6 my problem really -- we have no board minute in relation
7 to that meeting. So I'm afraid I can't question you on
8 how the board reacted to that.

9 A. And I can't help you in terms of any recollection
10 either, unfortunately.

11 Q. Has anyone asked you to look at your diaries for the
12 period in February 2001?

13 A. I don't have a diary for that far back.

14 Q. But your board diary, your diary at the time, would that
15 have been retained in Welsh Water?

16 A. I doubt it.

17 Q. Your secretary?

18 A. No, I kept my diary, to be honest.

19 Q. Yes. No, no ...

20 But it's a long time ago and I understand all that
21 and you went to a lot of board meetings but it was quite
22 an important board meeting. This was the first common
23 carriage decision, wasn't it?

24 A. But I don't -- I genuinely don't recall a board meeting
25 in February. I can't explain if there was why there

1 aren't any minutes and the only other possibility I can
2 think of is whether there had been a delegated powers
3 but when that been the case, I would have thought that
4 would have been previously recorded. So I'm at a loss
5 to explain it.

6 MR SHARPE: All right.

7 Mr Williams, that took a little longer than I had
8 planned but as far as I'm concerned, I have no further
9 questions. I'm sorry if I have overdone it.

10 THE CHAIRMAN: Any re-examination, Mr Beard?

11 MR BEARD: Just one or two questions if I may, given the
12 time it's worth just dealing with that and then having
13 a pause if that's okay.

14 THE CHAIRMAN: Yes.

15 Re-examination by MR BEARD

16 MR BEARD: File 3, tab 45, please, Mr Williams. It's
17 a letter from Mike Brooker that Mr Sharpe took you to.
18 I just wanted to go to the last paragraph:

19 "This letter and the enclosure is also being sent to
20 the First Secretary of the Welsh Assembly, the DETR, DTI
21 DWI and EA."

22 Do you know what those letters, the acronyms, stand
23 for?

24 A. DTI, obviously, Department of Trade and Industry.

25 Q. Yes.

- 1 A. Environment Agency.
- 2 Q. Yes.
- 3 A. I can't recall what the other ones are. Directorate of
4 Water? I'm not sure.
- 5 Q. I'm concerned not to lead the witness although I doubt
6 this is going to be controversial.
- 7 THE CHAIRMAN: Oh, go on, Mr Beard.
- 8 MR BEARD: Drinking Water Inspectorate.
- 9 A. Of course it was.
- 10 Q. Department for Environment, Transport and the Regions?
- 11 A. Yes.
- 12 Q. There is not a reference to any company, thank you very
13 much.
- 14 The next bundle I wanted to go to -- actually we
15 will stay in 3 for the moment, if that's easiest.
16 Tab 110, Licence Company Executive, LCE, paper.
17 Mr Sharpe asked you various questions about this. Could
18 you just explain: there are headings numbered 1, 2, 3,
19 4, 5. Could you just describe to us what the
20 significance of those different headings are and what's
21 discussed under them in general terms, please. So
22 issues, recommendations, timing, sponsor, argument,
23 please.
- 24 A. Sorry, I really don't understand that.
- 25 Q. I'm sorry, I'm just asking you what -- in relation to

1 each of those -- what is the significance of the heading
2 "Issues" in that paper? What is that telling us?

3 A. Well, it's pulling out a list of the issues relating to
4 common carriage.

5 Q. Issues that are to be discussed at the meeting?

6 A. Yes, it would have been, yes.

7 Q. And 2, "Recommendations". Is that recommendations from
8 the meeting or is that recommendations that the sponsor,
9 or whoever the paper is from, is making before the
10 meeting?

11 A. Before.

12 Q. And if you just work your way through --

13 THE CHAIRMAN: So those are your recommendations to the
14 Executive?

15 A. Yes.

16 MR BEARD: So your recommendations to the Executive, and if
17 we see the first one of those is "Continue common
18 carriage negotiations with AW".

19 Which is Albion Water?

20 A. Yes.

21 Q. "Ensure that all commercial opportunities to use water
22 currently purchased from North West are explored prior
23 to reducing the amount taken under the current
24 agreement. Continue negotiations with North West Water
25 ..."

1 And the fourth one:

2 "Calculate common carriage network access prices for
3 each constituent part of DC's water service based on
4 whole area average costs."

5 So that was a recommendation you were putting
6 forward to the LCE at that time; is that right?

7 A. Yes.

8 Q. And then:

9 "Continue to cooperate fully with Ofwat's
10 competition case manager to ensure DCC's stance and
11 actions are fully understood and not considered
12 anticompetitive. Establish the impact of prices
13 developed for AW on all other large users of non-potable
14 water."

15 Then over the page it says:

16 "Sponsor ..."

17 Which is you. Then "argument" and Mr Sharpe asked
18 you various questions about this. This was a paper
19 prepared for the meeting. So what is being set out in
20 this argument section?

21 A. Again, if you are asking me a question which is -- I'm
22 struggling with memory issues.

23 THE CHAIRMAN: If you do not know the answer, just say you
24 do not.

25 A. I don't.

1 MR BEARD: I'm grateful, thank you. If we could then just
2 take up bundle 6, tab 240.

3 A. Did you say 240?

4 Q. I did. Tab 240 in bundle 6, please, Mr Williams. This
5 is a witness statement from Christopher Alun Jones,
6 February 2006, in the earlier proceedings, where
7 Dwr Cymru were intervenors. Could you just remind the
8 Tribunal who Christopher Jones was?

9 A. No, I don't know who he was.

10 Q. You don't know who Chris Jones is?

11 A. No. Sorry, unless that's --

12 THE CHAIRMAN: You mentioned him earlier.

13 A. Sorry, I thought this was an operational person.

14 MR BEARD: No.

15 A. My apologies, yes. Chris Jones was the Dwr Cymru
16 Finance Director going back in time. Chris Jones at
17 this time was the Glas Finance Director.

18 Q. Thank you. If you turn on to page 1890, could you just
19 read through paragraphs 9 and 10 for me, please?
20 (Pause)

21 A. Right.

22 Q. Is Mr Jones there referring to the GIS or SAP R3 systems
23 or any other system that you know of?

24 A. I don't know. At this time in 2006 I had been out of
25 the business, so what it is referring to I don't know.

1 I know there was a huge amount of work that went on in
2 digitalisation. In what form it was kept at this time,
3 I don't know.

4 Q. Was the GIS system one that relate to mains information,
5 so far as you recall?

6 A. As far as I recall it was, yes.

7 Q. So it's possible he may have been referring to that?

8 A. It's possible.

9 Q. If you could then turn on to page 1902 and read
10 paragraphs 54 and 55, please. (Pause)

11 Sorry, and 56, I'm grateful to Mr Pickford.

12 A. Okay.

13 Q. Would this be reference to the SAP R3 system?

14 A. It could be, yes.

15 Q. Was that a system that contained information as to
16 particular assets?

17 A. I believe so.

18 Q. Could you turn on to tab 244. So far as you are aware,
19 nothing in the two passages that I have taken you to in
20 Mr Jones' statement is wrong, to the best of your
21 knowledge?

22 A. To the best of my knowledge.

23 Q. Tab 244, if you turn on to 2052A, this is a third
24 witness statement of Chris Jones. Just for the
25 Tribunal's note, there is a second witness statement.

1 It's at tab 241. This is an extract from it. Oh, I'm
2 sorry --

3 THE CHAIRMAN: Mr Cowen doesn't have a copy.

4 MR BEARD: Thank you very much. This is the only extract,
5 I think, from this witness statement. Could you read,
6 just through paragraphs 9 to 11 in that extract.

7 A. Okay.

8 Q. Do you have any reason to disagree with what Mr Jones
9 says here about valuation of relevant works?

10 A. I wouldn't have the knowledge to actually disagree with
11 it.

12 Q. You do not have any reason to doubt his comment about
13 the difficulties of obtaining local costing information?

14 A. I wouldn't have any reason to doubt his word, no.

15 THE CHAIRMAN: Do you know what "MEA" stands for?

16 A. No, I don't.

17 MR BEARD: Again it would be evidence from the bar, but it
18 would be Modern Equivalent Asset.

19 THE CHAIR: I know what it means. I was just wondering
20 whether Mr Williams did.

21 MR BEARD: A final couple of questions. Are you aware of
22 anyone in Dwr Cymru seeking to delay provision of either
23 the statement of principles or the network access code
24 to Albion?

25 A. No.

1 Q. Are you aware of anyone in Dwr Cymru seeking to delay
2 the production of the common carriage price to Albion?

3 A. No, I wasn't.

4 MR BEARD: I don't have any further questions for
5 Mr Williams.

6 THE CHAIRMAN: That's completes your evidence, you will be
7 pleased to hear, Mr Williams. So you are free to leave
8 the box.

9 A. Thank you very much.

10 THE CHAIRMAN: I think we will have a short break there and
11 then start with Mr Edwards. We will come back at 3.30
12 pm.

13 (3.23 pm)

14 (Short break)

15 (3.30 pm)

16 MR BEARD: We call Paul Edwards.

17 MR PAUL JUSTIN EDWARDS (sworn)

18 Examination-in-chief by MR BEARD

19 MR BEARD: Could you give the Tribunal your name, please?

20 A. Paul Justin Edwards.

21 Q. Could you turn to folder 1. Turn to tab 2 and turn to
22 the final page of that tab, tab 27. Is that your
23 signature?

24 A. Yes, it is.

25 Q. Is this your witness statement?

1 A. Yes, it is.

2 Q. Is it true to the best of your knowledge and belief?

3 A. Yes, it is.

4 Q. Could you turn on to tab 6 in this bundle? Could you
5 turn to the page 97DD. Is that your signature?

6 A. Yes, it is.

7 Q. Is this your witness statement?

8 A. Yes, it is.

9 Q. Is it true to the best of your knowledge and belief?

10 A. Yes, it is.

11 MR BEARD: I'm grateful. I don't have any questions for
12 Mr Edwards. Mr Cook may have some questions for you.

13 Cross-examination by MR COOK

14 MR COOK: You say in your first statement you have been
15 employed by Welsh Water since November 1989. Was that
16 your first job?

17 A. No, I had a job as a computer programmer at Ferranti
18 from 1983.

19 Q. A computer programmer for whom, please?

20 A. Ferranti Computer Systems.

21 Q. What qualifications do you have?

22 A. I have got a Bachelors BSc in Statistics, an MSc in
23 Management Science from Imperial College and an MSc in
24 Economic Regulation and Competition from
25 City University.

1 Q. So you do not have any technical qualifications in the
2 water industry?

3 A. No.

4 Q. So you joined Welsh Water in 1989 and then in 1992 you
5 took up the post of financial analyst?

6 A. That's correct, yes.

7 Q. And that was in the Economic Regulation Department.
8 Could you explain to us what the Economic Regulation
9 Department does or did within Welsh Water?

10 A. In 1989, we were privatised, Dennis Taylor was
11 a financial analyst who had taken the company through
12 privatisation and the role of the Economic Regulation
13 Department at that time was to undertake the principle
14 statement and the financial aspects of the June return
15 and also to make sure that the company was compliant
16 with Ofwat directives.

17 Q. So the June return, that was the annual statement
18 showing the financial position of the company?

19 A. At that time it was the July return and that contained
20 several tables of data -- customer service data from
21 comparative efficiency data, which was used to compare
22 the efficiency of companies and also the regulatory
23 accounts, the 30 or 40 tables.

24 Q. So you refer to Dennis Taylor. So he was the head of
25 your department?

- 1 A. That's correct, yes.
- 2 Q. How many of you were there in your department?
- 3 A. In 1992 through to the late 1990s there was four of us.
- 4 Q. Including Mr Taylor?
- 5 A. Including Mr Taylor, yes.
- 6 Q. And Mr Taylor, was he a board director?
- 7 A. No, he wasn't.
- 8 Q. Was he on the LCE, the Licence Company Executive?
- 9 A. The LCE only came into being in the late 1990s and he
- 10 wasn't a member of that.
- 11 Q. You were involved, as I understand it, in producing
- 12 Welsh Water's statement of principles and network access
- 13 code that Ofwat required following the introduction of
- 14 the Competition Act?
- 15 A. That's correct, yes.
- 16 Q. And you were involved in doing that along with
- 17 Dr Boarer; is that right?
- 18 A. That's correct.
- 19 Q. David Holton?
- 20 A. That's correct.
- 21 Q. And Mr Henderson?
- 22 A. I don't think Paul Henderson was involved with the
- 23 statement of principles or the network access code.
- 24 Q. Were just those three of you involved in that process
- 25 then?

1 A. All across the company there were several area managers
2 who were involved with producing that and also the legal
3 team.

4 Q. Whoever is in charge of that process?

5 A. Jackie Boarer was overall charge and Dave Holton was
6 making sure that the timescale was hit.

7 Q. Jackie Boarer was in charge. Presumably she would then
8 have to get approval from the board for those documents
9 to be issued?

10 A. I think Jackie Boarer would take that through
11 Mr Williams to the board or to LCE.

12 Q. Just to put that in context in terms of your
13 involvement, you weren't somebody who would have gone to
14 the LCE or the board meetings on any basis at all, would
15 you?

16 A. Not for the statement of principles or the network
17 access code I wouldn't have gone.

18 Q. Would you ever go on any other occasion?

19 A. I have been to the board I think, when we took the Large
20 Industrial Tariff on the board in the mid 90s, I went
21 and I also took the iDok papers through the board.

22 THE CHAIRMAN: The what papers?

23 A. The iDok, it's a process -- the periodic review --

24 MR COOK: It stands for Interim Determination of K, iDOK.

25 THE CHAIRMAN: It's not anything to do with this case then?

1 MR COOK: Then you became involved in Albion's request for
2 access in around November 2000?

3 A. That's correct, yes.

4 Q. But that was only a part-time involvement until
5 mid-January 2001?

6 A. That's correct, yes.

7 Q. In terms of the others involved again it was Dr Boarer
8 and Mr Holton and Mr Henderson was involved in relation
9 to that part of the process, wasn't he?

10 A. That's correct, I think Mr Holton was looking at the
11 prices -- sorry, Mr Henderson was the tariff manager at
12 the time and he was looking at the prices initially.

13 Q. In terms of seniority, where did you stand within that
14 group?

15 A. I'm not sure whether Paul was level with Dave Holton
16 because I know Jackie's team had Paul and Dave Holton in
17 there but I was working under Dave Holton and
18 Dave Holton clearly worked for Jackie Boarer. Jackie
19 clearly worked for Jeff Williams.

20 Q. Is it fair to say you were the most junior member the
21 team?

22 A. Yes.

23 Q. Mr Williams was also involved to a limited extent. What
24 contact did you have with him during this process?

25 A. I think we kept him regularly informed on progress of

1 the statement of principles and the necessary work
2 access code and so we had -- Jackie and Dave would have
3 regular team meetings with him. I also attended some
4 meetings where technical input was required.

5 Q. So in terms of the decision-making process, you would
6 effectively pass the bits of work you did, your advice,
7 your recommendations, to David Holton first and then it
8 would go up the chain through Dr Boarer?

9 A. I think "chain" is probably the wrong word because
10 Dr Boarer had quite an inclusive team. So there would
11 be joint discussions with Jackie Boarer and Dave Holton
12 and myself and Paul Henderson. So we can see from the
13 trail of emails that we were very inclusive.

14 Q. But in terms of ultimately making a recommendation to
15 Mr Williams, who would be deciding what would go to
16 Mr Williams?

17 A. I think it would be between Jackie and Dave.

18 Q. And in terms of this process, as far as you were
19 concerned, who had ultimate sign-off?

20 A. Ultimate sign-off for what, sorry?

21 Q. Ultimate sign-off on the prices.

22 A. On the prices? I think the ultimate sign-off would be
23 Jeff Williams through the board or LCE.

24 Q. Mr Holton was the competition manager. That's right,
25 isn't it?

- 1 A. I think he was Key Customer and Competition Manager,
2 yes.
- 3 Q. So his role included the competition elements. Had you
4 received any training on competition issues at that
5 time?
- 6 A. I had my Masters from City University, which included
7 competition as well as regulation.
- 8 Q. But that was an economic Masters?
- 9 A. It was from the economics department but economics is
10 only part of it. There is an economics course. There
11 was modelling, financial modelling and also competition
12 law.
- 13 Q. Sorry, when had you done that qualification?
- 14 A. 1997 through to 1999.
- 15 Q. We asked Mr Williams at the start of his
16 cross-examination about his knowledge of Welsh Water's
17 pricing structure. Presumably you are somewhat more
18 familiar with that structure?
- 19 A. Yes, I was involved with the Large Industrial Tariff,
20 although I had limited knowledge of the standard
21 tariffs, what was called the principles statement.
22 I was not involved with that.
- 23 Q. So you didn't know about sort of the main tariffs but
24 you knew about the exceptions to it?
- 25 A. Yes, that's correct.

1 Q. You were aware, though, that Welsh Water didn't charge
2 all of its customers the same price for water?

3 A. I was aware of that, yes.

4 Q. And why was that?

5 A. You mean the large --

6 Q. Why is it they charge the different prices?

7 A. Historic reasons for the large ones I was aware of, the
8 special agreement that several of these agreements are
9 entered into in the 1950s and 1960s, when we had very
10 local water companies. So the local council would have
11 responsibility for water supply. They would agree with
12 the large industrial customers a price for water on
13 a very long-term, to make it attractive to enter their
14 area and we inherited those. The way the water industry
15 grew, there was the local industry in the 1960s and
16 1970s, in the mid-1970s that became the Welsh National
17 Water Development Authority, which I think in 1984
18 became Welsh Water, which in 1989 was privatised. So we
19 inherited those agreements.

20 Q. Sorry, I wasn't referring to some of the special
21 agreement. You had a general tariff structure which
22 involved different prices to different types of
23 customer. Why was it you had different prices for
24 different customers?

25 A. Are you referring to the Large Industrial Tariff?

- 1 Q. Why did you have different prices for different
2 customers generally?
- 3 A. The difference would reflect the different level of
4 service they took from us.
- 5 Q. And therefore different costs?
- 6 A. Different costs.
- 7 Q. Because Welsh Water recognised that different classes of
8 customer should pay different prices based on the costs
9 involved in their supply, didn't they?
- 10 A. On average the costs involved in supplying that type of
11 customer, yes.
- 12 Q. So in terms of potable water, you refer to the fact that
13 it was a standard tariff for potable water, which you
14 say you didn't have much involvement in, but you
15 presumably knew that there was such a standard tariff?
- 16 A. I did, yes.
- 17 Q. And then there was the Large Industrial Tariff for
18 potable water, the LIT, which you were involved in
19 introducing, I understand?
- 20 A. That's correct, yes.
- 21 Q. And an updated version of that had been introduced in
22 1999?
- 23 A. Around that time, yes. I think mine was 1995, 1996 and
24 then there was an update in 1997/1998, I think.
- 25 Q. So you were involved in the 1995/1996 version, not the

- 1 later one.
- 2 A. I was involved in 1995/1996 and had partial input to the
3 1997/1998 version but not a very detailed input.
- 4 Q. That was set out in relation to potable customers, its
5 range of prices that would be paid based on the
6 different volumes that they took. That's right, isn't
7 it?
- 8 A. That's correct.
- 9 Q. And in relation to non-potable customers, Welsh Water
10 charged them lower prices for water, didn't it?
- 11 A. It had a standard non-potable tariff of about 49p, which
12 was below the standard potable tariff.
- 13 Q. Did anyone actually pay that standard non-potable
14 tariff?
- 15 A. I think in 1999 we sold 6 megalitres a day. These were
16 to farms, very small suppliers and I think there was
17 a theme park also took non-potable water. So, yes, they
18 did.
- 19 Q. 6 megalitres a day. Your total non-potable water --
- 20 A. Sorry, 6 cubic metres, not 6 megalitres. It was a very
21 small amount.
- 22 THE CHAIRMAN: Not much of a paddling pool in the theme
23 park!
- 24 A. It's 0.06 of a megalitre. So that's 60. I'm seeing the
25 table in front of me. It was 0.06 of a megalitre, which

- 1 is 60 cubic metres a day. Some of these --
- 2 THE CHAIRMAN: 0.06 would be 60.
- 3 A. Yes and some of these were farm troughs. So you
- 4 wouldn't expect to see much.
- 5 MR COOK: So effectively, in terms of your total non-potable
- 6 business, that was a fraction of 1 per cent?
- 7 A. It was a fraction of the non-potable business.
- 8 Q. It's a fraction of 1 per cent, isn't it?
- 9 A. I haven't got a calculator with me but ...
- 10 Q. For the rest, the vast majority, in fact almost all of
- 11 Welsh Water's non-potable business, that was all done
- 12 pursuant to special agreements, wasn't it?
- 13 A. The non-potable was special agreements, yes.
- 14 Q. Those were lower prices because the water was partially
- 15 treated, or in many cases the majority of the -- the
- 16 water completely untreated?
- 17 A. That's correct.
- 18 Q. In its charging, Welsh Water presumably didn't expect
- 19 a customer who was taking untreated raw water to
- 20 contribute to the costs of treating potable water, did
- 21 it?
- 22 A. No.
- 23 Q. And Welsh Water wouldn't expect a customer who was
- 24 taking partially treated water to pay the full costs of
- 25 potable treatment, would it?

1 A. I think all customers took partially treated water. So
2 we would expect all customers to pay their fair share of
3 the partial treatment but then the extra treatment to
4 take it to potable was then shared only between those
5 customers who took the potable water.

6 Q. So you said, all customers, our understanding was there
7 were only three who took partially treated water, the
8 rest received completely treated water?

9 A. No, because every customer takes partial treatment. For
10 instance, at Ashgrove there was a treatment to take --
11 to treat the river water and all customers who take
12 river water will have that as well. So all customers
13 take partial treatment.

14 THE CHAIRMAN: You mean all customers including customers of
15 potable water?

16 A. Yes, the only customers who wouldn't would be the raw
17 water customers. So in terms of regional average
18 pricing, all customers would pay their share of partial
19 treatment and then only potable customers would then pay
20 the second or first strength treatment.

21 MR COOK: To be clear, raw water customers wouldn't pay for
22 any treatment at all?

23 A. Raw water customers would not need any treatment.

24 Q. Partially treated customers would only pay partially
25 treated and if you were a potable customer, you would

- 1 pay for the full cost of potable treatment?
- 2 A. You would pay the rest, yes.
- 3 Q. Can I ask you to open up your first witness statement at
4 paragraph 28. It's at bundle 1, tab 2. If you go to
5 paragraph 28, which is page 15.
- 6 A. Yes.
- 7 Q. Presumably you are familiar with that paragraph. It's
8 the last sentence in particular I want to ask you about.
9 It says:
- 10 "In addition ..."
- 11 And he is referring here to average price
12 methodology:
- 13 "... it was one of the three main approaches to
14 access pricing. It had been outlined in MD163."
- 15 A. That's correct.
- 16 Q. Do you still think that statement is true?
- 17 A. Yes.
- 18 Q. Can I ask you to turn to MD163, which you will find at
19 bundle 3, tab 59?
- 20 THE CHAIRMAN: Which tab?
- 21 MR COOK: Tab 59. When you refer to the three main items
22 identified, presumably you are referring at page 611; is
23 that right?
- 24 A. Yes, that's correct.
- 25 Q. There were three items identified there.

1 The first is accounting costs, which is said to be the
2 book value of the assets to which access is sought.

3 I recognise that's local costs. That's specific to the
4 assets you were you were seeking access to, isn't it?

5 A. No.

6 Q. Why do you say that's not what it means?

7 A. Access -- sorry, book value of access -- book value of
8 the assets to which access is sought we took to mean
9 that you were looking to look -- say, for instance, to
10 connect to the network. So it was the book value of the
11 assets on the network. We didn't interpret this to mean
12 the local assets specific to that particular
13 application.

14 Q. No, the only way to read at that is you are seeking
15 access to a particular set of assets, aren't you?

16 A. That's correct.

17 Q. That's what common carriage is about, access to
18 a particular set of assets?

19 A. That's correct.

20 Q. You are not seeking access to all the assets within the
21 network, are you?

22 A. The particular set of assets would be our distribution
23 network.

24 Q. Some people would be seeking access to a particular part
25 of that network but not generally, wouldn't they?

- 1 A. They would, yes.
- 2 Q. So how can you have read that as being anything other
3 than the book value of the assets to which access is
4 sought, ie the particular assets?
- 5 A. Well, I just stated that the book value of the assets is
6 the value of the assets they are seeking to access to,
7 which is the network. They are seeking to take
8 advantage of our network.
- 9 Q. It was saying that, it would simply say the book value
10 of the network, wouldn't it?
- 11 A. I can't comment on the drafting. That's the way
12 I interpreted it.
- 13 Q. The reality is there is simply no way to read it like
14 that, is there?
- 15 A. I think that that's the way we read it.
- 16 Q. But you recognise the other two there aren't referring
17 to anything to do with average pricing?
- 18 A. I think efficient component pricing well could do in
19 that you take the average price and then remove the
20 actual cost that is being foregone by the entrant.
- 21 Q. But it's not an average price measure?
- 22 A. It could be.
- 23 Q. It's based on a different form of calculation?
- 24 A. It could be the average price with a bit taken off.
- 25 Q. Let's take you back to precursative use. You are

1 presumably familiar with MD154. We will stay in
2 bundle 3, tab 31. Go to page 414 in that. You are
3 familiar with this document presumably and saw it at the
4 time?

5 A. I have been reacquainted over the last year with the
6 document, yes.

7 Q. But at the time you were very familiar with it --

8 A. I would have been at the time, yes.

9 Q. Yes. I wanted you to go to page 414 to the section on access
10 charges. So this was the MD letter produced in
11 November 1999 in anticipation of the Act coming into
12 effect. We see there the section saying:

13 "Deciding upon the charges for the shared use of an
14 incumbent's network ... I expect each company to charge
15 entrants as it would charge itself. It is important
16 that access charges allow incumbents to recover
17 reasonable networks costs and capital maintenance
18 charges without over or under-recovery. This might be
19 on the basis of average ..."

20 Is the word that's half blanked out:

21 "... average costs were appropriate or long run
22 marginal costs."

23 But you appreciated presumably at the time that this
24 was a consultation document and that views were being
25 sought from the industry about what should be the

1 approach going forward. Were you aware of that? If you
2 go back to page 412, the middle of the page, "Next
3 Steps". The second little paragraph states:

4 "Ofwat's competition team welcomes discussions with
5 each company on the development of its statement of
6 common carriage principles. The appendix is not an
7 exhaustive list and may be revised in the light of
8 company responses. Comments on the issues including
9 whether errors of omission are welcome."

10 So you were aware that effectively it was a first
11 set of thoughts from Ofwat?

12 A. That's correct, yes. Yes, I would have been aware of
13 that.

14 Q. Just to be clear, this was something that you were very
15 heavily involved in at the time, weren't you, in
16 analysing these documents?

17 A. Not this particular document. I wouldn't have been --
18 November 1999 was just after -- sorry, just before we
19 had the final determination of the periodic review 1999.
20 So I would have been heavily involved with that.
21 I would not have been involved with competition in
22 November 1999.

23 Q. Can I ask you to turn to tab 44. This is a Welsh Water
24 internal document called "Common Carriage" and if we
25 look at the bottom right-hand side of the document, you

- 1 will see in the bottom right:
- 2 "PJE ..."
- 3 Would that indicate that it was drafted by you?
- 4 A. Yes.
- 5 Q. Yes. So this was an analysis, as we see here -- an
6 analysis of MD154, development of -- I apologise,
7 apparently it's tab 43 in the Tribunal's bundles. It
8 should be at page 528. So this was you analysing MD154.
9 Is that right?
- 10 A. That's correct, yes.
- 11 Q. So it's something that you were very much familiar with
12 at the time?
- 13 A. By February, yes, I would have been involved with that.
- 14 Q. And if we go through this, I mean, what you are doing is
15 going through almost effectively on a paragraph by
16 paragraph basis from 154, identifying the critical
17 elements for the purposes of the reasons of this
18 document?
- 19 A. Yes, this would be a compliance checklist.
- 20 Q. So it's a compliance checklist. So who would have been
21 provided with this checklist?
- 22 A. I can't remember at the time, but it would have been
23 shared with Dave Holton and Jackie Boarer and maybe Jeff
24 would have seen it but Dave Holton would have asked for
25 it and I would have prepared it for Dave.

1 Q. If you can turn now to tab 32 this was a letter of
2 23 December 1999 and we see at page 418 it was a letter
3 from Dr Brooker, the managing director, to Mr Ian Byatt,
4 the Director General of Ofwat at the time. Mr Williams
5 told us that the reference DJH in the top right of the
6 front page would indicate it was written by Mr Holton,
7 would you agree with that?

8 A. It was probably drafted by Dave Holton, yes.

9 Q. As we saw from MD154, Ofwat had sought responses from
10 the industry in relation to 154 and the principles that
11 it put forward there, in particular among them the
12 average pricing principle that it had suggested.

13 Go over the page to 417 in this letter. This is
14 Dr Brooker responding to Ofwat and we see at the --
15 actually if we go back, sorry, to 416 at the start of
16 the letter, we can see:

17 "Thank you for the opportunity to comment on your
18 proposals for the development of common carriage set out
19 in MD154."

20 So this is Welsh Water's formal response to that
21 invitation from the Director General. If we can go down
22 to the bottom of 417 now, the paragraph I want to take
23 you to, it's the penultimate paragraph on the page which
24 says:

25 "Averaging tariffs does not account for the ease or

1 difficulty of supplying water at certain points. MD154
2 would support average costs that would not give
3 incentives for efficient entry points for new entrants."

4 So this is Welsh Water at this time trying to
5 explain to the Director General the difficulties that
6 would arise from the use of average costs, doesn't it?

7 A. It's a fact, yes. It's a statement that average tariffs
8 do provide difficulties.

9 Q. Well, the difficulty is that what they do is they create
10 inefficiencies for entry, don't they?

11 A. Or they could potentially allow inefficient entry.

12 Q. So the concern from Welsh Water's perspective would be
13 that people would be able to come in and effectively
14 cherry-pick the best opportunities, they wouldn't be
15 trying to take advantage of the most expensive
16 opportunities.

17 A. That's one of the options.

18 Q. But that was Welsh Water's concern.

19 A. Well, it was the industry concern as well. It wouldn't
20 be just Welsh Water's.

21 Q. So at this point Welsh Water is explaining why average
22 costs shouldn't work in its view in response to the
23 Director General who suggested it's a possibility for
24 common carriage pricing?

25 A. I wouldn't say he's explaining why it shouldn't work.

1 He just explaining fact that if we do use average
2 tariffs, there is some consequences.

3 Q. Were you aware that this was the position that
4 Welsh Water was taking at the time in responding to the
5 Director General?

6 A. What position?

7 Q. Were you aware that they were writing back to the
8 Director General saying there were problems with the use
9 of average costs?

10 A. I'm not sure I would have been aware in December.

11 Q. When you were writing, as we saw the document at -- the
12 compliance checklist at 44, would you have been aware by
13 then?

14 A. Are you asking if I would have been aware of this
15 response?

16 Q. Yes.

17 A. I probably would have been but I can't remember.

18 Q. Could I ask you to turn now to tab 59, please? This was
19 MD163. A document I took you to a moment ago, which was
20 the Director General's new thinking as a result of among
21 other things of Welsh Water's response, the response
22 from the industry generally.

23 What I want to do is show you a comparison between
24 what was being said in 154 and what was being said in
25 163, so if we can go back to tab 31. If you can keep

1 your finger in tab 59, you might find it easier to go
2 back.

3 A. Sorry, what was the other tab?

4 Q. Tab 31 and tab 59 are the two tabs, tab 31, please.

5 Page 414, which is the paragraph I took you to before,
6 I was going to remind you about that text:

7 "It is important that access charges allow
8 incumbents to recover network costs and capital
9 maintenance charges without over or under recovery. It
10 might be on the basis of average costs, where
11 appropriate, or long-run marginal costs."

12 If we can now go back to 163, so tab 59, page 610 we
13 see at (iii) in that a very similar first half of the
14 sentence:

15 "Access charges should allow incumbent to recover
16 network operating costs reasonably incurred capital
17 maintenance charges without over or under recovery."

18 But of course the reference to average costs has
19 been removed, hasn't it?

20 A. There is no reference on this page.

21 Q. Yes. We go over the page, you said the three main
22 approaches to access pricing. Instead we have
23 a reference to the book value of the assets to which
24 access is sought. The reality is Ofwat knew very well
25 what the words "average pricing" meant, didn't it, and

1 it had taken it out of the statement -- its guidelines
2 that it's providing to the water industry?

3 A. I can't answer for Ofwat.

4 Q. You were (inaudible) at the time and I'm suggesting to
5 you that you knew full well that that's what happened.
6 The words "average pricing" have been removed, haven't
7 they?

8 A. I didn't do an audit of the two document. It was clear
9 that there was no guidance that we couldn't use average
10 pricing but ...

11 Q. You saw there was no guidance you couldn't use average
12 pricing, it was providing guidance on how you should
13 provide pricing and none of those were average pricing,
14 wasn't it?

15 A. Just based on accounting costs, which doesn't
16 preclude average pricing.

17 Q. So you accept now that it doesn't make any reference to
18 average costs and you were going as the first one on the
19 list. Is what you accept now?

20 A. No.

21 Q. The fact that average pricing had been removed, of
22 course, didn't come as a shock to Welsh Water because
23 you had already analysed Ofwat's Competition Law
24 Guidance, which had come out just before the Competition
25 Act came into force, which had made clear that average

1 pricing was not something that Ofwat was going to
2 consider in considering appropriate and excessive
3 prices, was it?

4 A. Could you take me to the document?

5 Q. Yes, I will. If you go to folder3 tab 39.

6 A. Do I need to keep this open?

7 Q. No, we can move on. Folder 3 tab 39. This is Ofwat's guidance on
8 the Competition Act. If you go to paragraph 4.14, which
9 is at page 496, you see at the end of that paragraph:

10 "In cases where there may be excessive pricing, the
11 director may have regard to measures of profitability or
12 the stand-alone costs of an activity."

13 So the director was making clear he was going to
14 look at stand-alone costs which is inherently a local
15 measure, isn't it?

16 A. I think this wasn't guidance to say how we should price,
17 it was just guidance on how they would treat any
18 complaint under the Competition Act.

19 Q. Well, no. They are telling you there is a chance that
20 if you go beyond stand-alone costs, they are going to
21 say that's excessive. By definition they are telling
22 you not to do that, aren't they?

23 A. I think "may have regard to" would be with reference to
24 stand-alone costs and not at stand-alone costs.

25 Q. This was Ofwat making very clear that the test it might

1 well use would be a test against stand-alone costs, so
2 local costs?

3 A. With regard to, yes.

4 Q. And that was something you were very much aware of
5 because if we go back to tab 44, which was the
6 compliance checklist that you had provided, you see that
7 one of the things you had added, if you go to page 533,
8 you had also analysed what Ofwat was saying in that
9 guidance and if we go to page 533, paragraph 7 on that,
10 you had expressly emphasised for the benefit of your
11 colleagues that excessive prices would be measured by
12 reference to stand-alone costs.

13 A. In relation to stand-alone costs, yes, that's correct.

14 Q. So you had been going through these documents line by
15 line, identifying the critical paths and you knew very
16 well that stand-alone costs was a test that Ofwat was
17 saying it was going to use as a benchmark for excessive
18 pricing, didn't you?

19 A. Yes.

20 Q. Against that background, can you explain how Welsh Water
21 came to decide that it should approach Albion's common
22 carriage application on the basis of average costs?

23 A. Average costs were how we charged all customers.

24 Q. There must have been a decision-making process in which
25 Welsh Water decided that was how it was going to

1 approach common carriage and that was what went into
2 Welsh Water's access code. What was the internal
3 decision-making process which led to that conclusion?

4 A. I can't remember exactly how it was but the network
5 access code was produced in consultation with several
6 departments, both operational, financial and regulatory
7 and income and tariffs team and from that a document was
8 pulled together which went to either LiCo or -- sorry,
9 the Licence Company Executive or the Dwr Cymru board.

10 Q. But you knew that Ofwat was saying it was going to use
11 the stand-alone costs measure for excessive pricing. Is
12 that something that would have been discussed at the
13 time in Welsh Water?

14 A. I don't think it would have been discussed at the board.

15 Q. Was it discussed on those who were producing a paper for
16 the board?

17 A. On the basis that it's in this document here, it would
18 have been discussed with Dave Holton's team,
19 Jackie Boarer and myself and Paul Henderson.

20 Q. Can you help us in relation to any of those discussions?

21 A. In what respect?

22 Q. Well, given that that was the test Ofwat had made clear
23 it was planning to use, how was it that Welsh Water
24 decided that average costs rather than local costs was
25 an appropriate test?

1 A. I think -- yes, average costs were never -- I can't
2 remember discussing average costs against local costs.
3 Average costs was the way we charged. It's the way we
4 had calculated the Large Industrial Tariff and therefore
5 it seemed appropriate to use it for common carriage.

6 Q. So you are saying there wasn't any discussion at that
7 point?

8 A. I didn't say there wasn't any discussion. I can't
9 remember any discussion.

10 Q. Albion's common carriage application was received --

11 THE CHAIRMAN: Are you moving on to a different --

12 MR COOK: Yes, I am.

13 THE CHAIRMAN: Yes. When you saw those three options in
14 MD163, you say said a moment ago you interpreted the
15 reference to assets there as being a reference to the
16 whole network rather than to the specific particular
17 assets that the common carriage applicant wanted to use?

18 A. Yes.

19 THE CHAIRMAN: That interpretation of MD163, was that
20 something that you came up with yourself or did you
21 discuss that with Jackie Boarer, "Well, goodness it says
22 this. What do we think it means by 'assets'?" How did
23 you come to that interpretation of it in discussion with
24 whom, if anybody?

25 A. I can't remember discussing that particular point at the

1 time. But I think we would have checked regional
2 average charging with the three to see whether it was
3 consistent but I can't remember having discussions at
4 the time.

5 Q. To see whether it was consistent, to see whether there
6 was something in that which expressly ruled it out?

7 A. Just to see whether it was compliant. If we thought
8 that the approach we were taking was compliant with
9 their principles. But I can't remember a conversation
10 happening at the time.

11 THE CHAIRMAN: There was quite a big decision, wasn't it?
12 That you can't remember.

13 MR COWEN: Maybe I can just ask one further point. In the
14 three cost alternatives or things that have been
15 discussed, above that section there is then a statement
16 by Ofwat saying that it will consider the effect on
17 competition, in particular with relation to -- or words
18 to that effect.

19 A. Yes.

20 MR COWEN: Did that have any bearing in your mind?

21 A. I can't recall any conversations about that.

22 THE CHAIRMAN: Just one question. The letter from
23 Dr Brooker to Ian Byatt in response to MD154 you were
24 taken to, that seems to be adopting a stance at that
25 time against average pricing, if I can put it like that.

1 Were you involved in doing any calculations for
2 anybody that might have informed how Dwr Cymru were
3 going to respond to that consultation? Did anyone ask
4 you: are you aware of anyone in the team being asked to
5 say, "Can you crunch these various different scenario
6 numbers for us so that we can work out how Dwr Cymru
7 should respond to this consultation"?

8 A. Not at the time. I think that consultation was done
9 towards the end of 1999, which is when I was involved in
10 the periodic review. So I wasn't involved with the team
11 at that time, sorry.

12 THE CHAIRMAN: Are you aware that there was any number
13 crunching that took place before Dr Brooker wrote that
14 letter?

15 A. No, I'm not aware of this.

16 THE CHAIRMAN: You were not aware of it?

17 MR LANDERS: Can I just ask a question as well. You said
18 that you asked yourself, "Is our current method
19 compliant with these tests?" Did you ask yourself
20 whether the current method would stand up to a test of
21 the stand-alone cost variety that Ofwat were going to
22 use for excessive pricing?

23 A. At the time that this work was going on, all of the
24 conversations in the industry and at Ofwat were with
25 regard to potable water. A lot of concerns and the main

1 focus of the water industry was around the quality of
2 water and liability for the quality of water to the
3 ultimate customer, which in a network would not
4 necessarily be the same water that was input. So around
5 that time the main focus was on potable water and
6 therefore we didn't do any analysis of estimating where
7 people could access the network to supply the potable
8 water to do that calculation. I think one of the
9 problems with de-averaging is not just the lot of
10 income, which is recoverable through the price review
11 process. One of our main concerns would have been the
12 incident effect to other customers. You have got the
13 universal service obligation. If you de-average the
14 tariff, the end result, if you unwound it the whole way,
15 is that some customers would get exactly the same
16 product as they were getting before but at significantly
17 higher prices. Alternatively other customers would get
18 a lot lower. So it was more of a social impact around
19 the de-averaging concern that we had.

20 MR COOK: You said the concern was not just loss of income.

21 You then said, I think, which you would get back through
22 the tariff process. It's right to say, isn't it, that
23 in 1999, Ofwat decided that supplies for large customers
24 would be outside the tariff basket.

25 A. I think that's correct but it's not the tariff basket

1 that matters in a price review process. The way a price
2 review works is on the one side of the equation you have
3 the costs of financing the functions of the company. On
4 the other side of the equation is the revenue, which is
5 made up of tariff basket and non-tariff basket items and
6 the K factor is the difference between the two.

7 So if at the end of a period there was significant
8 reduction in the amount of income from a class of
9 customer or because an industrial customer has ceased to
10 take a large volume of water, then that would be
11 rebalanced through K at the end of the period. So in
12 terms of worrying about the loss of income, it would not
13 be a permanent loss of income.

14 Q. But for at least a five-year period?

15 A. On average it would be a two and a half year period, but
16 up to five years.

17 Q. You became involved in -- well, sorry, go back. You
18 were involved in the discussions in relation to the
19 network access code that Welsh Water produced. Were you
20 aware of the importance of the issue for Welsh Water at
21 the time in terms of the financial effects that were
22 potentially arising from common carriage?

23 A. I was aware -- are you talking about the LCE paper?

24 Q. No, I will take you to the document. I was asking if you
25 were aware. We can go to it. It's tab 52 in bundle 3.

1 This was a document prepared for the board by Mr Holton
2 in, we believe, April 2000 and what this document does
3 is sets out to the board what competition in water means
4 in practice. Do you see that in the heading and title?
5 And simplistically on the front page it sets out that
6 23.4 million, though confusingly the detailed table says
7 23.8 million, but that 23 plus million of revenue was
8 therefore at threat, at risk from competition. Were you
9 aware of those kind of figures at the time?

10 A. The paper says:

11 "Came into force on 1 March."

12 So I assume that was.

13 Q. It is in April 2000.

14 A. April 2000. I would have been involved with this. So
15 I would have been aware that this was the total amount
16 of income but, as the paper says, it wouldn't all have
17 been at risk. We would still have -- if you had common
18 carriage, we would still have assets that we would be
19 earning a return on.

20 Q. You were actually involved in drafting this paper?

21 A. I probably was. I can't remember exactly but I would
22 imagine I would have at least seen sight of it.

23 Q. When did you first become aware of Albion?

24 A. It would have probably been almost from the outset of
25 the Shotton Paper discussions. So it would have been

- 1 mid/late 1990s.
- 2 Q. So effectively you were aware of Albion throughout?
- 3 A. Yes.
- 4 Q. How did you become aware of Albion?
- 5 A. It would either have been a team meeting or discussions
6 with Dennis Taylor.
- 7 Q. And presumably Albion's arrival into the market was
8 a significant event for Welsh Water. It was the first
9 time there had been an actual competitor.
- 10 A. I think the significant event was probably 93/94, rather
11 than the Albion entering, where the 250 megalitre bulk
12 supply threshold was introduced and that caused us to
13 introduce the Large Industrial Tariff. I believe that's
14 a more significant event.
- 15 Q. So 93/94 created the potential for competition through
16 the inset appointment regime but then Albion was the
17 first person at an advantage of that?
- 18 A. Yes, I think so.
- 19 Q. So that was the first time competition became real?
- 20 A. It was the first time, yes, I believe.
- 21 Q. And you were presumably aware that Albion had managed to
22 take away Welsh Water's second largest customer?
- 23 A. At the time of this, yes, I was.
- 24 Q. So when did you become aware of that?
- 25 A. I was aware of the discussions with Shotton Paper all

1 the way through the 1990s and I was aware of the final
2 decision. So I was aware of it in real time.

3 Q. Was that something that Welsh Water looked on with
4 equanimity?

5 A. What does equanimity mean?

6 Q. I apologise.

7 A. Too many syllables.

8 Q. Was Welsh Water happy about the fact that that was
9 taking place?

10 A. I think Welsh Water would have preferred to keep the
11 customer.

12 Q. Is that putting it too softly? Was Welsh Water upset
13 that somebody was coming in and taking one of its
14 largest customers?

15 A. I'm not sure I would use the word "upset" but I think we
16 strenuously tried to keep the customer. I think we saw
17 it as an important customer to keep, that we shall be
18 seen to be the supplier of choice, I think that was the
19 way.

20 Q. And when you started being involved in Albion's access
21 applications, presumably you were aware of the extent of
22 the margin that Albion was making on its existing supply
23 to Shotton Paper?

24 A. No, I was not aware of that.

25 Q. Well, you knew that Welsh Water presumably had matched

- 1 the "minded to" price.
- 2 A. Yes, I was aware of that, yes.
- 3 Q. So compared to the competing price that Welsh Water was
4 offering, there was no margin for Albion. You knew
5 that?
- 6 A. We were never aware of the commercial arrangements with
7 Shotton Paper and Albion Water.
- 8 Q. But if Albion was trying to beat the price that you were
9 offering, in the end there would be no margins.
- 10 A. Unless they were selling different services.
- 11 Q. Were you aware of the level of profitability that
12 Welsh Water was achieving on the Ashgrove System?
- 13 A. No, I was not.
- 14 Q. What about Corus? Were you familiar with the supply to
15 Corus?
- 16 A. Only through the Albion Water. I was not -- if you mean
17 Corus in Shotton?
- 18 Q. Well, Corus Shotton, yes?
- 19 A. No, I was not.
- 20 Q. But you were familiar with the fact that Corus Shotton
21 was being charged at 14p during much of that period?
- 22 A. I was aware of it later on. I don't think I was aware
23 of it at that time.
- 24 Q. Later on meaning -- what time did you become aware of
25 that?

1 A. During that process I was aware that there was an issue
2 with Shotton Corus. I had extensive dealings with Corus
3 in South Wales but not in North Wales.

4 THE CHAIRMAN: But roughly when. 2000 or --

5 A. In 2000, yes.

6 THE CHAIRMAN: In 2000.

7 A. In 2000.

8 MR COOK: No one suggested to you that Corus was
9 a loss-making contract for Welsh Water, did they?

10 A. No.

11 Q. So you knew the kind of level that Welsh Water obviously
12 thought was profitable for that supply?

13 A. At what time?

14 Q. You knew at 14p -- nobody suggested that was
15 loss-making, so you therefore knew that that presumably
16 was a viable price for Welsh Water?

17 A. The 14p, if I remember rightly, was an agreement we had
18 with Shotton dating back and therefore it was an amount
19 of income we got from them. I don't think we ever took
20 a view of the profitability of the supply. It was
21 something that we would not have done.

22 Q. That agreement ended in 1996, didn't it?

23 A. It did. As far as I'm aware it did, yes, and we then
24 spent several years trying to negotiate a new agreement
25 with them.

1 Q. During which time it carried on paying the same price?

2 A. As far as I'm aware, yes.

3 Q. And no one was suggesting that was a loss-making price?

4 A. We didn't know. Sorry, I didn't know whether it was
5 loss-making or not.

6 THE CHAIRMAN: Were you involved in the negotiations with
7 Corus?

8 A. Not in Shotton, no.

9 MR COOK: I was coming to a new topic. I don't know if
10 that's a convenient moment?

11 THE CHAIRMAN: How long will your next topic be?

12 MR COOK: We are moving into costs. So it's certainly not
13 short.

14 THE CHAIRMAN: Yes, all right, we will finish for the
15 evening then.

16 What time should we start tomorrow? It will be
17 10.30 if it's likely to be Mr Edwards in the witness box
18 all day, I'm afraid.

19 MR COOK: Madam, that's right.

20 MR BEARD: Just one issue in relation to timing more
21 generally. I communicated with the referendaires at
22 lunchtime in relation to the Tribunal's proposal that
23 the closing be 5 and 6 November and we can confirm that
24 that will work for our side. We understand it works for
25 Albion.

1 THE CHAIRMAN: Yes, well, we will direct that that is what
2 happens then.

3 Very well. Now, Mr Edwards, you are in the middle
4 of giving your evidence and that means that overnight
5 and in which breaks that we have during the course of
6 your evidence, you mustn't discuss what you are saying
7 or anything about the case with anybody, and
8 particularly not with any members of your legal team or
9 your colleagues at Welsh Water.

10 A. Thank you.

11 THE CHAIRMAN: We will come back at 10.30 tomorrow, thank
12 you.

13 (4.28 pm)

14 (The court adjourned until 10.30 am the following day)

15 I N D E X

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