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6 **IN THE COMPETITION**

Case No. : 1298/5/7/18

7 APPEAL TRIBUNAL  
8 Victoria House,  
9 Bloomsbury Place,  
10 London WC1A 2EB

11 21 February 2019

12  
13 Before:

14 **Andrew Lenon QC, Jane Burgess, Michael Cutting**

15 (Sitting as a Tribunal in England and Wales)

16 **BETWEEN:**

17 **Achilles Information Limited**

18 **v**

19 **Network Rail Infrastructure Limited**

20  
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28 **HEARING – Day 2 – Open Court**  
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**APPEARANCES**

Mr Philip Woolfe and Mr Stefan Kuppen (appeared on behalf of Achilles)

Mr James Flynn QC, Mr David Went (appeared on behalf of Network Rail)

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Thursday, 21 February 2019

(10.30 am)

MR. FLYNN: Good morning, sir.

Last night I gave my learned friend Mr. Woolfe a list of documents in the I bundle to which I might wish to take the witness, and he has indicated that he would prefer that that be held in closed session. I do not know if you are content with that. There is no one from Network Rail or RSSB in the room. If you wish to hear further, Mr. Woolfe may need to address you.

THE CHAIRMAN: Are you suggesting that we should go into closed session now?

MR. FLYNN: Well, I am not going to object to it if that is Mr. Woolfe's desire and the Tribunal is content with it.

MR. WOOLFE: Sir, if I could just explain. There are a number of documents in the I bundle. I think the issue is, in a sense, we say confidentiality, we really mean competitive sensitivity, that is the reason behind the confidentiality, and that is a matter of degree. I understand that at least one of the documents that is going to be referred to is in bundle -- well, perhaps I should not say for the witness -- is a fairly recent and highly competitive matter which we would want to be held in closed session.

Given that, going through in detail and working out

1           the precise degree of competitive sensitivity of  
2           the other elements seems perhaps a little  
3           disproportionate. That is our position, sir.

4       MR. FLYNN: Perhaps I should say my preference would  
5           obviously be to be able to discuss the document with  
6           the witness without unnecessary allusions and for  
7           the matters to appear somewhere on a transcript.

8       THE CHAIRMAN: Yes.

9       MR. FLYNN: In due course, the Tribunal may wish to refer to  
10          some of this evidence in a judgment, and at that point  
11          presumably it will be for any party claiming  
12          confidentiality to justify that to you in the normal  
13          way.

14       THE CHAIRMAN: Yes.

15       MR. FLYNN: But I think the regime was really adopted as  
16          a convenience not to delay the production and  
17          examination of documents on the timetable we have had  
18          and nobody on either side is saying that every document  
19          in the confidential bundle is one for which  
20          a confidentiality claim could properly be made out, but  
21          some of them may be.

22       THE CHAIRMAN: In the same spirit, the Tribunal would not  
23          normally be disposed to --

24       MR. FLYNN: No.

25       THE CHAIRMAN: -- hold the hearing in a closed session --

1 MR. FLYNN: No.

2 THE CHAIRMAN: -- but, equally, we do not want to take up  
3 time considering whether or not the relevant documents  
4 are sufficiently confidential. On that basis we will go  
5 into closed session.

6 MR. FLYNN: Thank you, sir. As I say, there is no one from  
7 our side, as it were, but I do believe there are  
8 reporters in the room.

9 (10.35 am)

10 (Hearing continued in closed session)

11 (11.06 am)

12 (Pause)

13 MS. KATIE FERRIER (continued)

14 Cross-examination by MR. FLYNN (continued)

15 MR. FLYNN: Can we go back to a document we were looking at  
16 yesterday which is in E5, tab 7. These are the exhibits  
17 to Ms. Scott's second witness statement, and within  
18 those, starting I think at page 13 of the tab, we will  
19 see the agreement between Achilles Information Limited  
20 and Network Rail, under which you provided the services  
21 I think on the concessionaire model.

22 A. Yes.

23 Q. Really just a couple of points on that agreement.

24 Firstly, if you go to page 26 within the exhibits you  
25 see a schedule to the agreement which is called

1 the "Service Schedule, Link-Up Subscription":

2 "Link-Up is a supplier qualification and  
3 registration scheme administered by Achilles ... on  
4 behalf of the rail industry in Britain. It incorporates  
5 Link-Up audits, which apply to products/services that  
6 are considered to be critical to safety and forms an  
7 additional stage in the qualification process."

8 Paragraph 1 in the Service Schedule. It is about  
9 Link-Up audits applying to products and services that  
10 are considered to be critical to safety?

11 A. Yes. Some of the services and products that are  
12 provided by our customers at the time were  
13 safety-critical.

14 Q. "At the time"? Well, you mean --

15 A. Well, they're not our customers, I mean -- yes --

16 Q. -- they are not your customers unless you have managed  
17 to sign them up on some other basis. Yes.

18 Then it says:

19 "The scheme was developed to support the supplier  
20 selection process but its features of regular updates,  
21 widely distributed information, customisable alerts to  
22 changes and Link-Up audits, facilitate the ongoing  
23 process of supplier management and monitoring. In  
24 addition to supporting procurement activity,  
25 the information is valuable to many disciplines within

1 an organisation and is used regularly by other functions  
2 such as, engineering, safety and quality."

3 That is what it is there for. It goes on to say:

4 "Initially targeted at the top of the rail industry  
5 supply chain, the scheme now serves many levels, across  
6 a diverse range of product and service categories.  
7 The complex nature of the industry also results in  
8 organisations operating at a number of different levels  
9 within the same supply chain."

10 Would you agree, that is a fair description of,  
11 shall we say, the community within this scheme?

12 A. Yes, that's correct.

13 Q. So as it moves down the chain, possibly, safety may be  
14 less important, but where it is important, it is  
15 critically important; is that not right?

16 A. Absolutely, the services that the suppliers often supply  
17 are absolutely safety-critical, that's correct.

18 Q. The assurance services that are necessary in that  
19 connection will be, as it were, calibrated according to  
20 the safety risk the services -- or products, we are less  
21 concerned with, but the services are -- engender?

22 A. Sorry, I don't understand your question.

23 Q. Sorry, it is basically a point that I think has already  
24 been made: the higher the risk, the safety risk,  
25 the deeper, the more thoroughgoing the assurance that is

1           needed?

2           A. Absolutely, so the assurance is based -- the way that we  
3           based it was on the product codes and the services and  
4           products that someone supplied to the industry, whether  
5           they just did a basic registration or whether they had  
6           a -- an audit of the management systems, processes, etc.

7           Q. Can we go back in there to page 16 and look at clause 4  
8           of the agreement, "Ownership rights and permitted use".  
9           You see there clause 4.1, basically the intellectual  
10          property and documents and everything related to --  
11          I mean, I am summarising but you tell me if it is  
12          unfair -- the systems used for the purposes of  
13          the agreement and the service schedule remain vested in  
14          and be the absolute property of Achilles. So Achilles,  
15          as it were, keeps control of the intellectual property  
16          and the system capability that it develops?

17          A. Yes, that's correct.

18          Q. In clause 4.2 it grants the customer:

19                 "... a non-exclusive non-transferable, limited right  
20                 to use the System(s) and the Documentation ..."

21                 And allows the customer to keep one copy for record  
22                 purposes at the end of the term.

23          A. That's correct.

24          Q. Then there is a licence to use it, use the data:

25                 "... the Supplier Data for the purposes of its

1 supplier management ..."

2 And so forth. As long as it is not, after the end  
3 of the term, able to continue to access the systems. So  
4 once the agreement is over, if the customer has still  
5 got the data, it can make use of it, but it cannot, as  
6 it were, go back into the system as currently operated.

7 A. That's correct.

8 Q. Under clause 4.4:

9 "The Customer may use the System(s)  
10 and Documentation ... for processing its own data for  
11 its own internal procurement and supplier risk  
12 management purposes only. The Customer shall not (other  
13 than in accordance with the Agreement) use or attempt to  
14 use the System(s) and Documentation or any ... output of  
15 the System(s) (including the Supplier Data), nor permit  
16 any third party to do so, or to provide data  
17 processing ..."

18 And so forth.

19 In other words, the use to which the customer can  
20 use the data are limited and it cannot allow third  
21 parties to make use of it either.

22 A. That's certainly the case in the 2013 agreement.

23 Q. Those terms are amplified in the licence schedule, which  
24 is on page 24 within that exhibit. The customer in 1.1,  
25 for example, under the heading, "Permitted Use":

1           "The Customer shall not (other than in accordance  
2 with the Agreement) use or attempt to use the System(s)  
3 and Documentation or any of the output of the System(s),  
4 nor permit any third party to do so, or to provide  
5 a data processing ..."

6           And so forth. Probably a repeat of what we have  
7 already seen but it expresses the importance of that  
8 limitation on use of the data and the output of  
9 the systems.

10       A. Yes, that was certainly the case in 2013.

11       Q. Can we have a quick look at your witness statements now,  
12 Ms. Ferrier, in bundle B. Your third witness statement  
13 is in tab 5. Paragraph 36 of that. In the last  
14 paragraph you say:

15           "In the event that TransQ was recognised as an  
16 equivalent scheme accepted by Network Rail in its  
17 capacity as manager of the infrastructure, Achilles  
18 could and would provide Network Rail with all  
19 the relevant information on its suppliers required by  
20 Network Rail in that capacity free of charge  
21 irrespective of whether Network Rail also chose to  
22 subscribe as a buyer to TranQ."

23           In your second witness statement, which is in tab 2  
24 at paragraph 125, you pick up Network Rail for saying  
25 that there are costs savings by way of reduced

1 registration costs when there is a single supplier  
2 assurance scheme. They obviously have RISQS in mind.  
3 But you say:

4 "However, it was decided that Network Rail would not  
5 be charged to subscribe to TransQ if it was offered as  
6 an alternative to the RISQS scheme for at least  
7 the first two years."

8 A. Correct.

9 Q. So is it two years, or is it three, or ...?

10 A. So I think there's two distinctions here. The first is  
11 Network Rail and its capacity as the infrastructure  
12 provider where we believe, for them to -- to do that,  
13 and enable them visibility of the information on  
14 the various schemes that we would like to offer, they  
15 would need access to that information.

16 The second is Network Rail as buyer, which is  
17 distinctly different. If they wanted access to TransQ  
18 to use it for their procurement services and other --  
19 other means, then there is a separate area that that  
20 needs to be considered rather than specifically as  
21 the infrastructure owner.

22 So I think there's the two distinctions there.

23 Q. We have discussed, today and yesterday, many of  
24 the advantages for buyers of being in a community of  
25 the Achilles model, or the RISQS model. The suggestion

1           that Network Rail does not have to subscribe to TransQ  
2           and become a contracting party, even if it is free, is  
3           implausible, is it not? I mean, how can Network Rail  
4           guarantee any of those benefits to it if it was not, as  
5           it were, a subscribing member of TransQ?

6           A. So it's different whether they're paying or whether  
7           they're a contractual party, I think. But actually, in  
8           terms of Network Rail in their capacity of  
9           the infrastructure manager I think they have to have  
10          access to that data, we have to provide that data is  
11          freely accessible because it will enable them to run  
12          the scheme. So I think that's the point I'm trying to  
13          make here.

14          Q. You have to make it available for free because you are  
15          obliged to by law, or ...?

16          A. To enable the successful running of the -- of the system  
17          as a whole. And I think that goes to the point of  
18          making sure we think through in terms of how this -- how  
19          this could work in practicality terms.

20          Q. That is a sort of thought, a work in progress, is it,  
21          how that could work in practical terms?

22          A. I don't think it's something we could determine on our  
23          own, I think it's something that would have to be  
24          determined, because obviously it -- it would be  
25          a Network Rail requirement and standard, so this is

1 an -- initial thoughts of us of how it could practically  
2 work.

3 Q. Thank you.

4 Could we look at bundle H30/8063. You may be able  
5 to tell me what this email is, but, at the top, it is  
6 from Achilles, TransQGlobal@achilles to  
7 Melissa Quarterman. I think Melissa Quarterman is an  
8 Achilles person; is that correct?

9 A. Yes, she is.

10 Q. So this is in the nature of a test email or a prototype,  
11 or --

12 A. Yes.

13 Q. -- was she just on a distribution list for an email that  
14 was sent out?

15 A. I'm guessing it's as a test, to make sure it --

16 Q. It's a test? In it, Achilles says that it has some  
17 exciting news to share with Melissa. And looking at  
18 the first paragraph:

19 "Building on Achilles' twenty year experience in  
20 the Rail industry ... working with Buyers ..."

21 With names to be pronounced in the usual way:

22 "... in the Nordics, we're delighted to let you know  
23 we are launching a new community specifically created  
24 for the transport industry, TransQ Global. This new  
25 supplier assurance and pre-qualification scheme will

1 bring together buyers and suppliers from across  
2 the transport sector to meet the evolving assurance and  
3 corporate social responsibility needs and create  
4 a multi-modal approach to global opportunities and  
5 supply chain management."

6 So that is the announcement that is being made, and  
7 TransQ Global is then discussed and its virtues set out.

8 Then under the heading, "Achilles' relationship to  
9 the rail industry", it is said:

10 "Achilles withdrew from the RSSB tender process  
11 in 2017 as we felt the proposed approach did not meet  
12 the evolving needs of the rail industry."

13 Now, I think you described yesterday why you thought  
14 that splitting the tender between the two lots was  
15 basically a bad idea and you had not had your concerns  
16 on that resolved at any point. Is that what is meant  
17 there --

18 A. It is, it's also --

19 Q. -- "proposed approach did not meet the evolving needs of  
20 the rail industry"?

21 A. It is, and it's also a reference to the global nature,  
22 which is why we talk about some of the -- our other  
23 global buyers in other TransQ schemes in areas such as  
24 the Nordics, Spain, etc, so we felt we -- we have a more  
25 compelling offering for those global

1 organisations.

2 Q. Is that a compelling offering for Network Rail?

3 A. I think it would be a compelling offer for Network Rail.

4 It would have to be slightly different to what we offer

5 some of our buyers in the Nordics, etc, but that's

6 the approach that we're taking in terms of tailored, but

7 with the ability to benchmark and look globally as well.

8 Q. Whereas it says:

9 "We are delighted that this has enabled us to focus

10 on a more comprehensive transport offering that caters

11 for rail, road, logistics, air and maritime, pre and

12 post qualification assurance - TransQ Global."

13 A. Yes.

14 Q. Again, this is a multi-modal international-focused

15 scheme?

16 A. Absolutely, and what we're doing over the course of

17 the next 18 months within the business is moving all of

18 our -- and Mark Chamberlain, who is one of

19 the witnesses, will talk later -- moving all of our

20 current platforms to a single platform to enable that

21 sharing of information. So yes, this was the initial

22 thoughts there.

23 Q. Whereas Network Rail would say, and has said, that its

24 evaluation and the rail industry's evaluation of its

25 evolving needs were set out in the RISQS scheme and

1 the tender for the new services. Reasonable people can  
2 possibly disagree about that, but ...?

3 A. I think the RSSB set out its requirements. I think  
4 we -- we could have met them, but in a different  
5 structure, in a different management structure. It  
6 wasn't the requirements in terms of the deliverables  
7 that were being met, it was the structure that they were  
8 offering.

9 Q. Is this not essentially a scheme, if it is of  
10 attraction, is of attraction to international and  
11 multi-modal businesses rather than, as it were,  
12 parochially-based network infrastructure managers?

13 A. I think it's of benefit to both, actually, because  
14 the module approach that we take in terms of you can  
15 answer questions specific to a country, specific to an  
16 industry, specific to a location, it enables  
17 the building blocks which we haven't previously been  
18 able to -- to offer the industry.

19 MR. FLYNN: Thank you, Ms. Ferrier.

20 MR. WOOLFE: It occurs to me actually this might be  
21 a convenient moment for the shorthand writers' break, we  
22 are about halfway into the morning.

23 THE CHAIRMAN: We can break now.

24 MR. WOOLFE: It might make things slightly more efficient.

25 (11.27 am)

1 (A short break)

2 (11.41 am)

3 Re-examination by MR. WOOLFE

4 MR. WOOLFE: Thank you, Ms. Ferrier. You were asked some  
5 questions yesterday about the UVDB scheme in relation  
6 to -- this is in your third witness statement, so that  
7 is bundle B/5, and you were asked some questions in  
8 relation to paragraphs 5 and 7 of that statement.  
9 I just thought it might be helpful just to clarify a few  
10 points.

11 First of all, in the utilities sector, National  
12 Grid, is there any form of industry-wide scheme for  
13 access to the infrastructure like Sentinel?

14 A. Not that I'm aware of.

15 Q. Can you just explain for the Tribunal the distinction  
16 between UVDB and Verify?

17 A. So UVDB is effectively the database, the initial  
18 registration that suppliers go on and complete  
19 a questionnaire. Verify is the audit offering.

20 Q. So I understand, when it says, "Achilles delivers audits  
21 on behalf of UVDB under the brand name Verify" -- and  
22 I think you said yesterday that you provide Verify  
23 audits to National Grid; is that right?

24 A. I think so, yes. I don't know how many we've provided  
25 recently, but yes.

1 Q. Is it the case that National Grid requires people to be  
2 verified by Verify in order to have access to its  
3 infrastructure to provide services to other people?

4 A. No, that's not correct.

5 Q. Then at paragraph 7 it is said that:

6 "Achilles holds contracts directly with the relevant  
7 buyers."

8 I think it was explained yesterday, it was  
9 clarified, that you were drawing a comparison between  
10 between UVDB as it stands today --

11 A. Mm-hm.

12 Q. -- and RISQS as it was when Achilles operates it.

13 So I think you were saying that under UVDB, Achilles  
14 contracts directly with the relevant buyers.

15 Under the concession model that Achilles was  
16 operating under, did it or did it not hold contracts  
17 with the buyers under the old scheme?

18 A. We did hold contracts with the buyers, but the overall  
19 scheme contract was with the RSSB.

20 Q. Right, so you had a concession contract with the RSSB --

21 A. Correct.

22 Q. -- and you contracted with the relevant buyers.

23 Now, as you understand it, with RISQS, who holds  
24 the contracts with the buyers?

25 A. So --

- 1 Q. Actually, you might be the wrong person to ask this.
- 2 A. Okay. I believe that it's the RSSB.
- 3 Q. Thank you.
- 4 Then if I could take you to the diagram in your  
5 second witness statement, which you were asked a number  
6 of questions about. So this is in bundle B/2/37.  
7 I just want to perhaps clarify a few things. You will  
8 see there is a triangle of orange boxes at the top, and  
9 it's the narrow box, which is at the bottom of the  
10 orange triangle, it says:  
11 "Sentinel Personnel Register - Mitie."  
12 What is the Sentinel Personnel Register?
- 13 A. So, Sentinel Personnel Register is a register of  
14 individuals that are competent -- classed as competent  
15 to access the Network Rail managed infrastructure.
- 16 Q. Who operates that?
- 17 A. So it is operated by Mitie but on behalf of  
18 Network Rail.
- 19 Q. That is the register of Sentinel personnel.  
20 Who keeps track of who is registered as a Sentinel  
21 sponsor?
- 22 A. So it is -- the Sentinel sponsor, the information is  
23 submitted to Mitie from RISQS, I believe, now.
- 24 Q. Right. All the personnel in the register have to have  
25 associated with them --

- 1 A. With a sponsor.
- 2 Q. -- a sponsor, thank you.
- 3 Who does the Sentinel sponsor auditing?
- 4 A. The Sentinel sponsor auditing currently I believe is
- 5 done by Capita.
- 6 Q. Under the RISQS?
- 7 A. Under the RISQS.
- 8 Q. Finally, who audits the provision of training?
- 9 A. Network Rail, I believe.
- 10 Q. Could I take you to the equivalent diagram which I think
- 11 you were shown that Ms. Scott exhibits to her statement.
- 12 So that is in bundle E5/7/1959.
- 13 A. Sorry, what did you say?
- 14 Q. Sorry, bundle E5/7/1959. Thank you.
- 15 Just to clarify, until when did you work at
- 16 Network Rail? I cannot remember off the top of my head.
- 17 A. 2017, the beginning. So I started work on
- 18 6 January 2017.
- 19 Q. You were line manager of Gillian Scott?
- 20 A. Not until that point.
- 21 Q. Okay.
- 22 A. Before that, I was -- so up until ... gosh, you're
- 23 testing me now. Yes, I managed Gillian Scott at one
- 24 point but I was a programme manager after that.
- 25 Q. Was this diagram something you were familiar with at

1           your time at Network Rail?

2           A. I don't remember it, but yes, I get this has -- this has  
3           been used before.

4           Q. Okay, so you can answer some questions about it.

5                     It says, top, "Trackside" and "Non-Trackside" and  
6           then runs down the page. Reading further over we have  
7           a column saying "When Required" --

8           A. Mm-hm.

9           Q. -- a column saying "Process Governed by", "Process  
10          Assured" and "Ongoing Assurance", and so forth.

11                    Can you just explain, help me, what is  
12          the difference between "Process Governed by" and  
13          "Process Assured"?

14          A. So I'm guessing it's the governance of the standards  
15          that apply to that and who owns those.

16          Q. Right.

17                    So the "Process Governed by" would be who owns  
18          the standard?

19          A. Exactly.

20          Q. And the "Process Assured by" is --

21          A. It's who is actually physically doing the assurance.

22          Q. If I could take you to the box under the column that  
23          says "Process Assured", and it is the third box down,  
24          saying "MGT Systems - RISQS Auditor", what would MGT be  
25          there?

1       A. So that would be the management system. So that's  
2       summarising the fact that the audit -- management  
3       systems are audited by the RISQS auditor, and then  
4       consequently, underneath that, verified by Network Rail  
5       on site.

6       Q. Question about that. What is the distinction between  
7       those two bits, the management systems being assured by  
8       the RISQS auditor and -- it says "verified on site".  
9       What was it that would be verified on site by  
10      Network Rail?

11      A. So I think the management systems audit is checking that  
12      the management systems are in place, that they are what  
13      you would expect them to be, that you have the processes  
14      aligned to those management systems. But actually,  
15      the verification on site is where -- where  
16      a Network Rail auditor would look on site, are those  
17      systems processes actually being implemented and adhered  
18      to on site.

19      Q. Just because there is a potential lack of clarity -- in  
20      my mind anyway -- about "on site", does "on site" mean  
21      (inaudible) either the supplier's offices or actually on  
22      the infrastructure? Which of those would this "verified  
23      on site" be referring to?

24      A. At the -- on the infrastructure.

25      Q. The management systems audit that is carried out by

1 the RISQS auditor, where would that be carried out?

2 A. It's generally in the offices, but --

3 Q. In whose offices?

4 A. In -- in the supplier's office.

5 Q. So it's not in the RISQS offices, they go to  
6 the supplier's offices --

7 A. Correct, yes.

8 Q. -- but they do not go to the site?

9 A. It could be. So sometimes the Portakabin is an office  
10 on site, but predominantly you're going and you meet  
11 the quality management representative of that  
12 organisation and you go through that with through those  
13 people.

14 Q. You can close that tab now, thank you.

15 Can I take you back to your second witness  
16 statement -- again, a point you were asked about  
17 yesterday. This is bundle B/2 at paragraph 91. You say  
18 there:

19 "Network Rail says that a single provider scheme  
20 enables it to monitor, check and act on safety issues  
21 ... in a timely, efficient and effective manner."

22 You go on to say:

23 "There was no reason why more than one competent  
24 provider of assurance would compromise this ability."

25 You were asked about that, and you said yesterday --

1 I am just going to repeat back to you my note of what  
2 you said:

3 "The technology exists now to allow this to be done  
4 in a timely and efficient manner ..."

5 You say:

6 "... so long as processes and procedures can be put  
7 in place."

8 What processes and procedures did you have in mind  
9 when you said that?

10 A. So it's -- it's clarity in terms of what should be sent  
11 to whom and how it is communicated.

12 Q. What should be sent. What kinds of things are being  
13 sent?

14 A. So should an audit fail, basically. So if you fail an  
15 audit, how do you communicate that, how quickly do you  
16 communicate that, what are the methods and channels?  
17 And for me, something like that needs to be laid out  
18 very clearly in terms of process.

19 Q. So that you have a documented process --

20 A. Correct.

21 Q. -- to lay out who should --

22 A. Who should receive, what -- the standard format of what  
23 they should receive it in, so it's -- it's clear to all  
24 parties.

25 Q. Then I think you were -- yes, you were. You were also

1           asked some questions yesterday about the reasons why  
2           Achilles withdrew from the tender process and about the  
3           concerns regarding the interface with an IT provider,  
4           presumably an audit provider.

5           If I could take you to a document in bundle  
6           H15/4432.

7           A. Sorry 44 ...?

8           Q. 4432. Can I just ask you to note what is at the top of  
9           that page:

10           "Negotiations meeting notes for lot 2 audit service  
11           with Achilles."

12           Now, I note that you are not listed in the meeting  
13           attendance, so I have to put it on that basis, but you  
14           will see that there is a group of people from RSSB, then  
15           a group of people from Achilles, who are named.

16           Then, just on page 4435, at point 7, you were  
17           saying -- I just remind you of what you said yesterday.  
18           You said that splitting it between lot 2 and lot 1 could  
19           lead to some complexities. We asked practically how it  
20           was going to work."

21           Can I ask you to look at the bullet points under 7,  
22           and in particular the third one.

23           A. Mm-hm.

24           Q. I just want to check my understanding, because I think  
25           this is a minute that has been prepared by RSSB. I want

1 to check that my understanding is correct of how -- it  
2 talks about "interfaces", which I assume is auditing and  
3 data capture:

4 "We have seven stages to our process. We will need  
5 an input that notifies and identifies when a company is  
6 ready for an audit."

7 So at the moment, under the Achilles systems they  
8 operate, the IT system will pop up and say --

9 A. Correct.

10 Q. So it's Achilles' own IT systems says when it is ready  
11 for an audit?

12 A. Correct.

13 Q. "The audit tracking workflow system tracks each stage of  
14 the process."

15 The audit tracking workflow system, is that part  
16 of -- what is that?

17 A. So it's a workflow process that is in the system but  
18 also has processes outside the system to make sure it's  
19 working correctly as well.

20 Q. Okay. Thank you, that is all I wanted to ask about  
21 that. You can put that document away, thank you.

22 Then you were asked some questions this morning  
23 about documents in bundle I1.

24 And I can say, the document I am going to take her  
25 to is one document my learned friend took her to and we

1           are happy is not confidential, it is the pages.

2           A.   Sorry, which?

3           Q.   I am just going to give you a ... it is bundle I1.

4                     I think the relevant document starts at page 198.  
5           This was the "Sales Boot Camp", and the representation  
6           of the community model is on page 200. You were asked  
7           some questions about the second block of text down, set  
8           of bullet points, on the right-hand side:

9                     "Independence is key to driving consistent data  
10           structure, common standards, confidence in data  
11           integrity."

12                    What is your understanding of what is required to  
13           achieve consistent data structure?

14           A.   So, in terms of consistent data structure, it's an  
15           agreement of product codes.

16           Q.   Okay.

17                    As regards common standards, what is required to  
18           achieve common standards?

19           A.   So it's an agreement of how you are going to -- what  
20           questions you are going to ask, what standard you're  
21           going to apply if you're doing any further assurance.

22           Q.   Okay.

23                    In your third witness statement, which is at  
24           bundle B/5, you refer, at paragraphs 32 and 33, pages 80  
25           and 81 of the bundle, to industry standards in

1 the construction industry, I believe.

2 A. Yes.

3 Q. Called PAS 91. So there is a basic industry standard  
4 known as PAS 91. That is the sort of common industry  
5 standard. How was that achieved?

6 A. So I'm not sure how PAS 91 is achieved but what we have  
7 done is take a -- a collaborative approach with other  
8 providers similar to ourselves, and industry members in  
9 construction, to agree a common question set that meets  
10 the needs of PAS91. So suppliers are only asked those  
11 questions in the same way and only provide the answers  
12 once.

13 Q. Okay. Just to check, so different providers of  
14 assurance can use the same standard?

15 A. Correct.

16 Q. Thank you. Then earlier this morning you were also  
17 asked some questions about a strategy document from  
18 2015 -- you need not go to the document -- and in  
19 the course of answering questions you said -- talking  
20 about the value of the data that you collect, that it  
21 can be analysed across industries and it is important to  
22 do so, and you mentioned the data insights team.

23 You referred to benchmarking across communities.

24 What do you mean by benchmarking in that context?

25 A. So some of our buyers are in multiple communities,

1           they're in multiple sectors and they like to benchmark  
2           how their supply chain is performing across different  
3           communities. So --

4       Q. In what kind of respects (inaudible) benchmark?

5       A. In lots of different respects. I think the reports  
6           sometimes go to -- to over 100 pages. So whether the --  
7           the -- the supply chain is financially sound to their  
8           environmental statistics to whether they have a modern  
9           slavery statement is a particular thing they look at in  
10          the UK at the minute.

11       Q. Then you were taken this morning to the agreement  
12          from 2013. This is in volume E5/7/1973, I believe.

13       A. 19 ...?

14       Q. The agreement actually starts at page 1960. I am going  
15          to ask you some questions about the detail of this in  
16          a moment but in the course of asking you some questions  
17          about it, I think it refers on page 1973 to product  
18          services that are considered to be "critical to safety",  
19          very safety-critical.

20                Can you just explain what you understand  
21          by "safety-critical", or "critical to safety", just as  
22          well as you can?

23       A. I think there is a definition of it, actually, in  
24          the industry, but for me, it's safety-critical if it's  
25          some -- a product or service that is classed as

1 safety-critical, it's an activity or a service provided.

2 So it's -- it's the actual physical activity or service.

3 Q. So it's an adjective that relates to the physical thing  
4 that is being done?

5 A. Correct.

6 Q. But what does it mean to be safety-critical?

7 A. That you have a risk of injury or harm.

8 Q. That there is a risk of something going wrong and  
9 causing injury or harm, okay.

10 A. Correct.

11 Q. Mr. Flynn asked you a question this morning and he said  
12 that, perhaps as one moves down the supply chain things  
13 may become less safety-critical but where safety is  
14 important it is important.

15 And you said "yes".

16 There were sort of two propositions there, I just  
17 want to check what you were saying yes to. First  
18 question is, is it the case that things become less  
19 safety-critical as you move down the supply chain?

20 A. No, it depends on the activity that you're undertaking.

21 Q. But then his second question is, where safety is  
22 important it is important?

23 A. Absolutely.

24 Q. You agree with that, okay.

25 If I could take you, within this agreement, to

1 clause 4, which you were asked some questions about,  
2 which was back on page 1963 of the bundle. I think in  
3 clause 4.1 it is said that:

4 "All intellectual property rights and any process  
5 product coding ..."

6 Etc:

7 "... documentation will remain vested in and be  
8 the absolute property of Achilles."

9 What happened at the termination of the contract  
10 with the RSSB? What happened to Achilles' rights over  
11 the product coding and documents?

12 A. So my understanding is that we keep rights, we still use  
13 the product codes as they are. I think they formed some  
14 of the basis of the RICCL product codes as well.

15 Q. All right. The documents you developed, the  
16 audit protocols, you retained and did not allow the  
17 RSSB to use them --

18 A. No, so the audit protocols have effectively been used by  
19 the RSSB for their audit protocols going forward.

20 Q. Thank you.

21 Then finally -- this is the last thing I want to ask  
22 you about -- you were taken to the document in  
23 bundle H30, which is the test email, if you recall.  
24 This is at page 8063. This was about launching a new  
25 community for the transport industry TransQ Global, and

1           it is referred to as being -- in the first big  
2           paragraph:

3           "... create a multi-modal approach to global  
4           opportunities ..."

5           You were asked whether this would be a compelling  
6           offer to Network Rail, and I think you said that it  
7           would be a compelling offer to Network Rail but would  
8           have to be different -- it would have to be provided  
9           differently. Then you spoke a bit about different  
10          question sets that can be used in different contexts?

11         A. Correct.

12         Q. My question to you is, what would be the advantages of  
13          such a scheme to other people in the supply chain who  
14          supply Network Rail?

15         A. So although Network Rail has limited international  
16          involvement, I think a lot of its supply chain does have  
17          global reach, including suppliers in tier 2s, 3s, so  
18          actually, the benefit really does come to those  
19          customers. So although there's only 100 or so buying  
20          organisations, around 4,000 suppliers in this industry  
21          currently, that we -- we were capturing, and I think  
22          that the reach of that is far more attractive to them:  
23          opportunities in different countries across different  
24          sectors.

25         MR. WOOLFE: Thank you. That is all I wanted to ask you.



1 MR. WOOLFE: Could you just give your name and your address,  
2 please.

3 A. Yeah, my name is William Nelson. My address is  
4 Cherry View in Southgore Lane in North Leverton.

5 Q. Do you have bundle B/4? You should have a statement  
6 there dated 25 January 2019. Is that your statement?

7 A. Yes.

8 Q. Then can you just turn to page 72. There should be  
9 a signature at the end. In my copy it is --

10 A. I have a signature on page 73.

11 Q. 73. That is good.

12 A. That is my signature.

13 Q. There's a duplicated page. Okay, that is good. Is that  
14 your signature? That is good.

15 Is there anything that you would like to to clarify  
16 or amend in this statement in any way?

17 A. No, not at this time.

18 Q. Do you adopt that statement as your evidence?

19 A. Yes. Yes, I do.

20 Q. I admit, I did just have a couple of questions I wanted  
21 to ask Mr. Nelson.

22 First of all, at paragraph 43 of your statement you  
23 say:

24 "Achilles previously used to conduct product code  
25 specific audits ..."

1 A. Yes.

2 Q. "... (ie conducting audits with a specific set of  
3 questions which varied depending on the products codes  
4 used ...)."

5 Then you say:

6 "However, as part of the rationalisation ... product  
7 code specific audits were removed under RISQS."

8 Could you just perhaps give a little bit more detail  
9 about what product code specific audits were?

10 A. Yes. If you look at the evolution of the Link-Up  
11 programme and moving into RISQS, when I started  
12 delivering the audits in 2003/2004, based on the product  
13 codes that had been selected by a supplier, they would  
14 receive a core module audit, which was against a 302  
15 standard, as it was commonly called, and then they would  
16 receive product-code-specific questions based on  
17 the product codes that they had selected, and over --  
18 from 2003/2004 right through to 2008, there was  
19 evolution of these product codes. So if a supplier in  
20 Link-Up, as it was, that was before RISQS, selected  
21 a number of signalling product codes, they would receive  
22 a core audit and they would receive an additional --  
23 I think it was 290 signalling-specific product code  
24 questions.

25 What -- what happened was, as we then moved through

1           into -- we moved into a period that was called "Link-Up  
2           engage" in about 2013 that became RISQS, evolved into  
3           the name RISQS, and it was decided an engagement with  
4           originally a chap at Network Rail I was working with  
5           called Glen Harvey and then moving into working with  
6           the RISQS group with Pete Colley from Network Rail and  
7           Richard Sharp who was the RISQS scheme manager, it was  
8           felt that as it was a more -- there was -- we weren't  
9           getting the value from the product code audits and that  
10          we should focus more on the general management system  
11          evaluation, because the actual contract-specific  
12          requirements were evaluated further down the line and we  
13          were duplicating later stages of the assurance process.

14        Q.    So just one further question.  How did the product code  
15           specific audits differ from the RISQS modules?  So it is  
16           only IMR that broadly relates to core module.  How do  
17           the product code specific audits differ from or relate  
18           to the --

19        A.    So there are -- the RISQS audits, there's the industry  
20           minimum requirements, which was the benchmark, which  
21           replaced the old core module, the old ... and then --  
22           and then what we had is we then had a series -- so for  
23           instance, we had a standalone -- not a standalone, my  
24           apologies -- we had a module that was the initial  
25           principal contractor module, but that wasn't linked to

1           specific product codes.  There were product codes you  
2           had to select to be a principal contractor, but it  
3           wasn't like -- it wasn't the case, as it used to be,  
4           where you would select signalling design and you would  
5           then receive signalling-design-specific questions.

6           The way that the system evolved was that what  
7           happened now was you would receive a standard set of  
8           questions, as laid down in the industry minimum  
9           requirements, and through those questions we would make  
10          sure that your general management systems -- safety,  
11          quality, environment, human resources -- were  
12          appropriate for the supply of the signalling services  
13          you had selected.

14         Q.  I think you mentioned a moment ago something called the  
15             -- you mentioned a 302 standard.

16         A.  Yes.

17         Q.  Can you just explain what that is.

18         A.  So it was -- and I apologise, I can't remember off  
19             the top of my head the full -- the full designation, but  
20             it was a Network Rail company standard which was  
21             effectively the mandated minimum criteria for assessment  
22             of the suppliers, and actually, if you looked at  
23             the original Link-Up core module, it was actually  
24             called "302" because it aligned directly with it.  
25             I believe that as the scheme evolved that was replaced,

1 as a standard, by the industry minimum requirements.

2 Q. Okay, thank you.

3 Then if I could just take you to -- there is an  
4 email which is in volume D/9. There is a witness  
5 statement from Ms. Gillian Scott, and at paragraph 29 of  
6 that statement, pages 102 to 103 -- this is referring  
7 back to paragraph 46 of your statement --

8 A. Yeah.

9 Q. -- where you had set out the auditor competency  
10 management and quality checking process operated by  
11 Achilles, and then Ms. Scott refers to an email exchange  
12 in which:

13 "'Will Nelson' ..."

14 Which is you --

15 A. Yes.

16 Q. -- "... received confirmation that one of Achilles'  
17 auditors was not qualified to the correct levels to  
18 undertake audits for the auditing for Achilles for circa  
19 7-8 years."

20 A. Yeah.

21 Q. The email is in the exhibit to Ms. Scott's statement,  
22 but we need not go there.

23 Could I just ask this document be handed up to  
24 the witness. It is a document we disclosed in the last  
25 few days.

1 (Handed)

2 So these should be paginated. In order to place  
3 them, you might want to place them at the back of  
4 Will Nelson's exhibit, which is volume C2/10.

5 Mr. Nelson, do you recognise the general nature of  
6 this document?

7 A. Yes, so there's -- there's -- well, there's two  
8 documents in here. There is a witnessed audit record,  
9 which is an internal form that we use. We -- we -- as  
10 laid down in our -- my competency management manual,  
11 which I believe has been submitted in evidence, we -- as  
12 part of our ongoing competency management we undertake  
13 witnessed audits to verify that our auditors are  
14 continuing to meet the standards expected as hired, and  
15 then the second document I see here is actually  
16 a competency justification form for -- for the auditor  
17 in question, which has been signed by Karl Morse.

18 So Karl Morse was the technical specialist at  
19 the time operating --

20 Q. Sorry, can I just pause you there. You say "at  
21 the time". Can I just --

22 A. In 2012.

23 So Karl Morse was -- because I have a -- a global  
24 responsibility, we have technical support in various  
25 parts of the business, and at this point Karl was our

1 Link-Up technical specialist, and Karl has done an  
2 assessment of the qualifications that Carol has and an  
3 assessment of the competency and the continued  
4 professional development she's undertaken and has deemed  
5 that although she does not have the NEBOSH general  
6 certificate, she does have sufficient equivalent  
7 qualifications in his opinion.

8 Karl is -- Karl was and is a chartered member of  
9 the Institute of Occupational Safety and Health, and as  
10 such I have agreed with his findings.

11 The email that I believe that's being referred to  
12 where I wasn't aware is purely because we do 9,000 to  
13 10,000 audits a year globally, and I had forgotten about  
14 Carol and I'm quite happy to admit it.

15 Q. Perhaps we will see that in a moment.

16 Can I take you back to the previous document then in  
17 the tab, which is now at 528, headed, "Witnessed Audit  
18 Record Form".

19 A. Yes.

20 Q. What is a witnessed audit record?

21 A. So as I say, in the competency management manual that we  
22 maintain internally, that is -- a witnessed audit is  
23 a requirement to go out, in line with the witnessed  
24 audit programme that we have internally, to witness our  
25 auditors actually delivering the audits, and this Karl

1 had moved to a different role in Achilles, and at this  
2 time, Mark Ferris was acting as the technical manager  
3 and this is his witnessed audit report of Carol from  
4 September 2017. Obviously this is the last RISQS  
5 witnessed audit record we have, because the following  
6 year it transitioned to a new provider.

7 I believe Mark is actually now the technical manager  
8 for Capita.

9 Q. What is the effect of this witnessed audit record?

10 A. So the witnessed audit record, if I can -- there's  
11 actually a back page missing from it. So what -- so  
12 what the witnessed audits -- the page that we can't see  
13 and we should see is -- there is a justification by  
14 the witnesser, a justification where he says -- he  
15 recommends either continued approval to deliver  
16 the scheme, continued approval with remediation  
17 activities, or removal from the programme. So  
18 effectively --

19 Q. To your recollection, on this, in relation to this  
20 witnessed audit record of 15 September 2017, which of  
21 those was it?

22 A. So this was continued approval to deliver the programme.

23 MR. WOOLFE: Thank you. That is everything I wanted to ask  
24 the witness.

25 THE CHAIRMAN: Sorry, I am not sure I completely follow

1           this. Is it Carol Wilson who is being referred to in  
2           the email exchange that you took us to?

3           MR. WOOLFE: Perhaps, because I did not take to the -- yes,  
4           that is right, sir. The email exchange in question is  
5           in bundle E5/7/197 -- the email chain starts on  
6           page 1978, but like all these things, you have to read  
7           from the bottom up. If you start on -- the things below  
8           are not very easy to understand, but on page 1979 there  
9           is an email dated 15 July 2014, an email from  
10          Mr. Will Nelson, and then a reply email from  
11          Mark Ferris, which is what Ms. Scott refers to.

12          THE CHAIRMAN: Yes, thank you.

13          A. In fact -- so if I can just respond. So after this --  
14          and unfortunately it wasn't in the written -- in an  
15          email -- there was a conversation between myself,  
16          Chris Whitfield who was the head of UK audit at the  
17          time, who my email is to, Neil Willings was the global  
18          head of audit at the time, and Mark Ferris who was  
19          the technical specialist, where we discussed, because --  
20          because I had forgotten that we had done the competency  
21          justification, I was quite concerned at this point, and  
22          I'll be very honest, and we actually went through it and  
23          actually we found a competency justification from Karl,  
24          and we looked at the witnessed audits that had been  
25          undertaken and we deemed that actually, although she did

1 not hold the NEBOSH certificate, she had sufficient  
2 equivalent qualifications and experience that it would  
3 not be an issue for her to continue.

4 Cross-examination by MR. FLYNN

5 MR. FLYNN: Good afternoon, Mr. Nelson.

6 A. Good afternoon.

7 Q. A few questions related to your witness statement, which you, I  
8 think, have in front of you. Perhaps you do not. B/4.

9 In paragraph 10 you describe Achilles' developing of  
10 Link-Up:

11 "... in conjunction with key stakeholders in  
12 the industry in order to tailor the service to industry  
13 demand."

14 A. Yes.

15 Q. Then you list a number of rail operators, as you call  
16 them, principally buyers in that list, I think?

17 A. Yeah.

18 Q. And you say:

19 "In simple terms, this meant building a two-sided  
20 product with (i) buyer agreements who pay the major rail  
21 operators (who pay a subscription fee ...) and (ii)  
22 supplier subscriptions for registration with Link-Up to  
23 ensure their details will be available to the industry's  
24 buyers and centrally registered."

25 A. Yeah.

- 1 Q. So it is a buyer-led, process, isn't it, the idea is  
2 to --
- 3 A. It certainly.
- 4 Q. -- provide something that buyers want?
- 5 A. It certainly was in Link-Up, yes, and there  
6 was still -- it is still a strong buyer  
7 requirement: where the buyers direct, the suppliers  
8 follow.
- 9 Q. As you go on to say in 11, your:  
10 "... 'community' model, Achilles ... able to develop  
11 and enhance ... [it] based on the requirements of  
12 the industry - for example ensuring suppliers provided  
13 the information most required or valued by buyers ..."
- 14 A. Yeah.
- 15 Q. "... and presenting it in a way that made it most  
16 straightforward to register and view the information."
- 17 A. Yes, yes.
- 18 Q. Followed by verification, which is your central  
19 expertise --
- 20 A. Yes.
- 21 Q. -- I suppose, in supplier assurance.  
22 So then you say in 12:  
23 "The auditing process also developed in conjunction  
24 between Achilles and the key industry stakeholders ..."
- 25 A. Yeah.

1 Q. "... in order to ensure it met the demands of  
2 the industry."

3 Again, that is typically buyer-led, is it not?

4 A. Yes, I mean, I should explain. Because the audit  
5 programme is what we call a "second party audit  
6 programme", it is meeting buyer and customer  
7 requirements. So effectively, we're not doing an  
8 ISO9001 audit, and we're not doing an audit against  
9 a specific railway group standard, we're doing  
10 a combined audit of a number of requirements that  
11 the buying community deem are appropriate for  
12 verification at the pre-qualification stage.

13 Q. Yes.

14 Let us just look at paragraph 28, just building on  
15 the points you have just made.

16 A. Yeah.

17 Q. "Achilles is not accredited against ISO ..."

18 And there is a number 17021-1:

19 "... on conformity assessment requirements for  
20 bodies providing audit and certification of management  
21 systems."

22 A. Yeah.

23 Q. This is because you provide second party assurance, not  
24 third party --

25 A. Yes.

1 Q. -- assurance, and as I understand it, that is  
2 the community model. Buyers are asking you to do  
3 this to --

4 A. Yes.

5 Q. -- provide audit and certification of their suppliers --  
6 that is what that is saying -- and you are not providing  
7 that to the world at large. That is the essence of your  
8 community model; is that not right?

9 A. Yes.

10 Q. You say:

11 "... in its current business [you do not] ... need  
12 to be accredited against this standard so as to provide  
13 third party certification ... [but you] could and would  
14 obtain it if it were necessary to do so."

15 A. Yes.

16 Q. But that would be a radical change in your business  
17 model, would it not?

18 A. Well, there is no need for that at this time. I mean,  
19 the business that I'm involved in, the assessment  
20 services element, is the audit part of Achilles, and  
21 there are requirements for audit that we deliver on  
22 behalf our customers. If they wished us to deliver it  
23 against a particular standard, so more of a third party  
24 assessment rather than a second party assessment, then  
25 obviously we would look to gain the necessary approvals

1 and controls to deliver that.

2 Q. Can we look at paragraph 36 of your witness statement.

3 There you say:

4 "Link-Up ..."

5 As you have just described it:

6 "... and RISQS (as that scheme became known) are a  
7 means of delivering supplier assurance. RISQS, as it  
8 was operated by Achilles ... complied with RIS-2450 and  
9 then RIS 2750 and the TransQ service was developed by  
10 Achilles to comply with RIS 2750."

11 Fine, so far as it goes, but as we know RIS 2750  
12 only takes you so far, does it not?

13 A. Yes.

14 Q. "Such schemes operate ...."

15 You say:

16 "... by providing such assurance by ..."

17 Three things:

18 "... (i) gathering information about suppliers and  
19 providing it to buyers."

20 Yes?

21 A. Yes.

22 Q. " ... (ii) carrying out a second party audit ..."

23 Now we know what that means.

24 A. Yes.

25 Q. "... (for example that suppliers have certain policies

1 and management processes in place); and (iii) providing  
2 that information to buyers through an IT platform."

3 That is what you do, you say, also through TransQ?

4 A. Yes.

5 Q. Those three things are linked, are they not? I mean,  
6 that is the service. It is those three things?

7 A. As I -- yeah, as I believe it, yes.

8 Q. That is how you operate, that is how RISQS operates.

9 A. Yeah.

10 Q. That is the sensible way of doing it.

11 Can we look at paragraph 44, please. Here you have  
12 described IMR, and compliance with that, and I think we  
13 have just had some discussion about the genesis of  
14 IMR as the foundation module.

15 A. Yes.

16 Q. Then it says:

17 "Certain codes trigger an audit by being identified  
18 as posing a higher risk to the railway ..."

19 A. Yes.

20 Q. You have described this just now, I think, in your  
21 evidence-in-chief.

22 Those codes trigger an audit because they are  
23 identified as higher level risks, and you have explained  
24 the audit is not carried out on a product-specific  
25 code-specific basis. But then you say:

1           "Even on higher level risk codes, the audit being  
2           carried out is still one of management systems, rather  
3           than any specific operational safety assessment."

4           A. Yes.

5           Q. Now, are you saying that the audits that you would have  
6           carried out when you were associated with RISQS are  
7           simply documentary reviews of systems?

8           A. So -- so if you look at the RISQS audit -- if you look  
9           at the industry minimum requirements protocol, it covers  
10          management systems across a number of areas. It will  
11          cover safety management systems, environmental  
12          management systems, quality management systems,  
13          management systems relating to human resources, and what  
14          you are looking to do is to apply those generic audit  
15          questions in relation to the scope of services that  
16          the supplier has selected.

17          So, as I said at the start, we no longer have  
18          the 290 signalling product code questions, we now have  
19          a generic protocol which we use to assess the overall  
20          management systems of the supplier but with cognisance  
21          of the scope of supply that they're looking to provide  
22          into the industry.

23          THE CHAIRMAN: That protocol is something that Achilles has  
24          developed, is it?

25          A. So the industry minimum requirement document, that

1 originally came -- originally it was called  
2 the "CDM plus", and I worked on it with a chap called  
3 Glen Harvey, who used to work for Network Rail but has  
4 now retired, and then that became the industry minimum  
5 requirements, and that was developed by myself in  
6 conjunction with Richard Sharp from -- who was  
7 representing RISQS, Pete Colley, who was representing  
8 Network Rail, and it was presented through the steering  
9 group in the RISQS community, and it was adopted as  
10 meeting their industry minimum requirements for  
11 assessment, which is why it became known as the "IMR".

12 MR. FLYNN: Just looking at some of the illustrations you  
13 give of what the auditor would carry out. So for  
14 example, at paragraph 59, you have the medical  
15 screening. I mean, your constant theme is basically  
16 these are documentary reviews and you are not the people  
17 who do the on-site, meaning on the building site, as it  
18 were?

19 A. On Network-Rail-managed infrastructure.

20 Q. So you are looking at, typically, a supplier's premises?

21 A. Yes.

22 Q. You are looking to see a documented process, no doubt  
23 generally done on computer, rather than by paper  
24 records?

25 A. Yes.

1 Q. But here you say again -- so, as it were, you are  
2 repeating a point you have already made in respect of  
3 other examples:

4 "... these are matters ..."

5 At the end of that sentence in paragraph 59:

6 "... these are matters of management systems,  
7 documentation and processes."

8 So you are not just looking at, as it were, at  
9 a paper trail, you are checking that there is a system  
10 there, are you not, and processes?

11 A. Yes, so it depends entirely -- if you look at  
12 the standard audit process, effectively what you are  
13 looking to see is that there is a procedure that lays  
14 out what is expected, and then where -- where it is  
15 available, you then look at records that can confirm  
16 that that procedure has been followed.

17 So as an example, if you were to take risk  
18 management in the industry minimum requirements module,  
19 you would look at the process, you would identify  
20 whether it's fit for scope, and then you would ask to  
21 see examples of where the risk management has been  
22 undertaken at site by asking for retrospective site  
23 packs or things, but you're not -- all you're doing is  
24 checking -- you're putting in place a, "Yes, I can see  
25 that that procedure appears to be appropriate, has

1 covered all of the aspects and the company can  
2 demonstrate that they've applied it correctly in these  
3 cases cases", but you're not at site, and the most  
4 important thing about -- in relation to the RISQS audit  
5 is it is a -- it has always been -- or certainly in  
6 Link-Up -- and we don't deliver RISQS now so I can't  
7 say --

8 Q. Indeed.

9 A. -- but Link-Up and the RISQS audit when Achilles was  
10 delivering it was that it was always identified as  
11 a snapshot in time. It is the evidence that was seen  
12 while the auditor was with that company and it made no  
13 assertions about what the -- what the company had in  
14 place as soon as the auditor had left the building, or  
15 what they had in place just before the auditor arrived,  
16 and I think it's important to make that point.

17 Q. I will just take another example that you give in  
18 paragraph 65. This is in relation to --

19 A. Yeah.

20 Q. -- the plant operation management systems. You say  
21 the module that you are talking about there:

22 "... assures the Plant Operator's management systems  
23 in connection with types of work involving  
24 On-Track Plant."

25 And there you say:

1            "... section 2.1 of ... "

2            The relevant protocol:

3            "... requires the auditor to verify the operator can  
4 demonstrate their controlled processes for communication  
5 and co-ordination within possessions and worksites."

6            It also -- well, let us just deal with that.

7            "Demonstrate" I take to mean their controlled processes  
8 work, they flow through.

9            A. Yeah, so they're not showing -- they're not actually  
10 doing the communication and the communication with  
11 the possessions while the auditor is there.

12          Q. No.

13          A. But they will show you that there is a procedure and they'll  
14 show you records of how that has been applied.

15          Q. So how it has been implemented, so that you can check  
16 whether you get from A to Z --

17          A. Yes.

18          Q. -- in the proper fashion if those processes are followed  
19 --

20          A. Yes.

21          Q. -- which you are not saying they are on site --

22          A. No.

23          Q. -- but you need to know that there is something that  
24 ought to work if it is followed --

25          A. Yes.

1 Q. -- and has worked in previous --

2 A. Has worked previously.

3 Q. Has worked previously, and --

4 A. For the sampled evidence that's requested, yes.

5 Q. Can we go back -- sorry -- to paragraph 46 of your  
6 witness statement, and this is a lengthy paragraph  
7 dealing with two mechanisms under the IMR.

8 A. Yes.

9 Q. Auditor competency and quality checking processes. Now,  
10 Mr. Woolfe has already drawn attention to a particular  
11 example where it transpired that one of your auditors  
12 had been out on the job without the necessary  
13 qualification certificate. That is --

14 A. Well, it does -- it does qualify in the manual or  
15 equivalent, and I believe that in this case we  
16 demonstrated that, but ...

17 Q. I do not intend --

18 A. Okay, sorry.

19 Q. -- to go over that. I mean, the thing is, you know, in  
20 any system, however well controlled, mistakes are made.

21 A. Yes.

22 Q. Different auditing bodies may carry out things in  
23 different ways, and the mistakes that can be made, even  
24 within the auditor, as it were, can proliferate.

25 A. Yeah, absolutely.

1 Q. You may have seen -- and I can take you to it if  
2 necessary, but just to deal with it shortly -- some of  
3 the Network Rail evidence to the effect that the rate of  
4 audit failure under RISQS, as administered by Achilles  
5 and now by Capita, has increased somewhat?

6 A. Okay.

7 Q. Now, again, I am not saying that is because you did  
8 a bad job, I am not making that suggestion, but simply  
9 different auditors will come out with different results,  
10 possibly because of -- it could be thoroughness, it  
11 could be different ways of looking at the processes they  
12 are auditing.

13 A. Yeah, and we actually have an internal process where we  
14 try not to repeat the same auditor year on year, because  
15 we like to put fresh eyes against the management  
16 systems. But yeah, I can't -- I understand that  
17 the RISQS failure rate has increased. I can't make any  
18 assumptions as to why that would be.

19 Q. We do not need to debate that.

20 Can we look at paragraph 53 of your witness  
21 statement. This is in a section about Sentinel.

22 A. Yeah.

23 Q. We have heard a lot about Sentinel already.

24 At paragraph 53 you describe what the Sentinel model  
25 is there for and what sponsors have to do, and you say:

1            "To the best of my recollection, at least 1,500  
2            suppliers have Sentinel assurance to act [as] sponsor  
3            which will enable their personnel to access Network Rail  
4            and Transport for London's managed infrastructure."

5            A. Yes.

6            Q. It is not a memory test. Does that number still seem  
7            about right to you?

8            A. I -- it's somewhere between -- I think I think a little  
9            low. I think it's somewhere between 1,500 and 2,000,  
10           but I don't know the exact number.

11           Q. Well, I can take you to a document which has got  
12           a snapshot of the numbers. That is in bundle H21, and  
13           I think the document we are looking for is at page 5953.  
14           The document begins at page 5941 and is a RISQS  
15           governance report from February 2018.

16           A. Okay, yeah.

17           Q. So these are just some numbers to give an illustration.  
18           This, I think, is a document prepared by Achilles when  
19           you were administering the scheme. I see it is on  
20           Achilles paper --

21           A. Yeah, I would assume so.

22           Q. -- so let us assume that. It does not really matter,  
23           but let us assume that.

24           On page 5953 you will see Sentinel listed companies  
25           as of 1 March 2018. The companies on the Sentinel list,

1 1,852, so in your ballpark, between 1,500 and 2,000.

2 "NR" Network Rail track side sponsors, 1,506.

3 Then if you go back to page 5948, I think it is, you  
4 will see the total number of active subscribers. Do you  
5 see the table at the top?

6 A. Yes, yeah.

7 Q. The total number there is 4,319?

8 A. Yeah.

9 Q. So that suggests, does it not, that less than half of  
10 suppliers to the industry require a Sentinel audit?

11 A. I would -- I would -- yes, I would assume so. I assume  
12 "active subscribers" is the total number registered on  
13 the RISQS programme at this stage, and of that, "require  
14 an audit", 2,488, is -- Sentinel is one of the main  
15 reasons, or there may be other areas. So yes, I agree.

16 Q. So the 2,488, "require an audit", would include any  
17 scheme under which they require an audit?

18 A. Yes.

19 Q. You may be right that Sentinel accounts for the majority  
20 of those, but that is the right sort of number?

21 A. Yes.

22 MR. FLYNN: Thank you, I have no further questions for  
23 Mr. Nelson.

24 Re-examination by MR. WOOLFE

25 MR. WOOLFE: If I could just take you back to paragraph 28

1 of your witness statement on page 59. You said --

2 A. Sorry, I've closed the folder. Is that --

3 Q. Sorry, it is in bundle B/4.

4 A. Bundle B/4, thank you.

5 And then you said paragraph ...?

6 Q. 28.

7 A. Paragraph 28. Yes.

8 Q. It says you are not accredited against the 17021  
9 standard but you would obtain such accreditation if it  
10 were necessary to do so, and it was suggested to you it  
11 would be a radical change in your business model, and  
12 you said it is not required at this time.

13 I am just wondering, could you just clarify  
14 something. You say that you are not accredited against  
15 the standard. Do you follow or use that standard for  
16 any purpose?

17 A. So yeah, and as part of the RISQS tender, when we were  
18 bidding for it we outlined in those documents exactly  
19 how we met the requirements of that standard, because  
20 that was listed as a -- compliance with that standard  
21 was listed as a requirement of the RISQS tender.

22 Q. Okay, but if I can take you to bundle C1/1 -- and this  
23 is an exhibit to Ms. Ferrier's first statement -- do you  
24 recognise this document?

25 A. Sorry, can you give me the reference again?

- 1 Q. C1/1. It is just a few-page document. If not, I can  
2 explain to you what Ms. Ferrier says it is.
- 3 A. Yeah, no, if you could just ...
- 4 Q. She refers to it in her first statement, so that is in  
5 bundle B/1. She refers to it at table 8 -- you need not  
6 turn it up -- as being the "RSSB's requested proposal".
- 7 A. Okay.
- 8 Q. There are a series of requirements set out, and she  
9 refers to the requirement that a successful bidder would  
10 not undertake services which may compete with RISQS  
11 services, which is one of these requirements.
- 12 I wanted to take you to the requirement on page 7 in  
13 the bundle numbering. There is a series of numbers  
14 saying "RFP" in the second column. If you read down to  
15 RFP00108 --
- 16 A. Yes.
- 17 Q. -- it says the auditor to provide requirements:  
18 "The Audit Provider must follow the principles laid  
19 out in ISO/IEC 17021 Conformity Assessment -  
20 Requirements for ..."
- 21 A. Yeah.
- 22 Q. So am I right to understand from that that would have  
23 been a requirement of the contract as followed?
- 24 A. Yeah, so we -- and as part of -- I wasn't involved in  
25 the full RFP, but in relation to the assessment services

1           and the audit elements we structured our response very  
2           clearly to show how we met the different requirements  
3           laid down in that particular standards.

4       Q.   When it says the audit provider must follow  
5           the principles laid out in that standard, would you  
6           understand that to mean they must be accredited against  
7           that standard?

8       A.   No, I would say that there is a documented standard, and  
9           I don't know whether Capita are accredited against that  
10          standard, but I would be surprised if they are.

11      Q.   Who does accredit against that standard?

12      A.   So it's not -- so I believe that that would be  
13          something -- the conformity assessment, the approval  
14          would be given by UKAS, which is the UK Accreditation  
15          Service, which is the UK-nominated representative on  
16          the International Accreditation Forum, which is  
17          the ISO-recognised body for approvals.  But I'm not --  
18          I made sure through the RPF that we met the requirements  
19          laid down in that standard.  I'm not that familiar with  
20          who would be approved, how you would get qualified  
21          against it.

22      Q.   Then finally, just to clarify one point, on paragraph 44  
23          of your statement -- I am not sure the question  
24          necessarily related solely to that paragraph --  
25          Mr. Flynn asked you:

1           "Are you saying that audits are simply documentary  
2 reviews?"

3           You did not quite answer the question, but your  
4 answer said a number of things, that management systems  
5 can cover a range of things including safety and so on,  
6 and you said that audit was context-sensitive, but  
7 I just wanted to actually check you had answered  
8 the question which is: the audit process, are you just  
9 looking at documents, or are you doing something else?

10       A. No, it is a document review. You are interrogating  
11 personnel from the company, but the objective evidence  
12 is the documentary review, and that is very clearly what  
13 our expectation and what our requirement was under  
14 Link-Up and RISQS. We spoke earlier about UVDb Verify,  
15 and actually, in the UVDB Verify programme, we do  
16 documented management reviews at site and -- at  
17 the company premises, and then we then go to a live  
18 working site to verify implementation of those  
19 processes. So that's a different community with  
20 a different level of risk application to our audit.

21       MR. WOOLFE: Thank you.

22           I have no further questions for the witness. I do  
23 not know if you do.

24       THE CHAIRMAN: Thank you, Mr. Nelson.

25       A. Thank you.

1 (The witness withdrew)

2 MR. WOOLFE: Now, sir, as you may recall from the timetable,  
3 we do have a third witness, Mr. Chamberlain, but he is  
4 not available today; we are going to deal with him on  
5 Monday, I think, according to the timetable. Therefore  
6 we were going to jump, at this point, into  
7 the defendant's witnesses. I am happy to start now, but  
8 it is coming up to 1. I do not know if it is convenient  
9 for the witness to be held incommunicado over the short  
10 adjournment. We can either start now or start at 1.50.

11 THE CHAIRMAN: We will rise now and start at 1.50.

12 (12.52 pm)

13 (The short adjournment)

14 (1.51 pm)

15 MR. FLYNN: Sir, our first witness is Gillian Scott from  
16 the RSSB. She is already in place.

17 MS. GILLIAN SCOTT (sworn)

18 Examination-in-chief by MR. FLYNN

19 MR. FLYNN: Please could you give Ms. Scott bundle D. Could  
20 you turn to tab 4, please. You will see a document  
21 there, "Witness Statement of Gillian Scott".

22 If you turn to the last page of it, just before  
23 tab 5, you will see a signature. Is that your  
24 signature?

25 A. That's my signature.

1 Q. That is your witness statement?

2 A. It's my witness statement.

3 Q. If you turn to tab 9 in the same bundle, "Second Witness  
4 Statement of Gillian Scott"?

5 A. Yes.

6 Q. If you turn to the last page of that?

7 A. That's my signature.

8 Q. That is your signature.

9 Is there anything in your evidence that you wish to  
10 clarify or correct?

11 A. There was -- sorry, I can't remember the paragraph.

12 Q. Do not worry, just say the point and we will ...

13 A. There was reference about the 30% Sentinel, and in  
14 the -- in the documents, in one paragraph it referenced  
15 30% of the total workforce. It's actually 30% of  
16 the total sponsored staff, so that's the primary and sub  
17 sponsors. It's clarified later on, but there's one word  
18 missing off the -- the sentence.

19 Q. I think it is paragraph 29 of your first witness  
20 statement that we are looking for.

21 A. Yes, so fifth line down, it says:

22 "... 30% of their total workforce under  
23 section 6.1 ..."

24 It should say:

25 "... 30% of the total workforce sponsored ..."

1 Q. Which is the phrase used in the penultimate line --

2 A. Yeah.

3 Q. -- of the same paragraph.

4 Is there anything else that you would like to point

5 out to the Tribunal?

6 A. No. There may be some variations where I refer to

7 things as being RISQS board and -- because there was

8 some cross over between an engaged working or steering

9 group and the RISQS board, so sometimes the dates are

10 a bit -- as to which one it was.

11 Q. So the terminology may vary between "steering group"

12 and "board" but --

13 A. It's the same.

14 Q. -- we will always be able to identify the body you are

15 referring to?

16 A. Yeah.

17 MR. FLYNN: Very good. I think Mr. Woolfe will have some

18 questions for you.

19 Cross-examination by MR. WOOLFE

20 MR. WOOLFE: Thank you for those clarifications.

21 If I could just start at the very beginning of your

22 statement. You are obviously at the RSSB now, fairly

23 recently moved there, and you were at Network Rail --

24 A. Yes.

25 Q. -- between December 2012 and October 2018. It says you

1 had the role of assurance manager between those dates.

2 Prior to December 2012 did you do another job within

3 Network Rail or were you --

4 A. Yes, so I've worked in Network Rail I think it was from

5 about 2007. I was a commercial manager in Network Rail

6 before I started the assurance manager role, and before

7 that I worked elsewhere, in a different industry.

8 Q. When you said you were responsible for the principal

9 contractor licensing team, so -- I do not know if you

10 were here yesterday or not, but we took the Tribunal to

11 the principal contractor licensing scheme,

12 the Network Rail document.

13 A. Yeah.

14 Q. Essentially your role there was to authorise people to

15 act as principal contractors; is that right?

16 A. Yeah, I governed a team who went out and did site

17 audits -- or audits and we authorised organisations to

18 discharge the principal contractor duties under CDM for

19 Network Rail when Network Rail was the client.

20 Q. Thank you.

21 Let me take you to paragraph 12 of your statement,

22 and you there say that:

23 "Network Rail's approach to supplier assurance

24 through its procurement process, including supplier

25 qualification and core requirements for suppliers, is

1           governed by a framework of standards [divided] into  
2           several 'levels'."

3           Then you give a couple of examples. Just so  
4           I understand, level 1 standard, that is setting out at  
5           a very high level the objectives that Network Rail wants  
6           to achieve?

7           A. Yes.

8           Q. Level 2 standards are setting slightly more detailed  
9           policies to --

10          A. Giving the detail of how.

11          Q. Give the detail.

12                  A level 3 standard would be --

13          A. Given -- I think it's more how it's implemented within  
14          Network Rail --

15          Q. You refer to these two standards which you say are  
16          the standards which:

17                  "... sit above the rules governing both the PCLS and  
18          Sentinel schemes, driving the requirements for the  
19          schemes and operating in addition to the requirements  
20          found in them."

21                  If I can take you to the first one, so that is  
22          NR/CPR103 standard, that is in G1/8. Could you be  
23          handed G1. That, as you will see on its face, is  
24          the supplier assurance framework?

25          A. Yeah.

1 Q. So that is the very highest level document setting out  
2 what Network Rail wants to achieve in supplier  
3 assurance. This is dated 1 March 2008. To your  
4 knowledge, is that still the framework that is currently  
5 in force or was when you left Network Rail?

6 A. I would say yes. Can I clarify? Network Rail went to  
7 a moratorium on standard updates, so therefore they  
8 refused to allow updates in standards, we had to put  
9 them on hold, because what they're doing is going  
10 through a review to see how many standards they could  
11 remove. So I believe there may be other things that  
12 actually kind of replaced the requirements of this  
13 standard, but I -- I believe it is still in force at the  
14 moment.

15 Q. Okay.

16 Then, just within that tab, if we turn to point 7,  
17 the supplier assurance framework, point 7.2 says:

18 "The arrangements ..."

19 So there is the supplier -- there is the sort of --  
20 I think elsewhere it is referred to as a journey, but  
21 here you have a multi-coloured blocking for demands and  
22 requirements to strategy, and an implementation block in  
23 which it says "Stage 1 - Supplier Qualification", so  
24 that is what supplier qualification is, then "Supplier  
25 Selection", so you pick who you want to supply

1 the goods. Then there is a "Supplier Monitoring and  
2 Management", which presumably is during the course of  
3 a relevant contract and monitoring supplier performance.  
4 That is the block there.

5 At 7.2 it refers specifically to Stage 1, which is  
6 supplier qualification, and says:

7 "The arrangements for the qualification of suppliers  
8 are described in the Company Standards NR/L2/CPR201  
9 Supplier Qualification and NR/L2/CPR202 Supplier  
10 Licensing. These standards include the arrangements  
11 for:

12 "The Link-Up Supplier Qualification Scheme.

13 "The Licensing of Principal Contractors.

14 "Licensing of Rail Plant Operating Companies in  
15 Engineering Possessions."

16 Fourth bullet point:

17 "The development of contract specific bespoke  
18 qualification assessments ..."

19 In certain circumstances. So that is what, in  
20 the highest level document Network Rail have, is set out  
21 to be -- they refer to these further standards.

22 I just want to check, that does not really describe  
23 very accurately what is the case now within  
24 Network Rail, does it?

25 A. I'm not -- well, obviously Link-Up's changed,

1 the licence of principal contract is still the same,  
2 the licensing of rail point operating companies in  
3 engineering possessions, there's a process of procedure.  
4 I would imagine, but again, I'm not part of contracts  
5 and procurement so I can't really say that that is  
6 the development of contract-specific qualifications,  
7 sorry.

8 Q. But it refers also -- we are going to go to this in  
9 a moment -- the CPR201 standard, which is the next one  
10 mentioned in paragraph 12 of your witness statement  
11 which is the supplier qualification. That is actually at  
12 tab 10 of the same bundle. This is cross-referred to  
13 from that paragraph, which is on the supplier framework.  
14 This is a level 2 standard. It is dated on the top  
15 right-hand corner 3 December 2011. Perhaps just start  
16 at point 1:

17 "The purpose of this document is to specify  
18 the arrangements for the 'qualification' activity within  
19 the ... Strategic Sourcing and Supplier Assurance  
20 Framework."

21 So that is what we saw before, that this is  
22 the qualification. There we are.

23 Then over the page on 230 -- "Definitions" --  
24 a series of definitions are set out, one of which is  
25 a "Qualification Scheme" referring to the -- can you see

1 at the top of page 230?

2 A. Yes.

3 Q. That is:

4 "Means by which suppliers' 'expressions of interest'  
5 may be collectively sought ..."

6 Then "Link-Up":

7 "The name of the Qualification Scheme used by  
8 Network Rail."

9 So that is out of date, is it not?

10 A. It is.

11 Q. It is both out of date as a name and it is also out of  
12 date because it was Link-Up and then it is RISQS under  
13 RSSB, and now it is RISQS --

14 A. I think if you followed the process through other  
15 documents and live things you would see the trace from  
16 Link-Up and a core requirement --

17 Q. We are going to go to that in just a moment, so yes.

18 Then, "Link-Up Product Code" it refers to. That has  
19 obviously been replaced by the RICCL codes.

20 A. Yes.

21 Q. It also then refers to a "Product Code Audit",  
22 the validation of a supplier's:

23 "... declared organisation and arrangements to meet  
24 pre-determined [product code specific] qualification  
25 requirements."

1           Now, obviously that is there as a definition, but  
2           that is not something that is provided through RISQS,  
3           is it?

4       A. We -- within the RISQS, an organisation will select  
5       product codes and then, when they go on site, if there's  
6       any bespoke requirements from that product code. So,  
7       say, overhead lines, the specific equipment to test to  
8       see whether they are still live. So that sort of  
9       requirement would be checked. Specific competencies  
10      around that requirement. So for signalling that was  
11      mentioned earlier, if there's specific competencies for  
12      signalling that would be checked.

13     Q. I think what Mr. Nelson was saying this morning was, you  
14     have the generic RISQS modules, like the IMR modules,  
15     and they will have requirements in them which are --  
16     need to check management systems, and they are set out  
17     at quite a high level. Obviously if you are going and  
18     checking an organisation that is doing one kind of task,  
19     you will apply those same criteria knowing their  
20     context, and so you will audit the management systems --  
21     the safety management systems they have, if they are  
22     doing stuff to the overhead lines then their safety  
23     management systems will relate to overhead lines. Is  
24     that what you were saying then?

25     A. I think so.

- 1 Q. I will just check what RISQS does not do is have  
2 a separate set of questions that apply when certain  
3 product codes are selected?
- 4 A. I think if you're referring to what Mr. Nelson said, at  
5 the time when Link-Up was going, there was a strategy  
6 group, a steering group, and what they did was they  
7 reviewed all product codes. There was a lot of  
8 duplication within the product codes, and I think what  
9 they decided to do was to look at them, rationalise them  
10 and decide whether or not they were relevant, and that  
11 was all done through very qualified people in  
12 the signalling arena from Network Rail, from industry,  
13 and it was decided what product codes would go forward  
14 from there. I wasn't part of RISQS at that point.
- 15 Q. But I understand prior to that process you just talked  
16 about there were -- for some product codes, if you  
17 selected them there would be a list of questions which  
18 you would be given specifically because you had chosen  
19 that product code. And what it moves to is a system  
20 where -- is a modular system, where if the product code  
21 flags that you are required to do Sentinel or that you  
22 are required to do a safe system of works planning, you  
23 then have to complete the Sentinel or safe system of  
24 work planning modules?
- 25 A. But the modules system still works. So as you are

1           going through, if you chose to do something that had  
2           a trackside relevance, the Sentinel module will still  
3           come up as a -- as an additional requirement --

4       Q.   But the Sentinel module is the same module irrespective  
5           of whatever product code you happen to be selecting that  
6           leads you to it?

7       A.   Yeah.

8       Q.   But there is no specific separate set of questions which  
9           pops up that is specific to each product code?

10      A.   I'm not aware of any.

11      Q.   Thank you.

12                 I think you said that a lot of this there had been  
13           a moratorium but this had largely moved on now, has it  
14           not, the use of the 302 --

15      A.   302 went when I changed the principal contractor  
16           licensing standard.

17      Q.   Sorry, have I gone too -- sorry, I should have perhaps  
18           taken you to -- I am going to take you to 302, that is  
19           tab 9, if you go back one tab, and this is the "Supplier  
20           Qualification - Core Requirements".  Could you just --  
21           it might be easiest for you to say.  Could you describe  
22           for the Tribunal what this is, or what it was at the  
23           time it was issued?

24      A.   My understanding, it was the requirements which we  
25           set up for the audit for Link-Up.  I didn't -- I never

1           audited against it, so --

2       Q. No, but this set out the core management systems and  
3           processes --

4       A. Yes.

5       Q. -- which Network Rail thought should be applied  
6           generally to those who supplied --

7       A. Would want to supply.

8       Q. In that sense it has been supplanted by the IMR, has it  
9           not?

10      A. Could you -- sorry?

11      Q. So it sets out the management standards and processes  
12           which Network Rail wants to have demonstrated and  
13           audited in respect of people who supply it, and that  
14           function -- this is what the standard does -- is now  
15           carried out by the IMR audit?

16      A. Yes.

17      Q. Broadly speaking?

18      A. Broadly speaking.

19      Q. Okay.

20           Perhaps we could put the bundle G1 away. If I could  
21           take you to G2. There are actually two documents which  
22           I want you to look at but I will just show you the cover  
23           page to both of them briefly and see if you can help me  
24           with something.

25           At tab 15 is a document called, "The RISQS Audit

- 1 Protocol"?
- 2 A. Right.
- 3 Q. "Industry Minimum Requirements". Is that a document  
4 which I recognise?
- 5 A. Yes.
- 6 Q. Then at tab 30 is another document which is called,  
7 "RISQS Audit Requirement - Industry Minimum  
8 Requirements". Is that a document which you recognise?
- 9 A. That's -- is that the guidance notes for the auditors?
- 10 Q. Well, I sort of wanted to check, because if we go to  
11 tab 15, they are quite similar in terms of headings and  
12 so on, but if you go to tab 15 and you go to page 336,  
13 under 1.1, "Management Structure", it starts off by  
14 saying:
- 15 "The auditor shall verify how the management  
16 structure is defined."
- 17 So it sets out in some sense what the auditors  
18 should check, whereas the document at tab 30 seems to  
19 set out a series of requirements for suppliers. So if  
20 you look at page 584 ...
- 21 A. I can't be 100% sure but I would think that the second  
22 document looks as though it's the guidance sort of  
23 information given to the auditors to see what they would  
24 look for.
- 25 Q. Right, okay. But beyond that, you are not 100% sure

1           what this document is?

2           Perhaps I could then ask you a question about the  
3           audit protocol document at tab 15. Who owns this  
4           document? So who is responsible for it and who gets to  
5           decide what goes in it?

6           A. At this moment in time we're going through a review of  
7           actually updating it. It's done through supplier  
8           consultation and buyer consultation groups. So what we  
9           do is we get members from the buying community in RISQS  
10          and members of the supplier community in RISQS and we  
11          set up a working group so we can all go through  
12          the actual requirements in the document. So it's not  
13          focused on one person's point of view. The chair is one  
14          of the buyers, not Network Rail. At this moment in time we  
15          have someone -- we're asking for someone of  
16          the principal contractor licensing scheme to come and  
17          represent Network Rail on that working group.

18          Q. Right.

19          A. But I think it's the lady from Costain who's the chair.

20          Q. This is a document that, broadly speaking, covers  
21          the same ground as the 302 standard that we were looking  
22          at a few minutes ago, what was called the "supplier  
23          qualification core requirement"?

24          A. I think you've got to say "broadly" because obviously we  
25          have been through the core document, we have been

1 through Link-Up, we have had various working groups and  
2 various committees that obviously review different  
3 things. So without reading the whole document I would  
4 have to say "broadly", sorry.

5 Q. It was phrased broadly. It is just to give the Tribunal  
6 a sense of how this all fits together.

7 If I can take you then to -- in the same tab we then  
8 have the Sentinel audit protocol, which is in tab 16,  
9 and that is an audit protocol that has been developed to  
10 assure compliance with the Sentinel scheme rules; is  
11 that right?

12 A. It would be, yes.

13 Q. Then we have the, "Safe Work Planning Protocol" at  
14 tab 17, page 366. That is an audit protocol, is  
15 it not, that has been developed to assure compliance  
16 against certain aspects that are required for principal  
17 contractor licensing?

18 A. No, it wasn't developed around principal contractor, it  
19 was developed around what was called the "Railway  
20 Interface Planning Scheme Rules". So it was developed  
21 around planning for safe work procedures trackside. It  
22 is a prerequisite of principal contractor licensing but  
23 it wasn't developed for principal contractor licensing.

24 Q. Thank you.

25 Again, the development of this document, that was

- 1           done in the same way as you said for the IMR?
- 2           A. I would -- I haven't been party to the development of  
3           this document, sorry.
- 4           Q. Okay.
- 5           A. I would imagine the Railway Interface Planning Scheme  
6           Rules, what was called RIPS, that was developed through  
7           working groups and through Network Rail, and then how  
8           it's morphed into this I'm not quite sure.
- 9           Q. Then the plant operation scheme is tab 18. Again, it  
10          sets out, does it not, a series of requirements that  
11          have to be checked, and this one is a prerequisite for  
12          the plant operations -- for the on-track plant scheme --
- 13          A. If you want to operate on-track plant on track, you have  
14          to comply with this as well as other requirements of  
15          having a -- our licence.
- 16          Q. So taken together -- I mean take that one in particular,  
17          the plant -- so the on-track plant scheme, in order to  
18          get into the on-track plant scheme you have to have done  
19          the IMR RISQS assessment; correct? If you are doing  
20          on-track plant, you must require Sentinel as well  
21          because you are putting people on track?
- 22          A. Yes.
- 23          Q. You are required to have done the plant operations  
24          scheme as well?
- 25          A. Yeah, before you get to that point you have to have --

1           have -- there're certain requirements, that you have to  
2           own plant and been able to maintain them properly, and  
3           have that in place before you can actually apply for  
4           this audit.

5           Q.   So those three audits taken together, there were three  
6           things that RISQS does on behalf of Network Rail in  
7           respect of people who put plant on track.  They do  
8           the IMR, they do the Sentinel and they do the plant  
9           operations scheme; yes?  Those are the three things that  
10          RISQS does on behalf of Network Rail?

11          A.   Yeah, they do it -- they do it for Network Rail, but as  
12          far as POS goes, it's also for anyone who wants to bring  
13          plant on site.

14          Q.   So these audit protocols taken together set out  
15          the management standards that Network Rail want to be  
16          met by people who are putting on-track plant -- putting  
17          plant on track, respectively?

18          A.   Yeah.

19          Q.   So in respect of, say, the Sentinel protocol, if I can  
20          take you back to that one, at tab 16, it is  
21          Network Rail's choice, is it not, whether or not to  
22          accept the Sentinel module as assurance of compliance --  
23          it is Network Rail's choice to accept these management  
24          standards as being what it wants for sponsors?

25          A.   Yeah, I would say that these have been developed from

1           the Sentinel scheme rules which were developed by  
2           a working group.

3       Q.   Okay, so the substantive requirements are set out in  
4           the Sentinel scheme rules?

5       A.   Yes.

6       Q.   The audit protocol simply sort of implements them?

7       A.   Yes.

8       Q.   Okay, that is fine.

9           In respect of safe work planning, obviously it is  
10          set, as you say, as a prerequisite for the PCLS, but by  
11          choosing it in that way, Network Rail has specified  
12          these as being the management standards it wants to be  
13          met.

14       A.   If you want to discharge the duties as a principal  
15          contractor for Network Rail, then, in order to do that,  
16          this is one of the requirements that you need to be able  
17          to do planned work safely on Network Rail's  
18          infrastructure.

19       Q.   This sets out that part of the requirements?

20       A.   It does, yes.

21       Q.   Similarly in respect of the on-track plant -- so plant  
22          operations scheme, that sets out part of  
23          the requirements that Network Rail wants to be met?

24       A.   Yes.

25       Q.   You can put that bundle away and take up bundle C1.

1 This was a document -- it is exhibited to Ms. Ferrier's  
2 first witness statement and, as I understand it from  
3 the way she presents it, it is a table of requirements  
4 that were presented to bidders by the RSSB as to what  
5 they needed to provide if they wanted to bid for RISQS.  
6 Does that sound familiar to you?

7 A. Sorry, this is a table that was provided to?

8 Q. This table was provided to bidders, potential bidders  
9 who were bidding to buy RISQS or lot 1 or lot 2 of  
10 RISQS?

11 A. I can appreciate that but I wasn't part of the tender  
12 process, so --

13 Q. No. You weren't party to the tender process, you were  
14 Network Rail at the time, but you are at the RSSB now?

15 A. Yes.

16 Q. I think I still want to ask you a question about it.

17 A. Okay.

18 Q. If I can take you down to requirement RPF00108, which is  
19 on page 7 because I am going to ask you a question about  
20 how the contract is being performed now so I think you  
21 can still answer that. So you will see, it is about  
22 a third or a quarter of way down the page:

23 "RPF00108 Auditor Provider Requirements.

24 "The Audit Provider must follow the principles laid  
25 out in ISO/IEC 17021 Conformity Assessment -

1 Requirements for bodies providing audit and  
2 certification of management systems."

3 This is staged as a "must" requirement. So that is  
4 a requirement under the contract between RSSB and  
5 Capita?

6 A. Right.

7 Q. Is that now a requirement under the contract?

8 A. If -- you would have to ask Gemma for the full details.  
9 Sorry, I only joined the RSSB in October, so I've had  
10 a handover, so I couldn't honestly tell you the full  
11 details of the contract.

12 Q. You are the scheme manager for RISQS.

13 A. I am, yes.

14 Q. The 17021 standard, conformity assessment standard, that  
15 is what specifies how audit and certification and  
16 management systems is to be carried out?

17 A. Right.

18 Q. Therefore, should it not be quite an important part of  
19 the contract that that is the standard to which your  
20 auditors are supposed to be performing?

21 A. If it's in here as a requirement, then --

22 Q. But are you not aware on a day-to-day basis that this is  
23 the standard against which your auditors are supposed to  
24 be performing?

25 A. I'm aware of -- on a day-to-day basis how they are

1 performing, I'm aware of what I've been -- reviewed by  
2 the previous scheme manager who's still around to ask  
3 questions.

4 Q. But it's it is right, that by setting this  
5 out as a specification -- I mean, that sets out  
6 the quality standards to which audits must be performed?

7 A. If that's what it says, yes. Sorry.

8 Q. In the same document, I think down -- I think it is in  
9 the next one, "Auditor Provided Requirements."

10 There is a series of bullet points:

11 "Auditor delivering RISQS audits must be in receipt  
12 of the following qualification and experience ..."

13 The three bullet points down the bottom are: passing  
14 certain kinds of courses, IRCA, NEBOSH and having  
15 a certain level of assurance. But the top one is:

16 "Meet the requirements and guidance including  
17 behavioural for auditor competence as detailed in  
18 ISO/IEC 17021."

19 Again. So it is a contractual requirement that  
20 auditors meet the standard for competency set out in  
21 that standard?

22 A. Right.

23 Q. Is that something that you check them against?

24 A. I went out -- I've witnessed an audit and I checked and  
25 I had a document that listed out all the requirements

1           that the auditor had to meet, and it was very detailed.  
2           And as the person who used to do the Achilles licence  
3           and checks, it follows that same procedure, so it's  
4           a similar document to what would have been used. And so  
5           yes, I checked -- went through with them.

6           Q. Fine. Because I think you say -- if I can take you back  
7           to your statement a moment, at paragraph 71 of your  
8           first statement you say that you are --

9           A. Right, sorry.

10          Q. I should say, keep the other document open because  
11          I will be going back to it.

12                    You say that you are currently in the process of  
13          auditing 20 auditors for Capita. So at the time -- so  
14          you wrote this statement on 25 January --

15          A. Yeah.

16          Q. -- I don't know if you're still doing it?

17          A. I am.

18          Q. So you will be auditing them against that list of  
19          requirement you were just describing?

20          A. Yes.

21          Q. But you do not know where that list of standards comes  
22          from?

23          A. The list of requirements.

24          Q. List of requirements.

25          A. The list of requirements came from the scheme manager

1           who was in place when the contract was written, which  
2           was Richard Sharp. So that was all set up then. So  
3           the frameworks that were agreed from the contract that  
4           Richard wrote the templates, and so he's agreed those  
5           with Capita, so they audit their auditors against it,  
6           and now I'm following that same template so I'm checking  
7           their auditors against the same template. If it refers  
8           to that particular standard, it doesn't say it on  
9           the template but I would imagine if Richard's put it in  
10          the contract, then that's what it will follow.

11         Q. Then similarly, if you go back down to the other  
12          document I was looking at with you for a moment, we can  
13          also see RFP00115. So this is most of the way down  
14          the page. Mm-hm.

15         Q. Protocol management:

16                 "The audit process must follow the principles of  
17                 the standard ISO 19011 current version."

18                 That is a "must" requirement in the contract as  
19                 well?

20         A. Right.

21         Q. So from that we can take that that is the specified  
22          requirement the audit process has to meet?

23         A. Right.

24         Q. Can I then take you to RFP00116, the next one down. It  
25          says:

1           "The service provider must ..."

2           Which I think must be the audit provider in this

3           context:

4           "... must have/create/develop, implement, use and

5           maintain audit protocols based on the standards and

6           requirements and include guidance on what an auditor

7           would assess to ensure competence."

8           So this looks like it's the service provider, so

9           Capita, whose obligation it is to develop audit

10          protocols?

11         A. Right.

12         Q. Is that what happens?

13         A. Is -- if we can amend them -- so obviously I wasn't

14          party to the original creation of them when it changed

15          over to RISQS because I worked for Network Rail. We are

16          in the process of amending the protocols, like I said

17          earlier, and part of that working group is the lead --

18          I don't know his title, sorry -- the lead chap from

19          Capita.

20         Q. Yes.

21         A. So he will be on that working group to help and assess

22          them and then he'll go away and develop them with

23          the scheme.

24         Q. But I think -- if you don't know this, I think I will

25          ask the other questions to Ms. Pearson rather than you.

- 1 A. Thank you.
- 2 Q. What I do want to put to you, though, Ms. Scott, is we  
3 have seen in the audit protocols a series of  
4 requirements that have to be met by suppliers, and we  
5 have seen in the table I have just taken you to that  
6 there are certain quality standards --
- 7 A. Right.
- 8 Q. -- which have to apply to the auditing,  
9 the audit process has to meet those standards.
- 10 A. Yes.
- 11 Q. So Network Rail could specify, could it not, that it  
12 wanted an alternative audit provider to audit the things  
13 set out in the audit protocols and it could have  
14 required them to be auditing to the standards we saw,  
15 the 17021 standard, and that would be equivalent, would  
16 it not?
- 17 A. Sorry, so -- what you're saying is that we could --  
18 Network Rail could ask Achilles and say to Achilles,  
19 "Yes, you can audit against those standards because  
20 they're there"? Is that what you're asking me, sorry?
- 21 Q. What I am saying is Network Rail could set out  
22 the substantive requirements it wants to be audited and  
23 it could say, "We want those to be audited to  
24 the standards, the ISO 17021 standard", and that would be  
25 equivalent to what it is that RISQS is doing?

1 A. It would be. I would imagine if they've got all  
2 the same controls and processes in place.

3 Q. Okay, thank you.

4 Now, if I can just take you to a document. This is  
5 bundle E4/4/1451.

6 This is a project --

7 MEMBER 2: What was the page number?

8 MR. WOOLFE: 1451.

9 This is a project brief for a project which I think  
10 you were the technical lead on because you show up on  
11 the top right-hand side, "Technical  
12 lead: Gillian Scott". This refers back to the standards  
13 which we were looking at a little earlier on. Under  
14 the "Problem statement", what is the problem to be  
15 solved, it refers to two standards we have not seen,  
16 which are supplier licensing standards. It says they  
17 are out of date "for the following reasons". Then it  
18 refers to "NR/L2/CPR302", which is the standard we were  
19 looking at before the supplier qualification core  
20 requirement standard, and it says:

21 "The supplier qualification core requirements  
22 detailed within the standards is in the process of being  
23 withdrawn as it has been replaced with an industry  
24 minimum requirements module [IMR module] which is  
25 governed by RISQS board. This was part of a strategy

1           agreed between Network Rail and RSSB to reduce  
2           the number of audits on suppliers."

3           You can see what is said there.

4           So the point that is being made there, effectively  
5           that is a sort of efficiency one, that by streamlining  
6           it you reduce the number of audits that are required?

7           A. At this point the actual streamlining had been done.

8           Q. Yes.

9           A. That was a strategy decision elsewhere, it wasn't taken  
10          in Network Rail. All I was trying to do now was align  
11          the 0070 and 0073 standards, which were principal  
12          contractor licensing, and I was trying to streamline  
13          them so that they no longer referred to 302 and they  
14          referred to the IMR.

15          Q. Yes.

16          A. So it wasn't -- the problem wasn't the streamlining bit,  
17          it was the fact that it referred to an out of date  
18          standard.

19          Q. Okay, that is fine.

20          Then I think you are making a point in a different  
21          context. So over the page under section A4 -- sorry, on  
22          page 1453 -- hang on, let me just check.

23          In A4 again -- sorry -- towards the bottom of that,  
24          there were three bullet points, and again that refers to  
25          the IMR coming in to replace the 302 standards as part

1 of a strategy agreed to reduce the number of audits.

2 You can see that, the last but one bullet point in  
3 the box.

4 A. Yeah.

5 Q. Yes?

6 A. Yeah.

7 Q. Okay.

8 So that is one issue that this is applicable to.

9 Then, on the previous page, you refer to -- 1452 --  
10 A3.2, "Safety reduced risk", and you refer to a "scope  
11 increase" it will demonstrate. What was the scope  
12 increase that you were talking about at the time?

13 A. This particular standard, if you read the next bit down,  
14 it was only ever applicable within infrastructure  
15 projects part of the business.

16 Q. Yes?

17 A. So it didn't include maintenance, property or any other  
18 part of the business. It also -- on this one, it didn't  
19 cover, like, non-trackside works, it only ever dealt  
20 with principal contractors that were going to work  
21 trackside.

22 Q. Sure.

23 A. So anyone who was going to build a building or a car  
24 park, it didn't cover those.

25 Q. So what you were talking about was an increase in

1 the scope of the --

2 A. Of the standards.

3 Q. -- supplier licensing standard, the CPO070, to cover  
4 some non-trackside stuff?

5 A. And to cover our internal arrangements where  
6 Network Rail internally were discharging.

7 Q. So it was in a context that you were saying there would  
8 be:

9 "A scope increase will provide demonstration that  
10 ... robust frameworks to confirm compliance."

11 If you look back at your statement in bundle D/4,  
12 I believe, at paragraph 45. Perhaps start at 44, which  
13 is where you exhibit this agreement document. You see  
14 you are in technical need of a project to update to  
15 Network Rail standards, and you set out then the context  
16 of what I think is in the box on the first page.

17 Then you say:

18 "Under the heading 'Specific Business Benefits',  
19 I have identified that the key benefits of the project  
20 will be in 'Safety (Reduced Risk)'."

21 And then it quotes the bit I have just been showing  
22 you, about the scope increase. But the safety benefit  
23 was from the scope increase. You were applying robust  
24 licensing standards more broadly to non-trackside stuff  
25 than you were previously. That was the benefit you were

1 talking about?

2 A. One of the benefits, yes.

3 Q. We see it in context, it was the scope increase will  
4 provide a demonstration that greater safety standards  
5 are being met. So it is the expanding of the CPO0070  
6 standard --

7 A. Yes.

8 Q. -- that is providing the benefit.

9 Then at 46 you go on to say:

10 "It is clear from this document there was an  
11 established rationale for a single supplier assurance  
12 scheme within Network Rail, primarily driven by safety  
13 considerations ..."

14 But that does not follow from this document,  
15 does it?

16 A. So from this document?

17 Q. Yes.

18 A. So in this document, the strategy -- so the change from  
19 the 302 to the single -- single IMR, so that was  
20 the single source.

21 Q. What I am going to say to you, the change from the 302  
22 standards to the IMR standard is mentioned in this  
23 document, and it is said it will reduce the number of  
24 audits. Which was a detail change. But the thing that  
25 is said to provide a safety benefit is the increase in

1 scope of the licensing standard to apply to  
2 non-trackside works.

3 A. So the non-trackside organisations, until it came to  
4 the PC licensing standard, until it was encompassed in  
5 that, didn't go through RISQS, they didn't go through  
6 Link-Up. Sometimes they did, sometimes they didn't. By  
7 putting them in this scope, then we could get -- they  
8 went through the RISQS scheme, therefore they had to  
9 deliver through the IMR, and therefore they were  
10 captured and governed the same as any other  
11 organisation, so we had a level of assurance on them, an  
12 ongoing assurance.

13 Q. So that is saying that people who were not subject to  
14 assurance, subjecting them to assurance makes things  
15 safer?

16 A. Yeah, the other thing that this changed was with  
17 principal contractors -- sorry, I've changed it twice,  
18 sorry, I'm getting ... with principal contractors, at  
19 the time this standard was implemented, the principal  
20 contractors, once they had gone through their first  
21 initial audit, they never then went through that audit  
22 again. So we as a PC licensing team used to review all  
23 of their management systems. So what this did was it  
24 said, "Right, okay, as a principal contractor, RISQS  
25 will review your management systems and the PCL team

1 will no longer review them". So before this time, once  
2 you got a PC licence, the PC licensing team used to do  
3 all the management review, and what we did was, by doing  
4 this, we put all the management systems into the Link-Up  
5 and RISQS, and then the PC licensing team used to go on  
6 site and do physical audits so then we could actually  
7 check on a construction site what was going on and make  
8 sure that the management systems were being delivered  
9 safely.

10 Q. Sorry, I need to focus on this sentence that you say:

11 "It is clear from this document there was an  
12 established rationale for a single supplier assurance  
13 scheme within Network Rail, primarily driven by safety  
14 considerations ..."

15 The issue we are looking at in this case is whether  
16 or not there needs to be a single supplier assurance  
17 scheme across the industry, and within that we are  
18 looking at whether or not Network Rail could have more  
19 than one supplier assurance scheme. But that is not  
20 what this document demonstrates. What this demonstrates  
21 is that applying assurance to people who were not  
22 previously assured is done for safety reasons.

23 A. This document was -- was set out -- you're reading an  
24 internal document and you're kind of -- sorry --

25 Q. This is a document that you -- I mean, when you wrote

1           this witness statement you wrote the words:

2            "It is clear from this document there was an  
3           established rationale for a single supplier assurance  
4           scheme ... [which was] primarily driven by safety  
5           considerations ..."

6            So you are saying that this document shows  
7           the primary consideration behind having a single  
8           supplier scheme was safety. I am saying to you that  
9           document does not demonstrate that point; is that right?

10          A. Unless -- unless you want to let me sit and read  
11          the whole document, I --

12          Q. But surely you read the whole document at the time you  
13          wrote the witness statement?

14          A. I've read all the documents. I created the documents.  
15          But -- sorry, (inaudible) since then I -- sorry.

16          Q. Okay, can I take you on to a further point in your  
17          statement at paragraph 56 you begin to turn to  
18          the reasons you say why Network Rail uses the single  
19          supplier assurance scheme?

20          A. Yeah.

21          Q. You say:

22                 "Network Rail has only ever specified one supplier  
23                 assurance scheme for Sentinel, POS and PCLS on cost and  
24                 efficiency and safety grounds."

25                 Then you say:

1            "... Allan Spence will be providing evidence on  
2            the safety benefits ..."

3            So I understand you are not making claims about  
4            safety here, you are focusing on the cost and efficiency  
5            points in the remainder of what you say?

6            A. I'm just -- I think what I would say is I'm focusing on  
7            the fact that, from my understanding, when I've looked  
8            at all the documents from my time in Network Rail, we've  
9            only ever had one supplier assurance scheme.

10          Q. Sorry, perhaps to be clear, I need to know what to ask  
11          you questions about and because you say Allan Spence  
12          will be providing evidence on safety benefits, if it is  
13          okay, I am not going to ask you any questions about  
14          safety and just focus on the cost and efficiency points.  
15          That seems to be what you are talking about.

16          A. I mean, I -- some elements I will be able to say to  
17          safety because there's obviously risks involved in  
18          having multiple schemes.

19          Q. Yes, okay. I will ask you a few points and we will see  
20          how we get on. That's fine.

21                  At paragraph 57 you say:

22                  "... the on site audits carried out by Network Rail  
23                  in relation to PCLS are additional to, and do not  
24                  duplicate, the audits carried out by RISQS."

25                  You say:

1           "The compatibility between these audits is  
2           facilitated by the use of a single scheme which allows  
3           a consistent approach ..."

4           The point I suggest is that, avoiding duplication,  
5           you can achieve non-duplication by having a clear  
6           specification of what it is the audits should cover.  
7           That is what will achieve non-duplication.

8           A. With that, though, if -- if you have multiple schemes,  
9           and we have 101 buyers in this scheme, so if you have  
10           101 buyers and each organisation that's in there supply  
11           those 101 buyers, they could possibly in up to 17 or,  
12           whatever, 18 schemes.

13          Q. I think I am looking at a different point. The point  
14           you are dealing with at paragraph 57, if you just read  
15           it, is about avoiding duplication between your on-site  
16           audits --

17          A. Oh right, yes.

18          Q. -- and the audits carried out by RISQS in relation to  
19           principal contractors.

20          A. Yeah.

21          Q. What I am suggesting to you is you can avoid  
22           duplication, but as long as you have a clear  
23           specification for what audits are being carried out,  
24           that allows you to avoid duplication.

25          A. Yeah.

1 Q. Then at paragraph 58 you refer to Mr. Blackley and he  
2 will provide a witness statement on efficiencies.

3 Then you refer to a document:

4 "This letter to all PC licence holders ..."

5 I think that document is in bundle E4/4/1507, using  
6 the bundle numbering.

7 Have your statement open in front of you at the same  
8 time. Okay, lovely.

9 MR. FLYNN: Sorry, could you just repeat the number?

10 MR. WOOLFE: Sure. It is E4/4/1507.

11 So, again, it is a matter of what you say in  
12 the statement, and you say in paragraph 58:

13 "This letter to all PC licence holders from  
14 Network Rail refers to the efficiencies to be delivered  
15 within a single scheme for suppliers as a result of  
16 aligning the new audit modules introduced in relation to  
17 PCLS as part of the transition to RISQS ... noting that  
18 'aligning all of the above new audits with your current  
19 product code and annual audit will provide the best  
20 reduction of days'."

21 I just want to check because I think it is clear  
22 from the witness statement, but --

23 MR. FLYNN: "... best reduction of audit days".

24 MR. WOOLFE: Yes, thank you, Mr. Flynn points out there is  
25 a slight misquotation there. In the letter, if you

1 look, in the second paragraph above "Yours sincerely",  
2 that is a quote and that says:

3 "... best reduction of audit days."

4 There is a word missing in that quote. I think it  
5 is not material.

6 The point this letter is making when you look at it  
7 is simply that it makes sense from a supplier's point of  
8 view, if you are going to have the audit done, the RISQS  
9 audit done, if you schedule them at the same time as  
10 your product code and annual audit, it will save you  
11 time, it will just get all things done on the same day?

12 A. If you schedule them all together, yes, because there's  
13 elements of duplication through Sentinel, through IMR  
14 and safe system work plan. Competence for one. So you  
15 would --

16 Q. So that is duplication within the modules?

17 A. If you separate them out, it would be, but when you do  
18 all the audits together, it builds it up and they're all  
19 dealt with in one --

20 Q. Okay, thank you.

21 But this is a question of scheduling audits. One  
22 can schedule audits on the same day irrespective of who  
23 is providing the audits. I mean, if it is RISQS  
24 providing the audits, you can do them on the same day,  
25 if it is Achilles providing the audits you can do them

1 on the same day. It is just a matter of diary planning,  
2 is it not?

3 A. If you put them all together, anyone can do them on the  
4 same day, yes.

5 Q. So this is presented as an efficiency relating to  
6 the use of a single scheme but it is not an efficiency  
7 relating to the use of a single scheme, is it, it is an  
8 efficiency relating to doing all your audits on the same  
9 day?

10 A. No, it's a bit of both. So this letter was sent to all  
11 principal contractors. At the point when this happened  
12 they did not get an audit by Achilles, they got an audit  
13 by the internal PC licensing team. We audited their  
14 management systems and sometimes it could take us  
15 a week, a week and a half. So that's where some of  
16 the audit efficiency goes.

17 It also meant that a principal contractor who was  
18 providing works to Network Rail could also be a supplier  
19 to another company. So therefore we would audit them  
20 for their principal contractor licence but then they  
21 didn't have an audit to be able to demonstrate  
22 compliance to another principal contractor. So by them  
23 doing it once, they would keep it in one scheme and therefore  
24 have one audit. So that was the idea.

25 So the whole point of it was that multiple

1 organisations didn't go and audit the same organisation  
2 on their management systems. So everybody put them into  
3 RISQS, so there was one audit held for the whole of  
4 the rail industry to view.

5 Q. So what you're putting forward there is a justification  
6 for having a common audit across the industry?

7 A. In one place, in one scheme, in one platform, so that  
8 everybody could go to one place and look at it.

9 Q. That is not what this letter says. This letter is  
10 purely about the practicality of scheduling audits for  
11 the same day.

12 A. So it talks about:

13 "... in order to meet the objectives set out last  
14 year in reducing the number of audits thoroughly through  
15 the supply chain."

16 So it covers a number of aspects. It doesn't just  
17 cover the fact that if you put all your audits together  
18 in one day you'll get a reduced audit, it talks about  
19 the whole supply chain. There's other elements in  
20 the letter.

21 Q. But in terms of reducing the number of audits, I mean,  
22 if a supplier wants just to be audited by RISQS, it  
23 could just be audited by RISQS, can it not, it does not  
24 have to go and get any audits from Achilles if it does  
25 not with want to?

1       A. It depends on -- if there's a buyer -- there's  
2       101 buyers in the RISQS scheme. If each of those buyers  
3       go to different platforms, whether it be TransQ, whether  
4       it be RISQS, whether it be the other ones that you  
5       mentioned or any of the other suppliers who actually  
6       tendered, there potentially could be -- have  
7       17 platforms out there, so they could go to who they  
8       want, yes, but then you have 17 places to look for  
9       the information, 17 different organisations that's got  
10      to be reviewed.

11      Q. Are you saying that is why Network Rail has mandated  
12      RISQS to be used --

13      A. No I'm not saying --

14      Q. -- throughout the supply chain?

15      A. I didn't mandate that, it was set upon a strategy group  
16      which was previous to me actually starting that strategy  
17      group. It was a decision made by someone more senior  
18      than me. I started the steering group when that  
19      decision had already been made.

20      Q. It is clear from this letter that there was an objective  
21      of reducing the number of audits and that is why we got  
22      to these modules.

23             I just want to check, the point which I did go to  
24      this letter for -- and I am sorry to be (inaudible) --  
25      this is being put forward as being an example of

1 efficiencies. You quoted the words about aligning a new  
2 audit. That is just a matter of when suppliers schedule  
3 their audits?

4 A. But that is one element of the letter as well, I would  
5 say --

6 Q. That's one element?

7 A. Yes.

8 Q. Okay.

9 A. And it wasn't the primary -- well, it wasn't one -- it  
10 was one of the -- part of the focus of the letter.

11 Q. Since you have raised the point I may as well deal with  
12 it. So you have said that if buyers chose multiple  
13 schemes then the supplier in the rail industry may have  
14 to be audited with multiple schemes; yes?

15 A. Yes.

16 Q. But as matters stand at the moment, if you have  
17 a supplier who is outside the rail industry who wants to  
18 get into supplying the rail industry, they would have to  
19 register with a new platform, RISQS, in order to do so,  
20 would they not?

21 A. An organisation coming into the rail industry would  
22 first of all register on RISQS and look and see if  
23 there's any product codes, but any of the buyers in  
24 the scheme could go to do their own assurance, it  
25 depends where the organisation wants to work. So each

1 of the organisations, of which there's 4,300, all of  
2 them have a supply chain ... or 4,000/4,500 and they all  
3 have their supplier assurance process and that could be  
4 done anywhere, not in RISQS if they choose to have it  
5 that way.

6 Q. But those suppliers, in order to supply the rail  
7 industry, the RISQS is the single point of entry, is it  
8 not?

9 A. No, if you want to supply RISQS -- if you want to supply  
10 the rail industry and you want to go trackside then you  
11 have to have the Sentinel module. But if you want to  
12 supply Balfour Beatty on some of their trackside -- on  
13 some of their activities on a platform, which might be  
14 classed as high street environment, then no, you don't  
15 have to be in RISQS. They have to have their assurance  
16 process that determines that the contractors that  
17 they're going to bring on site are competent and capable  
18 and everything else.

19 Q. But if you want to go trackside then you have to be  
20 Sentinel registered and you have to be --

21 A. You do, unless you're going to have a reduced number.  
22 So you can go on trackside for I think it's about  
23 12 occasions. So if you've got some very bespoke  
24 companies, they -- they won't necessarily.

25 Q. RISQS presents itself as the single point of entry for

1 the rail industry, does it not, to suppliers? It tries  
2 to market itself as --

3 A. It markets itself as: this is where you get one -- you  
4 get an audit. But that's so that we -- we kind of  
5 deliver it so that it's a single point so that when you  
6 get in there there's 101 buyers in that platform who may  
7 want to -- you can provide products and services for.

8 Q. Just one more point about this letter. It refers to  
9 reducing the number of audits. There is no mention of  
10 a safety-specific justification for this  
11 rationalisation, is there?

12 A. The letter was sent out because we -- we couldn't get  
13 the standard issued in time. So it -- it's kind  
14 of they're doing a lot of context and a lot of briefing  
15 and communications with -- it had only gone to principal  
16 contractors, it's only about 140 organisations in  
17 the business. And it would be done through  
18 consultation, through working groups and various  
19 briefing sessions, because it was part and parcel of  
20 this standard change.

21 Q. But this is referring to a potential efficiency element,  
22 there is no discussion of safety in a specific context  
23 of having a single assurance scheme here, is there?

24 A. Not in that letter.

25 Q. If I can take you to another document in the same bundle

1 at page 1666. This is an email from you to  
2 Mr. Blackley.

3 A. Yes.

4 Q. It refers back to a meeting with Achilles held -- well,  
5 the email is dated 6 March so it must have been on  
6 the 6th or the 5th, sometime around there?

7 A. I think it was in February if you look at the earlier  
8 email.

9 Q. So it had been a little bit earlier:

10 "Katie came in to see me. They are advising they  
11 would like to keep the Achilles with new name platform  
12 open (which we can't stop). They also advised that they  
13 would be offering an audit. I have said that  
14 Network Rail have given their commitment to RISQS and  
15 also it is a prerequisite to many of our standards. She  
16 said that they would offer the audit and challenge  
17 the equivalent to RISQS. I said that our standards do  
18 not say 'or equivalent' ..."

19 And so on:

20 "Can you look below and advise me if it is okay to  
21 send."

22 Then I think what follows, is this to be sort of  
23 notes that were to be sent to Katie?

24 A. It was just a note there to support the fact that  
25 I've said it did not say "or equivalent", so what I was

1           doing was quoting the relevant sections of the standards  
2           where it refers to the requirement for RISQS, and it  
3           doesn't say "or equivalent".

4       Q.   Thank you.

5           Just reading down, we have:

6           "I expressed my concern that you mentioned to  
7       RSSB ..."

8           And so on.

9           Then there are some web links under Network Rail and  
10          RISQS audits, platform statements --

11       A.   Yes, Katie expressed a concern that the RSSB and RISQS  
12          had not formally requested some data.

13       Q.   Right.

14       A.   So obviously I'd expressed a concern at that.

15       Q.   Okay.

16       A.   But I also then went and spoke with the RSSB at RISQS  
17          and asked them to confirm whether they'd done that.

18       Q.   Then it says:

19           "Via Q&As, Network Rail support the Rail Safety and  
20          Standards Board (RSSB), who provide a Rail Industry  
21          Supplier Qualification Scheme, RISQS, on behalf of  
22          the UK rail industry. The RSSB competitively tendered  
23          for the provision of RISQS, thus ensuring value for  
24          money on behalf of the UK taxpayer. A single scheme  
25          allows scheme overheads to be kept to a minimum.

1 Multiple schemes would require to be funded."

2 So that is an efficiency justification being put  
3 forward, a cost-saving justification being put forward  
4 for having a single scheme; yes?

5 A. It was a statement that was by Mr. Ken Blackley, and in  
6 that statement it would mention -- there's no mention of  
7 health and safety.

8 Q. No, there is not.

9 In fact, having gone through all of this, I cannot  
10 find anywhere in it, anywhere with any contemporaneous  
11 documents, saying there is a safety reason for  
12 Network Rail mandating a single supplier assurance  
13 scheme. Are you aware of any documents in here that do  
14 that?

15 A. I'm not aware of any documents. I think the issue is  
16 that they've always only mandated one, so we've never  
17 come across having to create a document that justifies  
18 why we only have one.

19 Q. Right.

20 A. You know, it's going back, what, 20 years where there's  
21 only ever been one.

22 Q. But that probably largely accounts for the character of  
23 the evidence we have gone through, where you are  
24 saying -- I have already taken you to some parts where  
25 you have some documents referring to the general issues

1 and efficiency and so on, and then you seized upon  
2 another part of it that related to safety and said,  
3 "This clearly demonstrates that we always had a safety  
4 justification", and in fact the document does not  
5 demonstrate that and it is, with the greatest of  
6 respect, an ex post facto rationalisation of  
7 the position.

8 A. Sorry, I don't know what that means.

9 Q. Sorry.

10 After the event you are claiming there is a safety  
11 reason for having only a single supplier assurance  
12 scheme, and that is an issue which has only occurred to  
13 you now, and you are, after the event, coming up with  
14 reasons and trying to fit that back to the facts.

15 A. No. All the way through -- we've worked with Achilles  
16 for a long, long time. The principal contractor  
17 licensing is set up and its fundamental core and  
18 Sentinel and everything else is about people's safety --

19 Q. Yes, Sentinel --

20 A. -- it runs right the way through -- no, but  
21 the principal contractor license scheme is -- you know,  
22 what -- our core part of that is looking at behaviours  
23 and trying to get that through on site. So we're going  
24 beyond just, you know, mandating legislation, we've  
25 taken it to a next step.

- 1 Q. But there is a difference, is there not, between  
2 the principal contractor license scheme being important  
3 to safety and it being important to safety that  
4 Network Rail mandates a single supplier assurance  
5 scheme. Those two different issues, are they not?
- 6 A. I think you would bring them together if you started  
7 looking at one and then looking at the other, because it  
8 intertwines. We get our assurance for the principal  
9 contractor licence, it's underpinned by this single  
10 scheme. And once you start bringing multiple schemes  
11 in, you have to start looking in multiple places and you  
12 have multiple audits on the same organisation, then  
13 you're at risk of -- of not knowing what to do with --  
14 when you've got five, six, seven audit reports about one  
15 organisation, which one do you believe, which one do you  
16 take?
- 17 Q. But as we dealt with earlier, Network Rail can specify  
18 what it wants the audits to cover and it can --
- 19 A. Right.
- 20 Q. -- specify that they be performing to a certain  
21 ISO-recognised standard?
- 22 A. Yes.
- 23 Q. Thus the audit reports would be equivalent, you accepted  
24 they would be equivalent?
- 25 A. Okay -- sorry, that sounds like I'm arguing, I'm really

1 not, sorry.

2 Q. I'm making a suggestion to you that you would know  
3 the reports were equivalent, and therefore, if you know  
4 what the report related to and you know what standard it  
5 was audited to, then you would know what to do with it?

6 A. But what I'm trying to say is if you had -- say there  
7 was five platforms and they were all auditing the same  
8 thing, you may come out with five different results, you  
9 may come out with two different results, a pass and  
10 a fail, and then which of those reports is right? Which  
11 of those reports, when they all get fed into  
12 the system -- will -- so, in itself it's a sampling  
13 exercise, so therefore you can't determine if you go  
14 into the same audit and the same -- a different auditor  
15 would find the same information. We are finding that  
16 now that we're getting a bigger number of  
17 non-compliance -- and if two audit reports go into  
18 the same system, one says "pass", one says "fail", which  
19 one do you believe? And if you ignore the "fail", what  
20 happens --

21 Q. Is it not quite simple, which is that if the "fail" is  
22 the most recent report, then it is a fail?

23 A. But what if it isn't? If you have -- if you have five  
24 platforms -- we'll just go with five -- and you have  
25 five audit reports on one organisation, which audit

1 report do you believe? If it's all done within  
2 a similar sort of time frame. If it's the last audit  
3 report, is the other organisation then going to take  
4 the word of a different auditing organisation and say,  
5 "Oh, they obviously knew better than me when I passed  
6 them". How will all that work?

7 Q. If an audit fail exists and it has not been remedied,  
8 you can treat it as a fail?

9 A. From a Network Rail point of view. So then will  
10 the other platforms take down their pass? Is what I'm  
11 trying to say. Or will you have --

12 Q. Sorry, we are looking at here from the perspective of --  
13 we are not talking about procurement, we are talking  
14 about the principal contractor licensing scheme.

15 A. Yes.

16 Q. We are talking about Sentinel?

17 A. Yes.

18 Q. We are talking about the on-track plant scheme. Those  
19 are the things we are talking about.

20 Let us take Sentinel. There is one place where  
21 Sentinel registration is recorded, is there not? That  
22 is Mitie who record who is sponsored and who they  
23 sponsor for Sentinel; that is right?

24 A. Yes.

25 Q. So if an audit fail is notified, then what happens at

1           Sentinel is that an email gets sent to Sentinel,  
2           Sentinel turn off access for those people who are  
3           sponsored by that sponsor --

4       A.   Yes.

5       Q.   That is right?  And they will not turn it back on again  
6           until any audit failure has been remedied; that is  
7           right, is it not?

8       A.   Yes.

9       Q.   That could be just the same even if there were multiple  
10          people providing the assurance.  If there was a fail,  
11          they turn it off, and until the fail has been remedied  
12          they do not turn it on again?

13      A.   But it's more than just for Sentinel.  For principal  
14          contractor licensing the supporting of it is all  
15          the other management systems that's been reviewed.  It's  
16          not just Sentinel.

17      Q.   But do you accept it for Sentinel, what I just said for  
18          Sentinel?

19      A.   That anyone can turn it off and anyone can turn it on?

20      Q.   No, Mitie, who control the register, they turn it off if  
21          they get an audit fail, and they do not turn it back on  
22          until the audit fail has been remedied?

23      A.   But then you would have -- when the scenario you  
24          mentioned earlier, if you had five organisations --

25      Q.   No, but if you fail with one organisation, until it has

1           been remedied, that audit has been re-passed?

2           A. Yes, so one organisation would send it to  
3           Sentinel, they would fail, and then they would have to  
4           send it to all the other organisations, to tell them to  
5           fail in that platform, otherwise you've got a buyer  
6           going into another platform and it shows their Sentinel  
7           as being --

8           Q. But the way that Sentinel --

9           SHORTHAND WRITER: Sorry, one at a time, please.

10          MR. WOOLFE: You go ahead, you must always speak rather than  
11          me. I do apologise. My fault.

12          A. The only thing that stops somebody going on track is  
13          their trackside Sentinel card, so yes, ultimately you  
14          will stop them going on track.

15          Q. Yes.

16          A. But if you are in the process of a procurement exercise,  
17          you would look in it in a platform and you would see  
18          that they were still shown as valid and live, if you  
19          don't -- if -- if -- if Sentinel doesn't feedback to all  
20          these other platforms. So you've failed it in one  
21          platform. It tells Sentinel. If Sentinel doesn't tell  
22          all the other platforms, somebody may be procuring  
23          through those other platforms, and then at that point  
24          they would be tendering with people who are not valid,  
25          they'll not be live, they'll be failed.

1 Q. Okay.

2 But that still would not result to anybody getting  
3 access to track who was not supposed to get access to  
4 track, would it, because they would be blocked on  
5 the Sentinel system?

6 A. They would be blocked on the Sentinel system.

7 Q. Thank you.

8 Similarly with the on-track plant team. If they get  
9 notified that there is an audit fail, they would  
10 withdraw the authorisation for a company to offer  
11 on-track plant, and then that company could no longer --

12 A. Again, it would have to go, if there was five platforms  
13 live, it would have to inform all five platforms because  
14 any of the 101 buyers will buy plant or plant operating  
15 through each -- any of them schemes. So you would have  
16 to feed that information back to all five. So if they  
17 failed in one, if you were going to accept the concept  
18 that you would take their audit as being the valid one.  
19 But I think the argument you get is if Achilles failed  
20 someone, RISQS may say, "Well, we saw them last week and  
21 they were fine". So you've then got a dispute as to  
22 whose assurance you use and whose -- whose information's  
23 live. You have discrepancies. And if you ignore one  
24 and you take another --

25 Q. Just to check, at the moment if you have somebody who has

- 1 a plant operating licence --
- 2 A. Yes.
- 3 Q. -- and for some reason, perhaps not related to RISQS but
- 4 they fail an audit done by Network Rail and so the plant
- 5 operating license gets withdrawn, the authorisation to
- 6 operate plant, how do people at the moment who deal with
- 7 them, how do they know what has happened?
- 8 A. That status would go into the RISQS platform and they
- 9 would withdraw the certificate that sits in there, and
- 10 then it would be notified to the -- the failure would
- 11 come and it would notify any of the buyers with -- well,
- 12 the scheme. It would come out at one of
- 13 the notifications of failure.
- 14 Q. So to take on-track plant, if a RISQS audit is failed,
- 15 the on-track plant team in Network Rail would be
- 16 notified?
- 17 A. Yes.
- 18 Q. The licence would be withdrawn. The authorisation would
- 19 be withdrawn. That would be noted in RISQS, it would be
- 20 reported by Network Rail, and then everyone would know
- 21 where they stand?
- 22 A. It would -- yes, an email goes out -- if someone fails
- 23 an audit in RISQS, an email goes out to all buyers and
- 24 identifies what the failure was and the actual
- 25 accreditation is taken down out of the system, if it's

1           that specific part, the POS certificate would be  
2           removed.

3       Q.   Right.  And that would show up in RISQS?

4       A.   It would, yes.

5       Q.   So, again, we're on an issue of sort of co-ordination  
6           problems, if you like, and paragraph 67 -- and again, do  
7           you say this is a safety benefit:

8                 "A single supplier assurance scheme integrated into  
9           the rail safety ecosystem delivers safety benefits.  For  
10          example, RISQS has a company ID code which aligns with  
11          a Mitie's company code database which [effectively]  
12          means that suppliers which fail a Sentinel audit can be  
13          efficiently and effectively removed from Mitie's  
14          database and no longer work trackside."

15                This is the freezing out issue that we were talking  
16          about a moment ago, when it gets notified.  Sentinel  
17          will sort of flick a switch and people with smartcards  
18          no longer gives them access?

19       A.   Yes.

20       Q.   So what we have is basically a company needs to have  
21          a unique identifier so you know if you send  
22          a notification about one company that the right  
23          company's employees get switched off?

24       A.   Yes.

25       Q.   Every company in the company in the scheme has a unique

1 identifier,

2 does it not?

3 A. They do.

4 Q. Which is the Companies House registration number?

5 A. Yes.

6 Q. So in fact there wouldn't be a problem at all of  
7 identifying precisely which company has been audited?

8 A. There is organisations where you have more than one but  
9 you could go to Dun's numbers, yes.

10 Q. Okay. Then at paragraph 68 you refer to a risk of  
11 safety issues slipping between the cracks, and you imply  
12 that that would not be the case, you say, if you have  
13 a single supplier assurance scheme.

14 Then you refer to a problem of double-shifting by  
15 workers on Network Rail and TfL infrastructure:

16 "... which was addressed through TfL during the  
17 Sentinel scheme ..."

18 So as I understand the problem, Network Rail ran  
19 Sentinel at the time, workers had the Sentinel card and  
20 they were not allowed to be on track for too many hours  
21 at one go. But at that time TfL were not on that scheme

22 --

23 A. No.

24 Q. -- and so a worker could work to be 10 hours for Network  
25 Rail and then go and pull another shift that evening --

1 A. Potentially, or they could go anywhere and do that, yes.

2 Q. -- on TfL and that could be a safety risk.

3 Then you say:

4 "There would be parallel issues."

5 You draw an analogy:

6 "... if Network Rail were required to recognise any  
7 number of supplier assurance schemes."

8 This is where you say:

9 " ... because as long as the supplier was able to  
10 provide one live IMR report, then the supplier would not  
11 disclose why it has failed."

12 But that is quite different, is it not, because in  
13 the first situation you have two bits of infrastructure,  
14 and a scheme applies to one and simply does not apply to  
15 the other, and you have problems with workers going from  
16 one bit to the other, working outside the scheme, but  
17 that is totally different to a problem of having two  
18 schemes, is it not? There is no parallel there?

19 A. I think the parallel I was trying to draw was with  
20 Sentinel. There was Sentinel and there was Lucas, so  
21 there were two separate schemes, so that people could be  
22 represented in both, and say they failed drugs and  
23 alcohol in one, it wouldn't register in the other, and  
24 so that's my parallel. If you have lots of issuing  
25 schemes, an organisation could fail in one, and unless

1 all of those tell every other scheme that's out there,  
2 then they would be sitting as live in one scheme and  
3 compliant, but they would have failed in another scheme.  
4 So that's what I was trying to --

5 Q. So it was a drugs and alcohol things you were thinking  
6 of in particular?

7 A. That's one of the ways where -- it wasn't the only --  
8 there's double-shifting, but it was just an easier way.  
9 The drugs and alcohol test can be taken down in one  
10 scheme and not necessarily in --

11 Q. So this is the sort of problem we were talking about  
12 a moment ago in relation to information flows where you  
13 have Achilles could notify Mitie that somebody has  
14 failed Sentinel, they switch it on off and that needs to  
15 somehow feed through to other people.

16 A. It would need to go to every other platform provider  
17 that came onto the market that wanted to provide  
18 the service, or ...

19 Q. I think we covered that before.

20 Then paragraph 69 and 70 you say:

21 "If Network Rail were forced to recognise multiple  
22 supplier assurance schemes, this would generate  
23 a misalignment of incentives regarding safety between  
24 buyers and schemes."

25 Then you refer to conflicts of interest between

1           auditors and consultants.

2           Now, I think you say -- and this is an advantage  
3           that you put forward regarding having a single scheme,  
4           but even if you have a single scheme, there could be  
5           conflicts of interest, could there not, if there were  
6           not provisions there to deal with it, because the person  
7           providing the single scheme could also provide  
8           consultancy services?

9           A. I think, the way we have it right now, we have very  
10          clear guidelines on consultancies. The majority of  
11          the staff are, and will be going forward, permanent  
12          employees. What I was trying to highlight is if you  
13          have five schemes, potentially you could have one scheme  
14          who provides a consultancy service but another scheme  
15          that audits, and I know, in -- recently we found out an  
16          organisation had access to, like, buyer-level  
17          information but he was providing consultancy service,  
18          and that was through the Achilles time, and we've -- in  
19          our scheme, we've refused to allow access to a buyer  
20          level service because they don't actually tender or buy  
21          anything, they provide a consultancy, which isn't kind  
22          of what the scheme is --

23          Q. Right, okay, so you (inaudible). What I am suggesting  
24          to you is avoidance of those conflicts of interest is  
25          not a benefit of having a single scheme, it is a matter

1 of having control over the conflicts of interests?

2 A. And that's one of the -- that's a benefit then, isn't  
3 it. If you have greater control over something,  
4 you know the individuals you're working with, there's  
5 a very clear fixed group and it's not a transient group  
6 of however many companies providing a service, that  
7 their auditors can come in and out.

8 Q. Can I ask the witness to be handed a document. I will  
9 hand up some copies to the Tribunal as well.

10 (Handed)

11 So you will see this is an excerpt from ISO 17021  
12 which is the one we saw that was referred to in  
13 the specification for your contract.

14 THE CHAIRMAN: Where shall we put it?

15 MR. WOOLFE: Well, because I am putting it to this witness,  
16 it might be best to go at the back of E5 possibly, but  
17 can I do my examination on it first and then we decide?

18 THE CHAIRMAN: Sure.

19 MR. WOOLFE: We will see in the contents page that we have  
20 a series of elements: scope, normative references,  
21 principles, the second one being impartiality.

22 A. Yes.

23 Q. And 5, "General requirements", and then 5.2 is,  
24 "Management of impartiality"?

25 A. Yes.

1 Q. Then we have a series of structural requirements,  
2 resource requirements, information requirements, process  
3 requirements, things like audit time, multi-site  
4 sampling and so on, planning audit, certification, etc,  
5 etc, as to how one goes about doing an audit. It is  
6 a fairly substantial standard.

7 I would just like to take you to 5.2, which is a bit  
8 of an excerpt. 5.2.1:

9 "Conformity assessment activities shall be  
10 undertaken impartially. The certification body shall be  
11 responsible for the impartiality of its conformity  
12 assessment activities and shall not allow commercial,  
13 financial or other pressures to compromise  
14 impartiality."

15 Then we have a series about top management  
16 commitment, processes for -- 5.2 3 -- documenting risks,  
17 and then over the page, 5.2.5:

18 "The certification body and any part of the same  
19 legal entity and any entity under the organisation or  
20 control of the certification body shall not offer or  
21 provide management system consultancy."

22 Then this thing about excluding internal audits at  
23 5.2.6.

24 Then 5.2.7:

25 "Where a client has received management system

1           consultancy from a body that has a relationship to  
2           a certification body, this is a significant threat to  
3           impartiality."

4           So they have to have a time lapse of two years  
5           between ...

6           So this is a fairly substantial code about how to  
7           deal with impartiality?

8           A. Mm-hm.

9           Q. It is set out in an international standard --

10          A. Mm-hm.

11          Q. -- which you are required to comply under the contract  
12          --

13          A. Yeah.

14          Q. -- and people can be certified against this standard?

15          A. Right.

16          Q. So what I am going to suggest to you is that conflicts  
17          of interest can be dealt with perfectly well by applying  
18          a standard like this without having a single body for  
19          the entire industry.

20          A. We do deal with it and we deal with it within our  
21          current RISQS contract and we make sure that's there and  
22          Achilles used to deal with it when they had theirs, they  
23          had a clause in the contracts and things, but what I'm  
24          saying is it gets harder to deal with when you've got  
25          multiple schemes, and harder to control, and it relies

1           very much on integrity and honesty, doesn't it.

2           Q. Well, no, because --

3           A. Well --

4           Q. -- you could be -- an organisation can be certified  
5           against 17021 by the United Kingdom Accreditation  
6           Service who is the official accreditation body for  
7           the United Kingdom and they would carry out an audit of  
8           that organisation --

9           A. Right.

10          Q. -- and they would be certified against that standard, so  
11          you would have a guarantee carried out by the UK body  
12          for certification --

13          A. So what you're suggesting is every organisation has this  
14          audit carried out.

15          Q. What I am suggesting to you is that conflicts of  
16          interest could be dealt with without having a single  
17          scheme, by using something like this.

18          A. Yeah.

19          Q. Okay, thank you.

20          THE CHAIRMAN: Shall we now put it somewhere?

21          MR. WOOLFE: Yes, perhaps, because I put it to that witness,  
22          shall we put it behind E5. Tab 7 is her second witness  
23          statement. If we put it at the back of that, it would  
24          sort of naturally follow.

25                 I am conscious that the shorthand writers probably



1           It appears to be some sort of press release or  
2 similar, and the headline is:

3           "Act now or potentially lose rail market access  
4 warns Network Rail.

5           "Network Rail is warning suppliers to act now to  
6 ensure they are not locked out of the rail market.

7           "With less than 50 days until the enhanced RISQS  
8 system goes live, Network Rail has told its supply chain  
9 that they need to sign in to the new RISQS portal and  
10 check their data to guarantee visibility to buyers."

11          Then there is a quote from you, which is why I am  
12 asking you about it:

13          "Gillian Scott, Assurance Manager for Network Rail  
14 ..."

15          As you were at the time:

16          "... said 'We have made clear that to maintain their  
17 Sentinel status, suppliers will need to be  
18 RISQS-assured, and that means signing into the RISQS  
19 portal now.'

20          So it is clear, is it not, from what you said as  
21 the assurance manager, that the way that was being  
22 presented by the RSSB was: in order to have access to  
23 the rail market, you need to be assured by RISQS. That  
24 is how RSSB markets itself.

25          A. It was following a tender of which somebody won

1 the tender to provide the RISQS service. There was  
2 various newsletters being issued by Achilles about  
3 Link-Up and resurrecting an old scheme, and there was  
4 a lot of confusion in the market, and what we needed to  
5 be very clear and concise, that this was the scheme that  
6 had won the tender, and therefore, in order to keep  
7 their Sentinel live, they had to log into the platform  
8 and update -- make sure all their information was  
9 updated and it had been transferred across properly.

10 Q. I am going to go to the confusion issue which you  
11 mention in your statement in a little bit, but this is  
12 definitely RSSB -- admittedly before you joined --  
13 saying that you had to be RISQS assured in order to have  
14 access to the rail market. That is how they are  
15 presenting it.

16 A. That's what it says on there.

17 Q. Okay.

18 Now, just going back to paragraph 26 of your --

19 A. 26?

20 Q. -- first statement -- yes. So bundle D/4. There are  
21 some points at the start of that paragraph which we have  
22 gone over, and if it is okay for the timing, I do not  
23 want to go over them again. There is the link between  
24 the RISQS auditors and the work of the PCLS team, so  
25 you -- and we accept -- that it is a foundation level

1           and you know what is in there and you then do your  
2           licensing work on top.

3       A.   Yes.

4       Q.   Then there is a reference to having:

5                 "... a single point of contact allowing them to have  
6           confidence in knowing where the audit information  
7           captured is available ..."

8                 Perhaps it is just worth dealing with that.  
9           Obviously if there is one scheme, you know  
10          the information is in RISQS.  If there are two schemes,  
11          you would know the information was in whichever scheme  
12          has done the audit.

13      A.   Yeah.

14      Q.   That is where you would know the information was, would  
15          you not?

16      A.   Only if you search in both schemes to find out which one  
17          they were in.

18      Q.   Or they could -- but in --

19      A.   And if there was five schemes --

20      Q.   If you were looking at --

21      A.   -- you would search through five --

22      Q.   If you were looking at Sentinel, for example -- this?

23      A.   Okay.

24      Q.   -- the way I understand audit failures work at  
25          the moment, they get sent to Sentinel by email.  Is that

1           how it works?

2       A. I'm -- I don't know whether it's a system-generated --

3           as soon as it presses "fail" in the system, it's like an

4           API that goes across to Sentinel.

5       Q. Is that -- are you saying it is, or you think it is, or

6           you don't know?

7       A. I honestly don't know the --

8       Q. You don't know.

9       A. -- I don't know the ins and outs of the system. I know

10          it works.

11       Q. Beacuse it used to be the case when Achilles did it that

12          an email was sent to Mitie?

13       A. Right.

14       Q. Are you aware of them having implemented any form of

15          API to do that job more recently?

16       A. That would have been determined in the contract, which

17          was before I actually started with ... I just know that

18          it happens. I can look in the contract specifications

19          to check.

20       Q. Right, but there is no reference to such an API in

21          the tender specification that we were looking at

22          earlier, so ...

23       A. Sorry?

24       Q. You don't know. Okay, fine.

25                So we have been through that already as regards

1 Sentinel. I think we did it as regards the track  
2 licensing teams. I said that if the track licensing  
3 team was informed that an audit had been failed, they  
4 would withdraw the licence and that is how that would  
5 work, but I think you are looking at it from the point  
6 of view of the PC assurance team, the principal  
7 contractor assurance team, doing the intensive work that  
8 you do as part of that licencing team, and you are  
9 saying, "Will I need to search multiple systems". Is  
10 that the point you are making?

11 A. What I'm trying say is that obviously the fundamental  
12 basics that make up to the principal contractor  
13 licensing, RISQS audit all the management systems, and  
14 the PC licensing team do an additional level of other  
15 management systems and then they do site audits. If  
16 they've failed, it would be a case of going through  
17 however many platforms, or you would have to log which  
18 one they failed in.

19 Q. But your statement here is about: it allows the PC  
20 assurance team a single point of contact in knowing  
21 where the audit information --

22 A. Is held.

23 Q. -- is available. So it is a matter of getting the audit  
24 information from the scheme to the PC assurance team, is  
25 it not? That is what you're talking about here?

1       A. What we do is, we go into the portal, and we can check  
2       any information, insurances, things like that. If  
3       they're expired, we notify immediately. We don't  
4       actually wait on a telephone call, it's -- there's  
5       notification and things come through, or we can go and  
6       look at the report.

7       Q. But you are saying having a single contact gives you  
8       confidence knowing where the information captured is  
9       available. In respect of any given principal  
10      contractor, you would know where that audit information  
11      was available, because --

12     A. Not necessarily, because again, a principal contractor  
13      can be a supplier in its own right.

14     Q. Yes.

15     A. So they can supply other principal contractors. So if  
16      I go back to purely five schemes, they could have five  
17      audits on five different schemes. So again, it means if  
18      they fail one, what about the other four?

19     Q. But the audits they would have to have, the Sentinel  
20      audit, the on-track plant audit and the safe work  
21      planning audit -- that is right -- those are the three  
22      audits that have to be done in order to get principal  
23      contractor licensing?

24     A. Industry minimum requirements, Sentinel and safe work  
25      planning --

1 Q. They have to have --

2 A. -- yes, sorry.

3 Q. -- all of those, so that is right.

4 Then on-track plant, if they did on-track plant --

5 A. Yes.

6 Q. -- which they may or may not do, okay.

7 How many principal contractors are there in total?

8 A. When I left there was around 140/150. There may be more

9 now, it might be 190. To be honest with you, I don't

10 know the numbers. It's not something I've --

11 Q. But in respect of each of those principal contractors,

12 it would be quite easy, would it not, to require them to

13 tell you where their audit information is, which systems

14 they are logged onto, and you would have to check

15 them -- I mean, how often would you check each principal

16 contractor? How often would you go and do your further

17 audits of them?

18 A. We would do them at least once a year, but if we have

19 any information, like an audit failure -- not an audit

20 failure -- if there's major NCRs, if we find out things

21 like that, we may go and do an ad hoc audit, or if

22 there's issues on site that we're notified about, we

23 would then go into the RISQS system and check and see

24 what the audit report -- see whether that highlighted

25 any issues.

1 Q. So on an annual basis and an ad hoc basis you would need  
2 to go into systems to check what the audit information  
3 said. That is fundamentally the point. But you would  
4 still know -- in respect of any given contractor, you  
5 could search the system see if there is an audit report  
6 and then that is it. There is no issue of certainty.  
7 It may be an issue of the work that is required, but  
8 there is no issue of lack of certainty, is there?

9 A. The issue I have of certainty is the fact of, like  
10 I say, there's potentially circa about 17 organisations  
11 who tendered for the RISQS work, 15/17, so if all of  
12 them go ahead and set up their own platform, there's 15  
13 or 17 audits, potentially, on each of those suppliers.  
14 So if one's a failure, what about the other 14? Which  
15 platform do we believe? Which platform do we take as  
16 being the read one, the one that's right?

17 Q. Okay, but that is a (inaudible) different point. We  
18 have already done that one, and the point we are on here  
19 is: a single point of contact gives you confidence in  
20 knowing where the information captured by RISQS is  
21 available.

22 A. And it's --

23 Q. All I am saying to you is that if you have more places,  
24 you may need to check more -- and we have done this --  
25 but there is no additional issue of confidence of

1 knowing where the information is available.

2 The information is available where it is available, if  
3 I can put it that way.

4 A. I'll accept it's available where it is available, but  
5 you'd have to go and search for this (inaudible).

6 Q. Okay, so there may be some extension of time spent in  
7 searching, but we are --

8 A. I hear what you say -- sorry -- it's just it's not the  
9 --

10 Q. I understand, but I am not here to debate the issue in  
11 general, I am trying to work through the things that you  
12 have said and just test which of them work and which  
13 ones do not.

14 Then we have done this issue about audit failures  
15 (inaudible) audit failures, we have gone over that  
16 a couple of times. What I wanted to get to is:

17 "A single point of contact also facilitates an  
18 effective dialogue between the PC Assurance Team and  
19 the supplier assurance scheme when any audit issues are  
20 identified."

21 So you say:

22 "This dialogue prevents the risk of any assurance  
23 issues 'falling between the cracks' ..."

24 So you are suggesting there is a dialogue between  
25 the principal contractor assurance team and the supplier

- 1 assurance scheme?
- 2 A. I used to speak to the scheme manager when I was  
3 the assurance manager for Network Rail.
- 4 Q. But as I understood it from the principal contractor  
5 licensing scheme materials we looked at, having passed  
6 those modules, the Sentinel module, the industry minimum  
7 requirements module and the safe work planning module,  
8 that is a prerequisite for being licensed, so if there  
9 is an audit failure, in a sense, that is it, you no  
10 longer meet the prerequisite and until that has been  
11 addressed, that is it, essentially.
- 12 A. Yeah.
- 13 Q. So there is not a dialogue debating exactly what the  
14 audits mean, backwards and forwards between the PC  
15 assurance team and the supplier assurance team, is  
16 there?
- 17 A. So if -- if we go on site and we find something that we  
18 find is fundamentally not there, we would then start  
19 investigating or challenging that. We also get involved  
20 in investigations. So if there's an accident on site,  
21 then we get challenged as to where that is and what that  
22 issue is, and then we can look at an audit report and  
23 find out whether or not we believe that the findings are  
24 enough or whether or not there's some gaps in what the  
25 statements are -- made, and then at that point we would

1 go back to the RISQS scheme manager for them to then  
2 take it through the audit team, but they would challenge  
3 whether or not they believe the audit's sufficient,  
4 I don't know whether they have access to more  
5 information, what's captured. It's -- it's that level  
6 of dialogue.

7 Q. So the answer is, if you find an issue with the audit  
8 you can go back to the person who did the audit?

9 A. If we find an issue on site or an issue in the audit  
10 report itself, or any issues, anything we need  
11 a discussion on.

12 Q. Achilles did not receive a whole lot of dialogue from  
13 the principal contractor licensing scheme when they were  
14 running the scheme --

15 A. We used to speak to Chris Whitfield(?) on a regular  
16 basis. I used to speak to Mark Ferris(?), who used to  
17 run the audits.

18 Q. Who we heard about earlier on.

19 Okay. We mentioned the issue of confusion when  
20 I showed you the document -- the press release a few  
21 moments ago and that is something you put in your  
22 statement. So at paragraph 77 and following you refer  
23 to post RISQS tender and confusion amongst suppliers and  
24 you discuss generally. I just want to check what it is  
25 you say. I can see that there were so many queries

1 received and you sent a clarification. And you  
2 explained to me earlier why that was. Are you saying  
3 this is an example of the kind of confusion that would  
4 occur if there was more than one scheme in general or  
5 are you just saying this that is what happened at the  
6 time?

7 A. At the time we had -- Achilles contacted all of our  
8 procurement people and told them there was training on  
9 the new platform, which confused them because they knew  
10 the new platform was RISQS platform not the old Achilles  
11 platform, so that's a level of confusion. I was still  
12 getting invoices from Achilles for -- to register on  
13 the platform. So, again, for a supplier who deals with  
14 something on a once a year basis, they're confused as to  
15 whether or not do they have to be in TransQ, did they  
16 have to be in RISQS, did they have to be in both? And  
17 that was the level of confusion I was getting. So if  
18 there's multiple platforms I can't honestly say what  
19 level of confusion there would be out there.

20 Q. What I was going to suggest to you was that confusion  
21 was a transitional issue. It is different from any  
22 confusion about having two suppliers on an ongoing  
23 basis. It was just because there was a change in  
24 the market people were confused.

25 A. I think the confusion -- it went on for over a year --

1 a year and a half. That's not just transitional, in my  
2 opinion, sorry.

3 Q. Perhaps I will not take you to the materials then. So  
4 in bundle E4 -- this is one of your exhibits -- tab 4,  
5 page 1701.

6 Before we deal with this I am just going to say --  
7 perhaps go to it first. We have an email from you at  
8 the bottom of the page and an email reply to you at  
9 the top of the page. The email from you dated  
10 1 February 2018, and this is when you were at  
11 Network Rail and it is sent to Sonya Bhooma-Loader, who  
12 is at the RSSB.

13 And Richard Sharp, who is at RISQS. Can I just ask  
14 who Sonya Bhooma-Loader is?

15 A. She was the project manager of the -- I think that was  
16 the title -- sorry, project manager for the RISQS  
17 scheme, I believe.

18 Q. The launch of it as a project manager?

19 A. Yeah.

20 Q. You copy in below your email -- I think we can see what  
21 looks like a bit written by you in small font:

22 "Sonya, Richard,

23 "These communications aren't really hitting  
24 the mark ..."

25 And I think what follows looks like a copy and paste

1 of a communication that somebody else had sent out. Is  
2 that your recollection as well?

3 A. There was communication sent out from the RISQS scheme  
4 which I didn't believe were succinct enough, and --

5 Q. You say here they were not hitting the mark, they were  
6 not getting the message across?

7 A. So that's why I was sending out the bit underneath that  
8 said, "To all principal contractors", that was mine.

9 Q. What we have then is a -- it is, I can see, a bit  
10 complicated because you have in bold capital letters --  
11 with the:

12 "Following a competitive tender by the RSSB, from  
13 the 1st May 2018 Achilles will no longer be the provider  
14 of the RISQS ... the new RISQS providers are ..."

15 Then an explanation of what RISQS will continue to  
16 do:

17 "Audits.

18 "Audits carried out before 30th April will be  
19 carried out by Achilles, from the 1st May it will be  
20 Capita ... Any audits that expire before 10 May ..."

21 So a different day:

22 "... will need to be scheduled with and carried out  
23 by Achilles.

24 "This will enable all the audit report to be  
25 written, reviewed ...

1           "Any audits that expire after 10 May can be planned  
2           with the new RISQS team but may also be booked with  
3           Achilles provided the audit is completed before  
4           1st May."

5       A. Right.

6       Q. So there is some complication around the handover, isn't  
7           there? You can see that on any view.

8       A. But that's not the confusion.

9       Q. Then I think the point you want to get to, if I can take  
10           you there, is:

11           "Note: this communication is not to be confused with  
12           that issued from RISQS at Achilles ..."

13       A. Yeah.

14       Q. "... to update the platform."

15           That was your concern, that Achilles was sending  
16           information saying, "Stay with us", essentially? And  
17           that is where you said it was not hitting the mark and  
18           people were confused?

19       A. I think if you look in the statement there was other  
20           information that was sent to Network Rail, you know,  
21           from Achilles, but about training, and to other  
22           suppliers. So my -- it was the fact that not only were  
23           Achilles sending information to Network Rail direct,  
24           they were also sending it direct to the suppliers, like  
25           I say trying to resurrect not only TransQ but we had

1 Link-Up in the mix as well.

2 Q. What I wanted to suggest to you is the confusion, such  
3 as it was, was a transitional issue because RSSB was  
4 trying to transition people from -- well, they were  
5 trying to keep them within RISQS and Achilles was trying  
6 to say, "No, stay with us", and there was a transitional  
7 issue, with some fairly complicated directions as to who  
8 was to do what audits when. That is quite different  
9 from a situation where you have multiple auditors and  
10 suppliers are allowed to choose who audits them, because  
11 in a situation where they can choose who audits them  
12 there is no real confusion, is there, they can book  
13 the audit with whom they want to book the audit with?

14 A. They can -- well, they would be able to book the audit  
15 with who they wanted to book it with, but I think,  
16 looking at some of the kind of aggressive nature of  
17 the fact that some suppliers are still getting invoices  
18 and we're nearly a year further down, then I think,  
19 you know, some businesses can't deal with that level of  
20 confusion. It is confusing, even now.

21 Q. So, as a matter of fact, some people were confused, is  
22 your point but that is different -- what I am putting to  
23 you is it is different from saying they would be  
24 confused if more than one provider was allowed into  
25 the market on a long-term basis.

- 1       A. I think it will add -- add a layer of confusion,  
2            regardless of whatever. Especially if there's 15.  
3            We'll get all the communications. Do we have to reply  
4            to all 15?
- 5       Q. Well, they would not have to reply to all, a supplier  
6            would be able to choose who audited them in this  
7            situation.
- 8       A. Well, would it? Or would a buyer dictate -- there's  
9            101 buyers out there -- dictate, because Achilles have  
10           given them a preferential treatment, of giving them free  
11           access, that that would dictate you have to have an  
12           audit with Achilles. Then another buyer will come along  
13           and they get free from another platform and they would  
14           dictate that they have to have an audit with another  
15           organisation.
- 16      Q. With respect, that's a different issue again, because  
17           that would be a case of a supplier may or may not want  
18           to register with more than one --
- 19      A. No, not a supplier, a buyer-made mandate.
- 20      Q. Just take for example, if buyers specify different  
21           audits, a supplier may know that it has to comply with  
22           different audits, but what I was trying to test you on  
23           was the issue of confusion, and in that situation it is  
24           not confusing for the seller, they just have to do more  
25           than one audit. It is not confusing for them, is it?

1           I can tell you do not want to agree but it is not  
2           confusing for them, is it?

3       A. I think you have to understand the supply chain to  
4           actually appreciate what confuses them at times, to be  
5           honest with you --

6       Q. -- (overspeaking) --

7       A. Pardon?

8       Q. Are people in the rail industry not bright?

9       A. I'm not saying that at all.

10      Q. Okay.

11      A. I'm saying that, you know, they're used to a way of  
12           working, which is one organisation which was Achilles  
13           and Link-Up, they're now used to RISQS and one  
14           organisation auditing there, so if we start adding into  
15           the mix lots of other organisations that they've got to  
16           get audited from, then that will add to a mix of  
17           confusion.

18      Q. Okay.

19           I think in your second witness statement at  
20           paragraphs 11 and 12 you criticise the diagram -- you  
21           need not bother turning up your statement necessarily.  
22           You criticise the diagram that Ms. Ferrier has in her  
23           statement. Do you know the point I mean? Okay, if you  
24           go to your second statement, bundle D/9, paragraphs 11  
25           to 12.

1 A. So where's the diagram, sorry? It isn't in ...

2 Q. No, it is not here. This is where you discuss it, when  
3 you wrote this statement. 11:

4 "I note that in Achilles' evidence (and particularly  
5 in Ms. Ferrier's Second Witness Statement ..."

6 You say:

7 "... there is a clear attempt to downplay the  
8 safety-critical nature of the subject matter of  
9 the RISQS audit ..."

10 Then a point I am going to come to is in the context  
11 of that.

12 Just to clarify that point --

13 A. Sorry, which paragraph?

14 Q. Paragraph 11. You claim that:

15 "... there is a clear attempt to downplay  
16 the safety-critical nature of the subject matter of  
17 the RISQS audit ..."

18 I do not know if you were in court this morning to  
19 hear Mr. Nelson give evidence but I mean Achilles  
20 witnesses have very clearly accepted that the actual  
21 activity that is being undertaken on Network Rail  
22 infrastructure is safety-critical and hence there was no  
23 attempt to downplay the safety-critical nature of  
24 the subject matter.

25 A. Sorry, I appreciate what you're saying but in various

1 statements they refer to things as being -- sorry, I'm  
2 trying to find the statements that were made.

3 Q. Well, over the page you have a, b, c, d and e, and for  
4 example, you -- I do not know if this might be what you  
5 are thinking of -- Ms. Ferrier says there is:

6 "... a 'hierarchy', with the RISQS scheme being  
7 'only one part of the assurance undertaken ... on safety  
8 critical works' ..."

9 That is right, is it not? I mean, RISQS is one part  
10 of the assurance that is undertaken on --

11 A. It is one part but they refer to things as being "basic  
12 or general nature", and statements like that, which --  
13 you know, I can't stress enough that what's there is not  
14 audited by any other. The Sentinel scheme documents are  
15 not, in itself -- the management systems that control  
16 those aren't audited. What they are is they are tested  
17 on site. The same with the industry minimum  
18 requirements. The documents that control the processes  
19 that create those documents for site are tested on site,  
20 we don't go and actually review them again --

21 Q. So can I just pick on a different formulation, because  
22 I think you object to the words "basic or general".

23 That is actually not Ms. Ferrier --

24 A. Sorry, there is --

25 Q. -- that is Dr Cox, who says "basic or general".

1       A.  Sorry, if you can bear with me, I will find the other  
2           statements, because it does refer to things like that as  
3           being --

4       Q.  -- (overspeaking) -- formulation and see if we can agree  
5           on some things.  It might be helpful.

6           In your second witness statement, at paragraph 11c,  
7           describing Ms. Ferrier's statement, this pyramid  
8           structure and hierarchy, and you say her formulation is:

9           "... with the RISQS scheme being 'only one part of  
10          the assurance undertaken ... on safety critical works'  
11          and assuring 'high level information'.  [She] goes on to  
12          refer to the IMR ... as a 'foundation module'."

13          Now, without any implication that the foundation is  
14          unimportant, would you accept that characterisation,  
15          the IMR is a foundation and other things build on it?

16       A.  If I'm not saying it's not important then I would class  
17          it as being -- (overspeaking) --

18       Q.  Our case is not that it's not important.

19          Then can I take you to bundle E5.  Because I think  
20          you exhibit the diagram that's used within Network Rail.  
21          E5/7/1959.  Just to observe there is no division in this  
22          diagram between safety-critical and non-safety-critical  
23          work.  That is division in trackside and non-trackside,  
24          and we can assume pretty much most of trackside is  
25          safety-critical?

- 1 A. Even non-trackside --
- 2 Q. Non-trackside can be as well. But that is  
3 the distinction, there is no distinction here between --  
4 yes.
- 5 Then you can see at the bottom we have supplier  
6 registration and then it is -- things build up on top of  
7 that. What I want to draw your attention to is  
8 the arrow on the right-hand side that says, "Greater  
9 assurance with each level"?
- 10 A. Yeah.
- 11 Q. So there is a sense, is there not, in which the IMR is  
12 the foundation, then you have the other RISQS modules  
13 built on top?
- 14 A. Yes.
- 15 Q. Then the principal contractor certificate, principal  
16 contractor licences and so on, which are built on top of  
17 that with additional checks, and you have a greater  
18 degree of assurance as you are going up?
- 19 A. Yes.
- 20 Q. It is the same activity that is being -- sorry,  
21 the stuff that is being undertaken on the network,  
22 the construction is the same activity that is being  
23 checked and audited in all these different ways but  
24 a greater degree of assurance is being piled on top?
- 25 A. I think each one depends on the one below, as --

1           you know, if the management systems aren't in place.

2           Q. They build on the ones below and the ones that provide  
3           the most assurance, at the top of the diagram, are  
4           the ones that Network Rail insists on keeping in-house.  
5           That is the logic of this diagram. They use the lower  
6           levels, I am not disputing that, but just to check this,  
7           the levels that provide the greatest assurance are  
8           the ones that Network Rail keeps in-house?

9           A. Yeah, because they're the physical activities on site,  
10          so you actually see the management systems in use.

11          Q. Okay, thank you.

12                 Now, back in your second witness statement -- and  
13                 I am going to be sticking in your second witness  
14                 statement now I think for the remainder of the time. So  
15                 if you can just keep this tab open, so this is  
16                 bundle D/9, if you do not have it.

17                 At paragraph 14 of that statement you refer to  
18                 the RISAS scheme, and you refer to this because we  
19                 raised RISAS and you responded to it.

20                 You make certain points about it. It is an  
21                 industry-led scheme, governed by the RSSB and operated  
22                 as a single scheme with a single governance structure.

23                 You say it is:

24                 "... both RISAS and RISQS relate to the provision of  
25                 safety-critical supplier assurance ..."

1           You explain the focus of them.

2           If I could just take you to one of the RISAS  
3 documents, this is in bundle H13/3765. This is  
4 a document titled in the top right-hand corner, "Rail  
5 Safety and Standards Board". Sorry, you have not got it  
6 yet. I apologise. It is titled "RISAS Rail Industry  
7 Supplier Approval Scheme". It has the heading in  
8 the right-hand corner showing it is an RSSB document,  
9 headed "RISAS/001 - Principles of the Railway Industry  
10 Supplier Approval Scheme". So this is one of  
11 the documents making up the RISAS scheme. Are you  
12 familiar --

13       A. I'm aware of it.

14       Q. It is not what you deal with day-to-day?

15       A. No.

16       Q. But it is published by the RSSB?

17       A. It is.

18       Q. Can I take you to, on page 3768, it says:

19                "RISAS was developed by GB mainland rail companies  
20 in response to ... the [Cullen Report] into the accident  
21 at Ladbroke Grove ..."

22                In the second paragraph:

23                "Since its launch, the development and promotion of  
24 RISAS continues with the aim that it will be generally  
25 recognised as the GB rail sector's scheme for suppliers

1 of critical products and services, which is fully  
2 integrated into clients' safety management systems.

3 This Vision has been encapsulated as follows:

4 "Universally recognised as the GB rail sector's most  
5 effective and efficient method of assuring our most  
6 critical supply chains."

7 That is the vision that is set out for  
8 the RISAS scheme.

9 Now, the RISAS scheme, as I understand it, is one  
10 where RISAS accredits auditors, and there are multiple  
11 auditors, and the auditors check the manufacturers of  
12 these products against standards that are similar to  
13 the RISQS standards, they are standards about management  
14 systems and the like, and the rail industry standards  
15 accreditation bodies, there are two of them at the  
16 moment, and they both carry out audits against those  
17 standards?

18 A. My understanding is it's the RSSB who accredits  
19 the RISABs, of which there is two RISABs, and then they  
20 go out and do the audits. So there's two companies  
21 doing audits, and it all surfaces on one platform.

22 Q. That is right, we are on the same page, I think.

23 A. Yeah.

24 Q. There were three RISABs until a while  
25 ago -- (overspeaking) --

- 1 A. I'm not sure, sorry.
- 2 Q. What I was going to say is that -- so it is right, is it  
3 not, that you can have a situation where you have  
4 multiple auditors auditing against a common standard  
5 where the auditors have been accredited and that is  
6 considered to be acceptable for the most safety-critical  
7 products?
- 8 A. I think the difference between what you're asking and  
9 the difference between this is there's one scheme where  
10 it all goes into, so all audits are published in one  
11 platform, but also in this there's only -- I think  
12 there's only about 30 -- I don't know the exact number,  
13 sorry. There's only about 30 organisations that get  
14 audited. So where you're talking RISQS, you're talking  
15 3-4,000 suppliers. This is one platform, two  
16 organisations that audit, and about 30 suppliers. Yes,  
17 it is safety-critical product codes, yes, it's  
18 safety-critical with RISQS. So there's some  
19 similarities but there's some major differences as well.
- 20 Q. Is it essentially that if you have a common standard and  
21 accreditation for auditors, one can achieve a situation  
22 where the auditing can be carried out to a perfectly  
23 acceptable standard; that is right, is it not?
- 24 A. I think on that you kind of have to -- you're kind of  
25 trying to push me into a hole of agreeing to something

1           where you're using something that's completely  
2           different. It's a different beast. When you're talking  
3           about 30 organisations it would take a lot more to  
4           manage something at the scheme of RISQS.

5       Q. So it is a different structure as well, which I think --  
6           but it is a different structure, yes, but you are trying  
7           to say that having a larger number of people to be  
8           audited would change what?

9       A. Because I'll end up going back to saying the same thing  
10          of saying if you've got 15 platforms, 15 sets of audits,  
11          one supplier could have 15 audits, with this it's very  
12          organised and the suppliers have been 30, will have one  
13          audit and it goes into one platform.

14                So the buyers of this product and service is going  
15          to one place and they know where to find the audit  
16          report.

17       Q. As I understand it, I think that they actually certify  
18          the -- (overspeaking) --

19       A. -- (overspeaking) --

20       Q. But it is a certificate that is portable in that sense.  
21          Okay.

22                Fine, I think I will leave that. You can put away  
23          H13 for now and pick up bundle G1, please.

24                I just want to pick up on one thing. At tab 4 -- so  
25          this is the front page -- there's a 2014 version of the

1 principal contractor licensing scheme, endorsed by you  
2 in fact. You have signed off on this document at  
3 the front.

4 Perhaps pick up one point. At page 114 there is  
5 a standard briefing note at the end, and it appears --  
6 correct me if I am wrong -- this is something that  
7 appears at the back of each issue of a standard, sort of  
8 explaining what has changed?

9 A. It is, yes.

10 Q. Okay.

11 Under, "What's New/What's Changed and Why", this is  
12 in relation to PCLS stuff:

13 "This is a revised standard which:

14 "Incorporates the Level 3 licensing requirements  
15 into this Level 2 standard ..."

16 There was a sort of attempt to streamline  
17 the requirements internally within Network Rail in that  
18 sense?

19 A. Yeah.

20 Q. "Removes from the scope of the standard  
21 the licensing/assurance of on-track plant operators."

22 That was carved out to be a separate regime?

23 A. Yeah.

24 Q. "Replaces the requirement of NR/L2/CPR/302 Supplier  
25 Qualification with the industry minimum requirements

1 module."

2 Can I just understand what it says when it  
3 says "replaces" there. This is the principal contractor  
4 licensing scheme, therefore I understand what it means  
5 to say is that, within the principal contractor  
6 licensing scheme, the CPR302 standard has been replaced  
7 by reliance on the IMR?

8 A. The 302 standard was reference to the core Link-Up and  
9 that audit, so all we're doing is we're saying that that  
10 is going to be withdrawn, and I think the document you  
11 showed earlier, that was withdrawn and it was replaced  
12 by an industry minimum requirements document.

13 Q. I put it that 302 actually has not been withdrawn, it is  
14 still extant on the Network Rail standard catalogue.

15 A. Sorry, I think you have to ask -- (overspeaking) --

16 Q. What you are saying here is that within the function of  
17 the document you signed off on, the principal contractor  
18 licensing scheme, references to the 302 standard were  
19 removed, you have inserted references to the IMR because  
20 that is the process that was going on at the time?

21 A. And the remit document we looked at earlier, one of  
22 the steps within that was to revoke the 302 standards.

23 Q. Then you have the two bullet points about increasing the  
24 scope, and I think we went through some of that earlier  
25 on as to why that was done on so on.

1           Then the next bullet point, as I think you said --  
2           I was not sure if you referred to this or not:

3           "Current Full Principal Licence Holders are exempt  
4           from the requirement to undergo ... CPR302 ... audit ...  
5           the revised Standard requires them to have in place the  
6           Industry Minimum Requirements Module ..."

7           I think you said earlier on there was a change about  
8           the annual audit, is that right? So at one stage there  
9           was an annual audit against the 302 that was required to  
10          be done?

11         A. So, under 302, any organisation that was a principal  
12         contractor licence holder, that was what the licensing  
13         team used to audit. They didn't go out on site and  
14         check on site, on a construction site. And they were  
15         exempt from having to go through what was the Link-Up  
16         audits.

17         Q. Okay, so --

18         A. This standard then changed it so that that then became  
19         applicable to them as well, so it was a standard across  
20         the industry.

21         Q. Okay, so from this point on they had the standard IMR  
22         audit but previously there was an annual management  
23         systems audit done on principal contractors by  
24         the principal contractor licensing scheme?

25         A. Yes.

1 Q. Okay, thank you.

2 Then back on page 98, under 6.2:

3 "The organisation shall have in place:

4 "... Auditable Product Codes ...

5 "[and the] Audited IMR Module."

6 A. Yes.

7 Q. That was a requirement.

8 Then the wording was changed slightly when we move  
9 forward into the current standard published in 2017. So  
10 if you flip over one tab to tab 5, another version of  
11 this standard, again signed by you, and on page 129,  
12 having said before "audited against the IMR module", now  
13 at 8.2 it says:

14 "The organisation shall have:

15 "... audited and verified compliance to RISQS IMR  
16 Module ..."

17 That looks like a deliberate change in wording?

18 A. No. In the time of the June 2014 standard, Network Rail  
19 standards, if you looked at the remit that evolves  
20 around this, it literally can take a year, year and  
21 a half to get a standard through, especially because of  
22 this, when the consultation wasn't with just the whole  
23 of Network Rail. So from every function from  
24 maintenance to property, it was also with one principal  
25 contractor so that the -- and -- and with the RISQS

1 organisations itself.

2 So when we started doing this 2014 standard, it  
3 actually started being changed in 2013, and at that  
4 point we were still at Link-Up and more often through to  
5 RISQS, but at that time it was just referred to  
6 everywhere as the industry minimum requirements. When  
7 we got to the stage of the 2017 update, it was regularly  
8 and widely known as the RISQS industry minimum  
9 requirements.

10 Q. Just a terminological change?

11 A. Yes, and if you looked at the remit that changes  
12 the 2017 standard, you can see when that started to  
13 change, and it was well before the procurement process  
14 of -- with Achilles. It started to change -- I think it  
15 took about a year and a half from the initial remit. It  
16 was changed around CDM 2015, so that's when we started  
17 discussing the changes on that particular document, and  
18 that was well before any of the tender process.

19 Q. Okay.

20 Can I take you back to your second statement at  
21 paragraph -- again, this is in tab 9 of bundle D,  
22 paragraph 12a. I just want to clarify what you are  
23 saying, because I think what you are saying is right and  
24 I want to check there is no misunderstanding.

25 One of the criticisms of the pyramid diagram

1 prepared by Ms. Ferrier -- but if it is all right, let's  
2 not discuss it by reference to that diagram, let's just  
3 look at it as a point of fact. It is suggested that  
4 Network Rail conducted an in-house audit of the Sentinel  
5 scheme:

6 "This is not true, the RISQS Sentinel audits are  
7 the only layer of sponsor assurance."

8 That is correct, what we understand to be correct,  
9 so I am not going to dispute that with you.

10 I do want to put to you though there is another  
11 layer of assurance that exists around the Sentinel  
12 scheme and access to track, which is the Rail  
13 Accreditation Scheme rules, providers of training have  
14 to be accredited. That is right, is it not?

15 A. I -- training -- training organisations have to be  
16 accredited, yes.

17 Q. That is not covered by the RISQS Sentinel audit, is it?

18 A. No.

19 Q. Okay, so that accreditation is dealt with through a separate  
20 set of rules?

21 A. They have to have -- if the training organisations are  
22 going to actually provide their own staff to go  
23 trackside, so when you're doing your training, you  
24 physically have to be -- go on the track, then they may  
25 have to have safe system of work planning things like

1           that so they may have to have some different modules.

2       Q.   If we go on, and then you say:

3                       "Therefore Network Rail is entirely reliant on the  
4       RISQS ordered under Sentinel in order to demonstrate  
5       adherence to Network Rail's safety requirements."

6                       Can I suggest to you that what is correct is  
7       Network Rail is entirely reliant on the RISQS audit  
8       under Sentinel in order to demonstrate adherence to  
9       the Sentinel rules.  So those requirements of  
10      Network Rail that are set out in the Sentinel scheme  
11      rules, that is what is audited.

12      A.   The scheme rules is audited, yes.

13      Q.   But Network Rail also relies on other aspects, so a good  
14      standard of training being provided under Rail Training  
15      Accreditation Scheme rules -- (overspeaking) --

16      A.   Yes -- sorry, what I meant in here was that, when you  
17      looked at that other diagram that you showed, of mine,  
18      and it was referred to earlier that it looked as though  
19      we re-audited some of those management systems, what I'm  
20      trying to say is that the management systems alone  
21      aren't audited through Network Rail.  We test them on  
22      site but we don't go through and review the fact of  
23      contracts of sponsorship unless there's an accident or  
24      something like that.

25      Q.   You are looking at principal contractors is what you

1 mean -- (overspeaking) --

2 A. Anywhere within Network Rail, we don't go and review  
3 a contractor sponsorship, that's done purely by the IMR  
4 and the Sentinel and RISQS. That's what I was trying to  
5 reiterate there --

6 Q. I think we have clarified that. That is fine.

7 If we look at 12e, which is on page 99, just a point  
8 that somewhat confused me. You say:

9 "Achilles has not properly conveyed the scope of  
10 the audit carried out by Capita on behalf of RISQS which  
11 comprised robust operational safety checks rather than  
12 a desktop review of management systems."

13 Now, I think from the evidence of Mr. Nelson earlier  
14 on, I think there seem to be three things. One is what  
15 might be called a desktop review by the RISQS auditor,  
16 at the RISQS auditors' desktop, where they get something  
17 sent through and verify information. That is one thing.

18 Another thing is going to visit an office. It may  
19 be a site office, it may be a main office of  
20 a contractor. It is another thing entirely to do  
21 operational safety checks. What I just want to check  
22 was our understanding was not, and I think this is  
23 correct, that RISQS does not do operational safety  
24 checks. That is not what it does, does it?

25 A. The checks they do is they go on site, they will see

- 1           procedures there that that -- (overspeaking) --
- 2       Q.   When you say "on site", you mean --
- 3       A.   Sorry, to a contractor's office.  Then they will do
- 4           things like check, make sure a card is live, whether
- 5           that person's had the right level of training,
- 6           the relevant PPE's been issued.  So that's where it's
- 7           more in-depth -- so making sure that those processes are
- 8           being used.
- 9       Q.   When you say check the correct PPE has been issued,
- 10           they're not going to go round an actual work site
- 11           checking if people actually have the right hard hats but
- 12           what they are doing is, in the contractor's offices,
- 13           sitting there checking if there are policies covering
- 14           PPE and records that PPE has been issued?
- 15       A.   Yes.  But also through the Sentinel card you can
- 16           actually check through the Sentinel card whether or not
- 17           the PPE's been issued to an
- 18           individual -- (overspeaking) --
- 19       Q.   Again, that is a form of electronic record?
- 20       A.   It is an electronic record.
- 21       Q.   So it is a check of records.  So it is not desktop in
- 22           the sense that you do go to the contractor's site,
- 23           the contractor's offices, but it is -- to say it is
- 24           operational safety checks, there is no observation of
- 25           operations being done, it is purely done by documents?

1       A. There's no observation of the operation being done, but  
2       when I went there with an auditor, we went into an area  
3       where it shows -- the briefing area where the guys were  
4       taken and given a physical briefing, and things like  
5       that. So there's -- there's an element -- it sometimes  
6       goes beyond, obviously depending on the time when  
7       the audit's being undertaken, and what -- if there's  
8       anything happening at that time.

9       Q. Then paragraph 17 -- I am conscious of the time, sir.  
10       There are -- I may not quite get done by 4.30, but  
11       I will not be very long after, and with your indulgence,  
12       it would be better to finish the witness rather than  
13       leave her hanging on overnight.

14                Paragraph 17, you refer to SQS. I think  
15       "SQS" stands for Supplier Qualification System; is that  
16       right?

17       A. It states it somewhere.

18       Q. You can see what it is anyway.

19       A. Yes.

20       Q. It is a dynamic purchasing scheme.

21                You say:

22                "It is a dynamic purchasing scheme not an assurance  
23       scheme it is a bespoke qualification system."

24                You say:

25                "Four technology solutions apply."

1           So it is for that in particular. But  
2           a qualification system is a form of assurance system, is  
3           it not?

4       A. If I'm being perfectly honest with you, I don't know  
5           what it is, because I queried it at the time, but again,  
6           that sort of question as to what level of detail goes  
7           into that system, you will probably be best speaking --  
8           I don't know whether Ken would know -- Ken Blackley,  
9           sorry.

10       Q. You say you queried it at the time, but what time do you  
11           mean?

12       A. When I found out there was another scheme and I was  
13           principal contractor licensing, so what I did was find  
14           out what -- what -- what scheme this was to understand  
15           that it was something that was completely bespoke to --  
16           is it IT?

17       Q. It's technology solution suppliers, you say, and that is  
18           your understanding?

19       A. It was completely different to what RISQS were  
20           providing.

21       Q. So it is a different scope of people; technology rather  
22           than ...

23       A. Yes.

24       Q. I am just wondering, there is no distinction, is there,  
25           between an assurance scheme and a qualification system?

1 A. Well, the assurance, if you think, somebody can put in  
2 the platform what -- their information, but the  
3 verification side will do the assurance. So your  
4 assurance will come from your audit. The qualification  
5 platform doesn't say it has an audit in place or any  
6 checks --

7 Q. I see, so you are not drawing a distinction between  
8 assurance and qualification, you are simply referring to  
9 it as an IT platform, it does not necessarily have a  
10 role of assurance within it, is your point?

11 A. I don't know what it has, to be honest with you.

12 Q. You don't know.

13 A. As soon as I knew it was nothing to do with RISQS and PC  
14 licensing, I --

15 Q. Okay.

16 Then at paragraph 21 -- I am just going to check  
17 which point I was -- you refer to this again, this  
18 number, that there were 17 organisations attended  
19 the market engagement session. That is the only basis  
20 for you saying 17, which you have repeatedly said today  
21 17? The only reason for saying 17 is that number there,  
22 they attended the marketing engagement?

23 A. That's the -- yeah, those organisations.

24 Q. Then you say:

25 "As such, based on my experiences in assurance

1 management for Network Rail's PCL team, I believe that  
2 risks would be imported into the assurance process for  
3 Network Rail if it was no longer able to use a single  
4 scheme."

5 But I suggest to you again that any risk would be  
6 manageable and it could be managed by specifying what it  
7 is that has to be assured and the quality standard to  
8 which it has to be assured.

9 A. I think we have to disagree, I'm really sorry. But if  
10 there was 17 platforms and one organisation had 17  
11 audits, then if they failed one, what about the other  
12 16? Which do you take as being read and which do you  
13 take as being right?

14 Q. Well, I think we have been through before that --

15 A. Yes, sorry --(overspeaking)--

16 Q. --(overspeaking)--

17 SHORTHAND WRITER: Sorry, can we have one person; I can't  
18 take two people.

19 MR. WOOLFE: Okay, paragraph 26 --

20 MR. FLYNN: Well, perhaps, just for the transcriber's  
21 benefit the witnesses answer was:

22 "We will have to agree to disagree".

23 MR. WOOLFE: Paragraph 26, you refer to Mr. Nelson's  
24 evidence:

25 "Mr. Nelson recognises that supplier assurance under

1           IMR is tailored to buyers in the rail industry."

2           You say:

3           "It is not clear to me how that tailoring would  
4           continue effectively with multiple providers of supplier  
5           assurance."

6           Again, if Network Rail specifies what standards it  
7           wants to be met, those would be standards applicable to  
8           the rail industry, that would be tailored to the rail  
9           industry. That could be dealt with under a multiple  
10          scheme environment, could it not?

11         A. Yes, sorry, I was waiting until you had finished.

12           The only thing with that is obviously if you've  
13           got -- you'd have to start looking at how  
14           the questions -- because obviously the system itself has  
15           a number of questions. If you start tailoring it  
16           totally, numbers will become out of sync. You know, if  
17           you start adding questions in one platform that aren't  
18           in another platform ... it's obviously an IT thing that  
19           you would have to make sure that everybody was aware of  
20           what the different question sets were and --

21         Q. Sorry, I think the point here is not tailoring between  
22           platforms, I think the point that is being made here is  
23           that this IMR is rail-specific. That is what  
24           Mr. Nelson, I think, was picking up on. You are saying  
25           it is not clear how tailoring to the rail industry could

1 continue effectively with multiple providers of supplier  
2 assurance. What I am saying to you is that Network Rail  
3 has in effect specified what it wants to be covered --

4 A. Mm-hm.

5 Q. -- if it is referring to these audits, and it can  
6 continue to specify what it wants to be covered and that  
7 would be tailored to a rail environment, would it not?

8 A. Yes, if you look at one buyer. There's 101 buyers in  
9 this scheme, so if each of them wanted it tailored  
10 that's --

11 Q. Well, that, I think is -- oh, I see, that is not, with  
12 respect, what it does say, because you are not saying --  
13 sorry, the point you are making now is there would be  
14 too much tailoring, whereas the point you are making in  
15 paragraph 26 is tailoring could not continue.

16 A. No.

17 Q. You say:

18 "It is not clear to me how that tailoring would  
19 continue effectively."

20 A. "Effectively". How it would continue effectively. If  
21 you have a single scheme you can tailor it and you can  
22 keep control of it. If each of the different platforms  
23 start tailoring it to meet a specific buyer's needs, it  
24 doesn't necessarily come together as  
25 cohesive -- (overspeaking) --

1 Q. So you are not complaining about insufficient tailoring,  
2 you are complaining about too much tailoring?

3 A. Just the fact that it needs to be co-ordinated in some,  
4 way, shape or form.

5 Q. If Network Rail specified a standard, there would be no  
6 issue about tailoring, would there?

7 A. If -- if Network Rail -- for [specifications/suppliers]they would  
8 issue a standard, that would be their [intent]

9 Q. So if they specified what standard they wanted to be  
10 assured for people to get on to Sentinel, then that  
11 would be met, there would be no excessive tailoring of  
12 the kind that you are talking about?

13 A. Slightly ...

14 Q. Sorry, am I unclear? If I am, please say. I do not  
15 want to mislead you.

16 THE CHAIRMAN: What was your answer?

17 A. Mine was just around -- because it doesn't say  
18 whether -- what the level of -- you know, the assurance  
19 and the tailored -- of buyers -- to the buyers of  
20 the rail industry, so it does not specifically say it's  
21 just to Network Rail. If you have 101 buyers and then  
22 they each tailor the industry minimum requirements,  
23 you're going to end up with 101 different versions of  
24 industry minimum requirements. So therefore  
25 the tailoring needs to be organised, it needs to be able

1 to -- you know -- otherwise the questions would be all  
2 out of sync.

3 MR. WOOLFE: It needs to be standardised, in other words?

4 A. Yeah.

5 Q. Then at paragraph 29 you refer to this email exchange  
6 that came out of disclosure in which Mr. Nelson, four  
7 lines up from the bottom, you say he received  
8 confirmation that one of Achilles' auditors was not  
9 qualified to the correct levels to undertake audits and  
10 had been auditing.

11 "It appears in this email Achilles were aware of  
12 this position at the time the relevant auditor was hired  
13 and did not take the steps to ensure she acquired the appropriate  
14 qualifications. Despite this, throughout that period it  
15 appears the auditor was held out by Achilles as a fully  
16 competent auditor. Notwithstanding Achilles' track  
17 record, etc, it is precisely this type of situation  
18 which could occur and potentially proliferate in  
19 a multiple scheme environment."

20 Now, those emails I believe -- go to volume C2. So  
21 the email is appended to your statement. Go to  
22 volume C2 and go to the very back of the tab, the last  
23 couple of pages, and if we could start on page 530.

24 What we have there is, at the bottom corner, dated  
25 23 December 2012, so 7 years ago. We have a competency

1 justification. This was put in evidence to Mr. Nelson  
2 this morning. Is that was in respect of Carol Wilson,  
3 who was the individual you raised. Although she did not  
4 have the specifics qualification, there had been  
5 a documented process of justifying why she had  
6 the required competency.

7 A. Can we have a look at the email, what --

8 Q. Yes, that, I think, is in your exhibit. So that would  
9 be in E5, and I think it is within E5/7, starting at  
10 page 1978. I think you had picked up on this.

11 A. Sorry, what page?

12 Q. Page 1978.

13 A. So, yes, on this particular one, the concern was  
14 obviously around a lady who started --

15 Q. Carol Wilson.

16 A. Sorry, Carol -- who started with Achilles quite some  
17 time beforehand, in August 2009, and any -- like the job  
18 descriptions, I think at the time in the -- in Will's  
19 statement he was referring to, like, having a --  
20 a competency management system, which is what he  
21 mentioned this morning, and for me that shows -- all  
22 disrespect (sic), I appreciate some things fall through,  
23 but that was a failure. She didn't have the -- whatever  
24 competency was written on her job description. It  
25 requests specific qualifications as well as competency.

1 The actual document you've showed, the witness audit, it  
2 shows a competency check. So I'm not saying she wasn't  
3 competent, what I'm saying is there was a system failure  
4 of their competency management, because in 2009 she was  
5 done. And then if you look at the very top it says:

6 "Obviously in relation to the RISQS tender, we now  
7 need to put a tick in the box."

8 That's kind of paying a bit of lip service to  
9 competency, isn't it, or someone's qualifications?

10 Q. I think there's several points, can we try to deal with  
11 them separately. So the first point I want to deal with  
12 is the competency, and what we can see as a matter of  
13 fact is they did not have the NEBOSH general  
14 certificate, there was a competency justification in  
15 place -- we have this dated 23 October 2012 -- and then  
16 there was -- also the previous page, we have a witnessed  
17 audit record that was signed off by Mark Ferris --

18 A. So there was -- (overspeaking) -- sorry.

19 Q. -- in September 2017. So that is what we sort of know  
20 were the relevant facts. I want to deal with the facts  
21 and then separately with any points you may want to make  
22 about them.

23 Now, the point you seem to be trying to make, I am  
24 not sure whether you are just criticising Achilles on  
25 the one hand or whether the point you are trying to make

1 is the one in paragraph 29, where you suggest that this  
2 type of situation could occur and potentially  
3 proliferate in a multiple scheme environment.

4 What I was going to suggest to you is the fact that  
5 something -- these facts, that somebody did not hold  
6 the relevant qualification but was competency justified,  
7 happened in a single scheme environment, you can't jump  
8 from that to say that is more likely to happen in  
9 a multi-scheme environment, can you?

10 It is a logical leap, is it not?

11 A. It is a logical leap to say that if Achilles had this  
12 failing in their competency management system that  
13 started in 2009, in 2012 it was rectified by some  
14 document, that's a few years, so that lady in that  
15 duration was doing audits, so there's nothing -- in --  
16 in all due respect, my statement in here was based on an  
17 email. This document information, this -- this second  
18 one you've added in wasn't there when I made  
19 the statement, but --

20 Q. No --

21 A. Sorry, can I ...

22 Q. Sorry.

23 A. In 2009 she wasn't necessarily competent, she had  
24 obviously signed a job description or whatever else was  
25 in place and it was on her CV. So what I'm trying to

1 say is that sort of thing happened. And then in 2012  
2 you say you rectified it with that statement. That's  
3 a fair old time difference for a lack of a qualification  
4 in construction. That's what NEBOSH is about. And so  
5 then you jump to that, and then when you get round to  
6 2017 decide to put a tick in the box for it --

7 Q. Okay, so are you --

8 A. So --

9 Q. I just want to check, that's a criticism you are making  
10 of Achilles but the point you are making in this  
11 paragraph here, paragraph 29, is you say that:

12 "This type of situation could occur and potentially  
13 proliferate in a multiple scheme environment and it  
14 undoubtedly would create material safety risks."

15 So what you appear to be saying is this would be  
16 more likely to happen in a multiple scheme environment;  
17 that is the point you are trying to make?

18 A. Yes.

19 Q. What I am saying to you is, whatever your  
20 interpretation, we have different interpretations of  
21 these documents, all they tell you is that a certain set  
22 of facts happened in a single scheme environment and  
23 that it is a complete logical jump to suggest that that  
24 would be more likely to happen in a multiple scheme  
25 environment?

1 A. It is a logical jump. I would say, yes -- for me, it  
2 seems logical.

3 Q. Indeed, if there was the consistent application of  
4 a quality standard in auditing, such as 1721, that would  
5 be a way of addressing those kind of situations arising,  
6 would it not?

7 A. It should be.

8 MR. WOOLFE: That is everything I wanted to ask, thank you.

9 Re-examination by MR. FLYNN

10 MR. FLYNN: Ms. Scott, you gave, in discussion with my  
11 friend Mr. Woolfe, some details of dialogue that might  
12 occur in particular circumstances from Network Rail or  
13 another buyer with the RISQS scheme, or the audit scheme  
14 at a basic level, and a back and forth sort of dialogue  
15 between them.

16 A. Yes.

17 Q. Could you please give Ms. Scott bundle G2, and within  
18 that, tab 28. You will see that that is the RISQS terms  
19 for the provision of audits to supplier members. If you  
20 turn on a few pages to paragraph 3.8.4, page 571, is  
21 that an example of the sort of dialogue that you were  
22 talking about?

23 A. It is an example, yes.

24 Q. Are there others that you can think of offhand? It does  
25 not particularly matter, but other scheme requirements

1 or suggestions for such dialogue?

2 A. There may be other scheme requirements. Obviously  
3 principal contractor licensing was my main point of  
4 concern, and therefore, if anything had the potential to  
5 impact on their licence, the principal contractor  
6 licensing team would want to know about it immediately.

7 Q. You are saying that is a point at which --

8 A. We would contact --

9 Q. -- your first -- (overspeaking) -- would be to go to  
10 the scheme --

11 A. Yes.

12 Q. -- go to RISQS --

13 A. Yes, or if there has been an accident investigation and  
14 we have some challenges from RAIB, the Rail Accident  
15 Investigation Board, or our own internal auditors, we  
16 would not only look at our own arrangements, we would  
17 then also have the dialogue with the scheme manager to  
18 understand a bit more about some of the information  
19 given during their audit, things like that.

20 MR. FLYNN: Thank you. No further questions from me, sir.

21 I do not know if the Tribunal has questions.

22 THE CHAIRMAN: Thank you very much, Ms. Scott.

23 A. Thank you.

24 (The witness withdrew)

25 MR. WOOLFE: Thank you for sitting a little bit later.

1 MR. FLYNN: 10.30 tomorrow we will continue with our  
2 evidence.

3 THE CHAIRMAN: What is the order of the witnesses tomorrow?

4 MR. FLYNN: The order tomorrow I believe is Mr. Prosser from  
5 the Office of Road and Rail, and then Mr. Spence, and  
6 I think that would probably be a good day's work.

7 (4.40 pm)

8 (Court adjourned until 10.30 am on Friday, 22 February 2019)

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22  
23  
24

INDEX

MS. KATIE FERRIER (continued) .....3

    Cross-examination by MR. FLYNN (continued) .....3

    Re-examination by MR. WOOLFE .....15

    Questions from THE TRIBUNAL .....31

MR. WILLIAM NELSON (sworn) .....31

    Examination-in-chief by MR. WOOLFE .....31

    Cross-examination by MR. FLYNN .....41

    Re-examination by MR. WOOLFE .....55

MS. GILLIAN SCOTT (sworn) .....60

    Examination-in-chief by MR. FLYNN .....60

    Cross-examination by MR. WOOLFE .....62

    Re-examination by MR. FLYNN .....173

1

2