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5 record.

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)

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 need a break, especially as I have been talking too
2 fast. Would now be a convenient moment?

3 THE CHAIRMAN: Yes.

4 (3.14 pm)

5 (A short break)

6 (3.33 pm)

7 MR. WOOLFE: Thank you.

8 Ms. Scott, I think the next topic I want to take you
9 to is in bundle H23/6401. You should have an email
10 there to Lee Parlett. Can I just check who Lee Parlett
11 is. Who is Lee Parlett?

12 A. He was my line manager when I left Network Rail.

13 Q. Sent from RISQS Scheme Manager. We see from the date of
14 this this is 21 March 2018, so the RISQS scheme manager
15 referred to there would not be you --

16 A. No.

17 Q. -- it would be your predecessor; is that right?

18 A. That's right.

19 Q. The reason I am taking you is because a while ago I said
20 to you that the RSSB/RISQS presents itself as being
21 the single point of access for the rail market and
22 I think it is relevant to that.

23 It says:

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

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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