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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 22 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 3**

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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)

1 Friday, 22 February 2019

2 (10.30 am)

3 (Proceedings delayed)

4 (10.36 am)

5 MR. FLYNN: Good morning, sir. Our first witness today is
6 Mr. Ian Prosser.

7 MR. IAN PROSSER (sworn)

8 Examination-in-chief by MR. FLYNN

9 MR. FLYNN: Could Mr. Prosser please be given bundle D.

10 At tab 3, Mr. Prosser --

11 A. Yes.

12 Q. -- you will see a document headed, "Witness Statement of
13 Ian Prosser CBE"?

14 A. Yes, I do.

15 Q. If you turn to the end of that document you see
16 a signature?

17 A. Yes.

18 Q. Is that your signature?

19 A. It definitely is.

20 Q. Is that your evidence before the Tribunal today?

21 A. This is the evidence before the Tribunal that I've
22 prepared. Thank you.

23 MR. FLYNN: Very good, thank you. Mr. Woolfe will have some
24 questions for you.

25 Cross-examination by MR. WOOLFE

1 MR. WOOLFE: Good morning, Mr. Prosser. Now, can I just
2 begin with paragraph 24 of your statement.

3 I am sorry, I just want to check something. I can
4 see you have some papers of your own in front of you.
5 Can I ask what those are that you have?

6 A. This is some documentation I've got from the trial.

7 Q. From the trial. I just wanted to check. Have you got
8 your own copy of your statement there?

9 A. Yes.

10 Q. That is what I am trying to see.

11 I am just interested to know what the witness has --
12 what you have in front of you, that is all.

13 A. I've got some -- some notes.

14 Q. Are those handwritten notes that you have made yourself,
15 or are these notes that somebody else has given you?

16 A. Some of them are emails, some of them my handwritten
17 notes.

18 Q. Are they matters that are in the trial bundle, do you
19 know?

20 A. Some of them won't be.

21 Q. Right.

22 A. But if you're --

23 Q. As long as we know what you have.

24 A. Yeah.

25 Q. If you start referring to them, we may need to talk

1 about that?

2 A. Yeah, that's fine.

3 Q. Thank you.

4 Can I pick up your statement at paragraph 24?

5 A. Yeah.

6 Q. You say there -- having discussed the health and safety
7 management system and the requirement of ROGS, you say:

8 "The ORR would carefully review any major change
9 falling within the scope of ROGS
10 Regulation 13(a)(iii) ..."

11 A. Yes.

12 Q. I just want to explore with you a little bit what that
13 review would consist of. For that purpose, if I could
14 ask you to have a look at this document I am going to
15 hand up.

16 (Handed).

17 Sir, I am going to suggest in due course this goes
18 at the back of bundle G4, hence why I provided a tab,
19 but for the moment it might be easiest during this
20 examination to have it open in front of you in this
21 form.

22 Now, Mr. Prosser, this is a document published by
23 the ORR --

24 A. Yes.

25 Q. -- as you see on the first -- it is dated

1 1 September 2018:

2 "Guidance on the application commission regulation
3 common safety method for risk evaluation and
4 assessment."

5 Can I just ask, were you involved in the preparation
6 of this guidance, or approval?

7 A. This -- I was not directly involved in it, but the --
8 because this -- of this guidance, in the fact that my
9 team developed this. And obviously I did read it when
10 we decided to publish it --

11 Q. So it is a document you are familiar with?

12 A. I know of it, yes, and I -- but I don't know,
13 obviously -- with all our documents, I don't know in
14 infinite detail.

15 Q. Thank you. In broad terms would you agree that what
16 this relates to is the preparation of risk assessment by
17 undertakings involved in the rail sector, infrastructure
18 managers in particular, and it is about them preparing
19 their risk assessments where changes are made?

20 A. Correct, yes.

21 Q. I see.

22 Could I ask you to look at page 3, paragraph 1.1.
23 If I could ask you perhaps and the Tribunal, rather than
24 me read it out, just to read it for a moment.

25 (Pause)

- 1 A. Yeah, I understand that.
- 2 Q. So this is an ORR document giving guidance as to an
3 EU harmonisation measure, is it not?
- 4 A. Yeah, in terms of application of the common safety
5 method in risk evaluation and assessment.
- 6 Q. The intent, it says, of the common safety method of risk
7 evaluation is to -- it addresses a perceived problem of
8 barriers to competition, and it is to harmonise risk
9 evaluation, and it is within the context of a system of
10 mutual recognition; that is right, is it not?
- 11 A. Yes.
- 12 Q. So it is companies that can be recognised in, say,
13 the UK, that can do a safety assessment that will then
14 be recognised across the EU, broadly speaking?
- 15 A. Broadly speaking, but it's obviously quite dependent
16 upon what you're talking about.
- 17 Q. Yes. We are going to go through the details of this in
18 a moment but I am trying to make sure we all understand
19 what we are talking about.
- 20 It says at 1.2, it is a:
- 21 "... framework that describes a common mandatory
22 European risk management process ... and does not
23 prescribe specific tools ..."
- 24 Then can I ask you to turn over the page and look at
25 1.4, and just to check that I understand the scope of

1 this. At 1.4 it stays:

2 "The starting point for anyone proposing any change
3 in relation to the main line railway system is the
4 CSMRA."

5 So the common safety method risk assessment:

6 "It applies when any technical, operational or
7 organisation change is being proposed to the railway
8 system."

9 You first consider if there is an impact on safety,
10 and if there is no impact on safety, you can just forget
11 about this, but if there is an impact on safety,
12 Paragraph 1.5, you have to decide whether or not
13 the impact on safety is significant. That is right?

14 A. That's correct.

15 Q. So am I right in thinking where any proposal has
16 a significant impact on safety, this common risk
17 assessment methodology must be applied?

18 A. Yeah, if -- if it's significant, yes.

19 Q. If it is significant.

20 It goes on at paragraphs 1.6 and 177, it
21 cross-refers to domestic legislation -- I think it says,
22 at the end of that paragraph:

23 "Following this approach, it is likely to mean that
24 domestic safety legislation is complied with."

25 So that is helpful. Then 1.7:

1 "The RSSB [it notes] has suggested applying a risk
2 management process, even if the change is not
3 significant."

4 Is that something you would advocate?

5 A. I think it depends on the situation.

6 Q. Thank you. So we are going to look in a moment at --
7 so, a question for you. If a major change to health and
8 safety management system is proposed that will have an
9 impact on safety, this risk assessment methodology
10 should be followed?

11 A. If the -- if the change is deemed to be significant.

12 Q. Okay.

13 A. At this point in time, we are sort of hypothesising
14 about what the -- the change would actually be.

15 Q. I am just trying to establish the principles but if that
16 is how it works, that is okay.

17 We go to look at the nature of the risk assessment.

18 If you go to 1.13, what the purpose of it is:

19 "If a proposal of a change applies one or more of
20 the three risk acceptance principles correctly ..."

21 We are going to see what these are in a moment:

22 "... and implements suitable control measures, this
23 should mean the risk has been reduced to an acceptable
24 level for the change being effected."

25 That is the purpose of this approach, is it not, to

1 identify risks, identify methods of addressing them --

2 A. Correct.

3 Q. -- them being addressed, and then, whatever residual
4 level of risk you assess, whether or not you can live
5 with that residual level of risk?

6 A. Yes. And that has to be then acceptable to
7 the regulator.

8 Q. That is all fairly sort of standard risk management
9 stuff, is it not?

10 A. It is indeed.

11 Q. Now, the remainder of the guidance fleshes out the sort
12 of scheme of this. If we can turn to section 2, it
13 defines what is -- this is on page 9 -- and then 2.1 in
14 a sense summarises what we have already seen: that it
15 applies where technical, operational or organisational
16 changes are being proposed, and whether you have to
17 follow this or not.

18 Then the meaning of those is fleshed out over
19 the page, at paragraphs 2.6 through to 2.13. We have
20 technical changes, things like changes to rolling stock
21 or station rebuilds; operational changes about
22 the operation of things like that; and I think you would
23 accept that supplier assurance services would not fall
24 within either a technical change or an operational
25 change, would they?

- 1 A. Well --
- 2 Q. Or might they?
- 3 A. -- operationally, because what your supplier -- what
- 4 your suppliers are doing is interfacing with the
- 5 railway -- (overspeaking) --
- 6 Q. Right, so changes about supplier assurance could fall
- 7 within operational changes?
- 8 A. They could well indeed.
- 9 Q. Then:
- 10 "Organisational changes are changes to
- 11 the organisation ..."
- 12 At 2.11:
- 13 "... to the organisation of an actor in the railway
- 14 system which could impact on the safety of the railway
- 15 system."
- 16 That is where supplier assurance would most
- 17 naturally fit within this scheme because it is
- 18 the organisation of -- which may then relate to how
- 19 things are done, but that is where --
- 20 A. Yeah, but you could cover both of them.
- 21 Q. Then 2.12, over the page, it says:
- 22 "An example could be a change to the Safety
- 23 Management System (SMS) ..."
- 24 A. Yes.
- 25 Q. It proposes what would be quite a significant change

1 there, which is:

2 "... moving from a structure and culture based on
3 a large number of prescriptive standards to a risk-based
4 system relying on trained and competent staff ..."

5 A. Yes.

6 Q. So that would be the kind of thing that is thought of as
7 significant?

8 A. That would be one of those that's significant, yes.

9 Q. But other things could be significant too?

10 A. Yes.

11 Q. Okay.

12 A. That was just to give an example.

13 Q. Would you consider that changing the health and safety
14 management system to allow supplier assurance to be
15 provided by multiple providers would be a significant
16 change?

17 A. We would have to assess that. We haven't had
18 the proposals yet. If there was a change from
19 Network Rail they would have to -- first of all, they
20 would actually assess it themselves, which is part of
21 the process. It may well be deemed to be significant,
22 but until we'd have the proposals in on how it was all
23 going to work and how extra insurance -- assurance might
24 be developed, we'd have to see if it was significant,
25 but could well be significant.

1 Q. Perhaps it might help if you look at 2.27, which sets
2 out the factors used to determine significance, and as
3 you say, this is something for Network Rail to do if
4 they are changing their own system?

5 A. Yes.

6 Q. These contain six factors, failure consequence -- says
7 to -- you can see what the six factors are, I am not
8 going to read them all out. Perhaps just pick up two
9 points. First of all, in terms of failure consequence,
10 the worst case scenario, it says it has to be credible,
11 does it not, so merely fanciful scenarios do not need to
12 be considered, it is only credible ones that need to be
13 considered?

14 A. It's only credible ones, but failure consequence in this
15 type of -- type of system, if you like, supplier
16 assurance system, failure consequence in the past has
17 been major.

18 Q. Okay.

19 So if you are looking at something that could
20 credibly -- and I can see you are looking at what
21 credibly might occur not credibly will occur, you are
22 looking at possibilities there, are you not, you are
23 trying to exclude the possibility of bad things
24 happening?

25 A. No, but on a historical basis we know that -- that

1 supplier assurance has failed. I can give you an
2 example, one recent case that we took where it wasn't
3 a Network Rail sort of activity but it was an activity
4 in a train operating company where their assurance
5 failed -- they had a supplier assurance system, but
6 there was failures and weaknesses in that system that
7 resulted in the fatality of a worker, and they were
8 fined substantial amounts of money.

9 Q. So I think what you are saying there is that changes in
10 respect of supplier assurance can have failures which
11 would lead to them being determined -- that changes
12 could be determined significant?

13 A. Yes.

14 Q. Okay, now, if you can look at what a risk assessment
15 actually is, if we turn over the page -- I realise you
16 will be well aware of this but it helps if you can
17 explain it to the Tribunal -- to page 16 and get to
18 paragraph 3.1. Perhaps you could just have a quick read
19 of that to yourself for a moment, and 3.1 and 3.2,
20 perhaps.

21 (Pause)

22 I think this stresses what we discussed in relation
23 to section 1, which is that it is an iterative process.
24 So you start off with looking at the system, looking at
25 the change you are making, and then you consider what

1 you may need to do to deal with that -- any risks, but
2 then it has to be iterative, so if those changes you
3 make also affect the system, you need to consider them
4 in the round and keep doing that until you are happy
5 with the result?

6 A. Yeah, you have to keep making sure that the hazards that
7 you've identified haven't changed and making sure you're
8 actually checking that your mitigation controls actually
9 are going to have the -- (overspeaking) --

10 Q. Because the mitigation controls could themselves
11 introduce some form of risk --

12 A. Correct.

13 Q. -- and you need to consider that.

14 If you look over the page, page 17, you see
15 a diagram, which I am not going to go to but it shows
16 this is quite a substantial sort of process this kind of
17 risk assessment; that is right, is it not?

18 A. Yes.

19 Q. Now at 3.2 it is said that there is a role for an
20 independent body. We are going to look at that in
21 a little more detail in a moment but could you just
22 describe your understanding of what the role of
23 the assessment body is in this process?

24 A. The -- in this process that -- what is an independent
25 assessment of the -- the duty holder has gone through --

1 like Network Rail, gone through the process, looks at
2 the hazards that have been identified, goes through
3 the hazards identification studies, fault trees, etc,
4 and looks to see if -- very often looks at, if there's
5 standards involved, which may be European, do they
6 comply with those standards, for example -- that's very
7 often the case -- and then we'll produce a report.

8 Q. I think if we just run through the various phases of
9 the risk management process, if we deal with 3.4 and 3.5
10 and so on together, there is a preliminary system
11 definition and then a system definition.

12 As I understand this correctly -- and please tell me
13 if this is right -- you have to start out with a clear
14 definition of the system that you are dealing with and
15 making any changes to before you can start working out
16 what the effects of those changes might be? That is
17 the logic of it?

18 A. Mm-hm.

19 Q. At 3.5, I think it says -- where are we? So 3.10, if
20 I can take you to that, one looks at the various aspects
21 of the system including the objective, the functions,
22 the system boundary, what it interacts with, existing
23 safety measures and assumptions. So it is quite
24 a complex definition of the system you are looking at?

25 A. Yes, well, it's -- this is obviously -- generally can

1 apply to some very, very significant introductions, new
2 rolling stock, for example.

3 Q. Although it looks complicated it might be more simple if
4 you are looking at a more simple issue?

5 A. Yes, take a proportionate approach.

6 Q. Then, can I ask you to look over the page, page 19, we
7 have "Hazard identification", is the next stage. So
8 having set out what the system is, you then -- this is
9 3.18:

10 "The purpose of hazard identification is to identify
11 all reasonably foreseeable hazards, which are then
12 analysed further."

13 So 3.19, it says that:

14 "Hazard identification should be systematic and
15 structured and takes into account the various
16 factors ..."

17 Which are the same as in the definition of
18 the system: the boundary, modes of operation, what it
19 interacts with, and so on?

20 A. Yeah, and could be human factors.

21 Q. Human factors, yes.

22 That is quite a substantial piece of work,
23 identifying hazards, is it not, in itself?

24 A. It depends on the size of the change, but yes.

25 Q. There are established methodologies that one can use to

- 1 identify hazards?
- 2 A. Yes.
- 3 Q. In fact, if you look over the page at 3.20, you will see
4 a list of tools. Are these all methodologies that you
5 would identify as means of identifying hazards?
- 6 A. Yes.
- 7 Q. Are there any others which you would add to that list?
- 8 A. Not off the top of my head, no.
- 9 Q. Just to check, at 3.21 it refers to having:
10 "... the right mixture of experience and competence
11 whilst maintaining impartiality and objectivity."
12 That is important, is it not?
- 13 A. Yes.
- 14 Q. Then if I could understand 3.22 in terms of what -- this
15 is about what hazards one can ignore. It says:
16 "... hazards where ..."
17 In the third line:
18 "... the risk is, to all intents and purposes,
19 insignificant and negligible."
20 Am I right in understanding that basically what that
21 is talking about is things that are either so unlikely
22 to occur you do not need to think about them, or things
23 that are just trivial? Is that broadly what that --
- 24 A. Correct, yeah.
- 25 Q. -- relates to?

1 The example it gives are a meteorite's impact on
2 the one hand, and a paper cut on the other --

3 A. Yes, it's about probability.

4 Q. Yes. But things that fall within that, if there is some
5 significant risk of harm, they are things then you
6 should deal with.

7 Just to check as well, although it is in the context
8 of a European common frame work, this kind of process of
9 identifying the system, identifying hazards, this is
10 a standard risk management approach?

11 A. Yes.

12 Q. Okay.

13 Then, in terms of risk acceptance principles, over
14 the page, on page 21, it identifies three possible risk
15 acceptance principles, and at 3.27 it notes that in
16 the UK -- you can choose any of these three.

17 I think in some member states they might require you
18 to use one or the other, but the ORR's position in
19 the UK is they are content for to you use any one of
20 these. Is that a fair summary?

21 A. Yes, that's what the ... yeah.

22 Q. If I can just understand what these are in outline.
23 Codes of practice: that essentially means applying
24 documented standards; is that ...?

25 A. It would possibly mean that, yes.

1 Q. Right. Okay, well, that is what I am going to focus on,
2 so we will come back to it in more detail.

3 Then there is "Comparison with reference systems".
4 That is essentially looking at how a similar system
5 works in a different context and saying, "Because it
6 works there we think it can work here"; is that broadly
7 what that is?

8 A. It could be that. It depends on the change really that
9 you're looking at.

10 Q. Well, we will come and look --

11 A. It's very much dependent upon the change that you're
12 looking at.

13 Q. Okay, so it is context-specific, this evaluation?

14 A. Yes.

15 Q. Then finally there is "Explicit risk estimation". That
16 is, from what I understand, essentially what you do when you
17 cannot really -- when you have some residual hazard and
18 you are trying to assess how bad it would be if it did
19 happen, you sort of look at how likely it is to occur,
20 how bad it would be if it happened, and then achieve an
21 overall view of risk. Is that --

22 A. Well, that's how risk is defined, is probability times
23 consequence.

24 Q. Right. But the explicit risk estimation is doing
25 that --

1 A. Yes.

2 Q. -- in that exercise?

3 Okay, if I could zoom in on codes of practice, over
4 the page, and see what qualifies. It says:

5 "Standards and rules have to meet all of
6 the following criteria to be used as a code of
7 practice ..."

8 The three are: they have to be either widely
9 accepted in the railway sector or otherwise justified;
10 secondly, they have to be relevant, which is not
11 a surprise; thirdly, they have to be available to an
12 assessment body, so they cannot be proprietary codes of
13 practice or whatever.

14 If I could just ask you to note 3.31, it says:

15 "Standards and rules that are widely accepted in
16 the railway sector include ..."

17 Then the fourth bullet point:

18 "European standards or ISO standards."

19 So that is accepting that ISO standards are widely
20 accepted in the railway sector; that is right, is it
21 not?

22 A. In certain cases, yes.

23 Q. Certain cases.

24 A. Also you've got here national rules, and it's also
25 notified national safety rules.

- 1 Q. Yes. So those are alternatives that can be used as
2 standards to show that something --
- 3 A. Well, these are all ways in which you can manage safety
4 in the railways but this still comes back to the risk
5 assessment.
- 6 Q. Yes. Can I just ask you to note at 3.33, it does
7 explicitly say:
- 8 "It is also possible to use standards or codes of
9 practice from other sectors, for example aviation and
10 maritime, but these have to be justified and be
11 acceptable to the assessment body."
- 12 So you are saying that in an appropriate case, if it
13 works in the context, you could look at a code of
14 practice from another sector and see if it manages risk?
- 15 A. Yes, and it would depend on the sector, and this is all
16 dependent on the change you're going to make, but you
17 can obviously use standards to control the risk. But
18 that doesn't necessarily mean you comply with the law.
- 19 Q. Sorry, it does not necessarily mean ...?
- 20 A. That you -- you know, complying with a standard does not
21 mean that standard can -- you can -- at times, there may
22 be instances when you have to double-check that you are
23 actually really controlling all the risks. That's
24 why -- (overspeaking) --
- 25 Q. Oh, I see, yes.

- 1 A. -- your iterative loop that you were talking about.
- 2 Q. So it is one question of how you comply with
3 the standard, and then there is a question of how the
4 standard fits with what you actually have to
5 achieve -- (overspeaking) --
- 6 A. Yeah, and does it actually -- (overspeaking) --
- 7 Q. -- in compliance with the law or safety?
- 8 A. It does actually fit the set of risks that you've
9 actually got.
- 10 Q. Yes, absolutely. Then I am going to skip over reference
11 systems and explicit risk estimation because we have
12 broadly seen what those are.
- 13 On page 27 we come to "Hazard record", which is
14 the proposer of a change has to create and maintain
15 a hazard record. So that sort of documents the hazards
16 that are remaining following the risk evaluation
17 procedure; is that right?
- 18 A. Yes.
- 19 Q. At 3.58, over the page, there are further documentation
20 requirements. These are things that the proposer of
21 a change -- so, for example, if an infrastructure
22 manager is changing something about its operations they
23 have to provide certain documents to assist
24 the assessment body, and that includes: the results of
25 the different phases of the risk assessment, so you have

1 to effectively provide what you have done at the risk
2 assessment stage; evidence of compliance; and a set of
3 assumptions and so forth. But that would be quite
4 a substantial set of documentation, would it not?

5 A. Could be. It depends on the size of the change.

6 Q. Thank you. Then "Demonstration of system compliance",
7 which is essentially assessing the whole thing works to
8 comply with the requirement that needs to be met; is
9 that right?

10 A. Yeah.

11 Q. Then we come to the independent assessment.

12 Can I draw your attention -- so the system of this
13 is, the person who is making the change to their systems
14 carries on the risk assessment, then they hand over this
15 document to an independent assessment body who is going
16 to do a sort of second look at what they have done?

17 A. Yeah, and that -- that can be -- Network Rail do have
18 their own independent assessment
19 body -- (overspeaking) --

20 Q. Yes, we are going to come to that in a moment because
21 there are some that are external but it can be internal
22 under certain circumstances?

23 A. Yes.

24 Q. 3.6.3 points out what the independent assessment is of,
25 so it is:

1 "Analysing how the risk assessment process is
2 applied and it is looking at the results."

3 A. Yes, so it is checking the process has been thoroughly
4 done and does look at the results.

5 Q. That the results are robust?

6 A. Yes, in their view.

7 Q. In their view, yes. 3.6.4:

8 "The assessment body must carry out the independent
9 assessment."

10 Can I ask you to note 3.6.5. This is a case where:

11 "The proposer is able to choose, subject to certain
12 restrictions, the assessment body, unless there is
13 a national rule that requires certain bodies or persons
14 to be used. There is no such national rule in the UK."

15 So the UK has chosen to implement a system where
16 the proposer of a change can choose who audits its
17 significant changes to the safety matters?

18 A. Yeah, but in the end -- there is an end stage to this
19 process as well, which is that it would come to us.

20 Q. Yes, yes, absolutely.

21 But in this context, at that stage, the ORR is
22 content to allow that the body who is going to be
23 audited to choose who is going to audit it?

24 A. That is true.

25 Q. Yes. But they are assessed subject to certain

1 restrictions, and if we just pick those up, I think it
2 says -- at paragraph 3.6.7, it says:

3 "The assessment body must meet the criteria set out
4 in the CSMRA ..."

5 So the common safety management risk assessment:

6 "... included in this guidance at annex 2."

7 Which we will go to in a moment. I think it is
8 actually annex 3 but that is by the by:

9 "The assessment body must be either accredited,
10 recognised or NSA."

11 Am I right the NSA is national safety --

12 A. No, that's what ORR is for the UK.

13 Q. Okay, thank you.

14 Then it refers to what are called "relaxed criteria"
15 if mutual recognition is not required. So perhaps if we
16 can just see what that means. It is at annex 3, in
17 fact, which is at page 46. Annex 3 sets out what the
18 criteria are and then how they are to be relaxed; is
19 that right?

20 A. Yes.

21 Q. So we can see at paragraph 1 it says:

22 "Where the change is not to be mutually recognised
23 the proposer shall appoint an assessment body meeting at
24 least the competency, independency and impartiality
25 requirements of annex 2 of the Commission regulation."

1 It says:

2 "The other requirements of paragraph 1, annex 2 may
3 be relaxed in agreement with the national safety
4 authority in a non-discriminatory way."

5 I think box 3 then sets out what the non-relaxed
6 criteria are, which are:

7 "The assessment body shall fulfil all
8 the requirements of ..."

9 Then there's an ISO standard named there,
10 the ISO 17020 standard.

11 At paragraph 3, below, it says:

12 "The logic, therefore, is that it is
13 the requirements of the ISO 17020 standard which are to
14 be relaxed."

15 Explains how that is done.

16 Am I right in understanding it is the 17020 standard
17 that an assessment body has to comply
18 with -- (overspeaking) --

19 A. That's the European norm.

20 Q. -- to have mutual recognition? That is the European
21 law?

22 A. Yeah.

23 Q. But that is considered to be how -- this is how
24 the system is set up that it is a body that complies
25 with that standard who carries out the -- it's the

1 auditor, the safety risk assessment?

2 A. But it's also the responsibility of the national safety
3 authority to oversee these assessment bodies.

4 Q. Yes.

5 A. Because that's what we -- what we get is their work, if
6 you like, and so at the end of the day the arbiter is
7 us.

8 Q. Yes. Just to show you what 17020 covers, this is not
9 stated here but I think it is -- the title,
10 I understand, is, "Conformity assessment requirements
11 for the operation of various types of bodies performing
12 inspections"; does that sound familiar?

13 A. Yeah, that sounds ...

14 Q. Then we can see at paragraph 4 on page 46 what
15 the ISO standard covers: scope, normative references,
16 definitions, general requirements, structural
17 requirements, resource, process, management system
18 requirements and independence requirements.

19 Can I just take you back to annex 2, which is
20 a couple of pages back, page 42. This sets out who
21 the independent assessment body has to be. It says they
22 have to be either accredited by a national accreditation
23 body, recognised by a recognition body, or be a national
24 safety authority, and that is the ORR-- as I understand
25 it the ORR has taken the position it is not going act as

1 an assessment body?

2 A. No, we just oversee the lot.

3 Q. As regards accreditation, it says here that UKAS has
4 been asked to establish an accreditation scheme.

5 So UKAS is the United Kingdom body that accredits people
6 to certify things under ISO standards, is it not?

7 A. Yeah.

8 Q. I think, just to note the point that you were making
9 over the page, I think it is at paragraphs 8 and 9,
10 there are a series of bullet points, which are somewhat
11 complicated, but I think that allows the NSA --
12 the second bullet point on page 44 -- to recognise an
13 organisation as having the ability to conduct an
14 independent assessment -- sorry, for the ORR to
15 recognise that a part of an organisation can conduct an
16 independent assessment.

17 A. Yes.

18 Q. That is what that requires.

19 In paragraph 10:

20 "The person acting as the assessment body must be
21 sufficiently independent from the project."

22 So there is a requirement of independence that is
23 preserved. Okay, thank you.

24 If I can take you back to section 4 on page 35.

25 This is going through the role of the assessment body.

1 A. Sorry, where have you gone?

2 Q. Page 35. As I understand it from 4.7:

3 "... the assessment body produces a safety
4 assessment report ..."

5 It says:

6 "... this should support the proposer in taking
7 the decision on the safety of the system."

8 There is a procedure for disagreements to be
9 registered.

10 Then 4.9 deals with mutual recognition, but 4.8
11 refers to the safety assessment report being submitted
12 to the NSA. Now, that is specifically in the context of
13 an authorisation for placing in service?

14 A. Correct.

15 Q. But if I can just now, having covered all of this, take
16 you back to paragraph 24 of your statement, if we can
17 pick that up again. You are saying it in the context
18 that -- of a change to the health and safety management
19 system, to recognise a change in supplier assurance
20 could be a major change, and you are looking at
21 the safety of it?

22 A. Yeah, and my words are quite carefully written,
23 you know:

24 "The ORR would carefully review any proposed major
25 change falling within the scope ... such as

1 a requirement to recognise one or more other supplier
2 assurance schemes, in order to determine ..."

3 Because we don't know what the proposal is:

4 "... whether the proposed major change would satisfy
5 the Assessment Criteria ..."

6 Q. Yes. I think at the back -- yes, at paragraph 23 you
7 say:

8 "The imposition of a requirement on Network Rail to
9 recognise one or more other supplier assurance schemes
10 would necessitate major changes to its [health and
11 safety management system]."

12 A. Yes.

13 Q. "As a consequence, Network Rail would be required to
14 notify the ORR ..."

15 A. They would notify us, yes.

16 Q. So if you are reviewing the major change, you would look
17 at a risk assessment that Network Rail had produced in
18 relation to the change, would you not?

19 A. Yes.

20 Q. Would you look at any independent report by an
21 assessment body that is produced along with it?

22 A. If they had done one.

23 Q. If they had done one? If it had gone through this
24 process and the documentation was there, you would
25 review that?

- 1 A. It depends if they deemed it to be significant in
2 the context of the CSM.
- 3 Q. Right. But if it is a major change to the HSMS, which
4 you say could have an impact on safety, that would
5 likely be something that would go through the risk
6 assessment process, would it not?
- 7 A. It would go through the risk assessment process, because
8 that's what -- that's good practice and that's what
9 Network Rail would do.
- 10 Q. Are you saying that such a change would not be
11 significant?
- 12 A. Well, it depends. I haven't got the proposals. You
13 don't make judgements until -- it could well be, and
14 that's really to start with, for Network Rail, to
15 actually analyse what they've got to do. At this moment
16 in time that hasn't -- that's not on the table.
- 17 Q. Thank you.
- 18 Then, in terms of how you would assess it -- so
19 I think we have a sense of what documentation you would
20 or might be looking at, which is a risk assessment, it
21 may or may not have an independent report, but we're
22 looking at quite a substantial structured process that
23 would have been gone through and you would be looking at
24 that.
- 25 You would be looking, I think you said, at the stage

1 it had got to, a specific proposal?

2 A. Yes.

3 Q. An assessment of that.

4 Then can we go to the criteria which you say would
5 be applied, which I think are referred to back at
6 paragraph 19 of your statement.

7 Just to check, you say there are five of these
8 criteria. So these are, middle of paragraph 19:

9 "The Mainline safety certificate and safety
10 authorisation assessment criteria ..."

11 You say in the last sentence of that paragraph that
12 five of them "are of particular relevance in the context
13 of these proceedings".

14 If we could perhaps go and look at those, because
15 you set out the headings of the criteria, but in
16 the document which you exhibit, they are fleshed out in
17 more detail. So that is at bundle E4/3, which is
18 the exhibit to your statement, page 1389.

19 I think what we have here is an excerpt from
20 a document rather than the whole of a document. That is
21 right, is it not?

22 What we have here looks like a copy of parts of
23 the contents page of what is I am guessing from the fact
24 it starts at page 43 and ends on page 106, it is quite
25 a substantial document setting out the criteria?

1 A. Yeah.

2 Q. Am I right that those criteria would sit alongside an
3 ORR document called "The ROGS Safety Certificate and
4 Safety Authorisation Assessment Manual"?

5 A. That is true.

6 Q. They sort of would work together?

7 A. Yeah.

8 Q. Which is also another substantial document.

9 Now, you have presented here the copies of
10 the criteria which you flag in your statement as being
11 of particular relevance, the first one being
12 criterion A on page 1391. So these would be
13 the criteria that you would be assessing any proposed
14 change against --

15 A. That's true.

16 Q. -- to see if it is safe?

17 A. Yeah.

18 Q. Now, criterion A:

19 "Risk control measures for all risks associated with
20 the activity of the infrastructure manager."

21 Just looking down at those sub criteria, this is
22 the very high-level risk control criteria, are they not?
23 These are measures for controlling of all risks, for
24 instance sub criteria A.1:

25 "There are procedures in place to identify risks

1 associated with railway operations ..."

2 So this is something which -- there may be a lot of
3 rules that Network Rail has that would have to comply
4 with it, but this is the highest level criterion?

5 A. That's true, yes. It's their own top level management
6 of their risks.

7 Q. Looking down at A.4, we can see -- well, (unclear). So
8 there are procedures in place to identify risks, would
9 that relate to supplier assurance?

10 A. Yes.

11 Q. "There are procedures in place to develop and put in
12 place risk control measures."

13 Would that relate to supplier assurance?

14 A. Yeah, it would relate to their activities.

15 Q. "There are procedures in place to monitor
16 the effectiveness of risk control arrangements and to
17 implement changes when required."

18 Would that relate to supplier assurance?

19 A. It could do.

20 Q. These could apply to a lot of things?

21 A. They're general -- general requirements.

22 Q. A.4 is about recognising:

23 "... the need to work together ... where
24 appropriate, on issues where they have shared
25 interfaces ..."

1 I take it you will say that that could relate to
2 supplier assurance as well?

3 A. Yes. That's one of the reasons.

4 Q. Similarly, A.5 and A.6 you would also say could relate
5 to supplier assurance; yes?

6 A. Yes.

7 Q. Just quickly, over the page, "Expected evidence":

8 "The applicant is expected to provide a summary
9 of ..."

10 Various things.

11 The bottom of that box:

12 "For 'significant' changes, the CSM for risk
13 evaluation and assessment will need to be applied.
14 ORR guidance gives advice on when this is the case.
15 Applicants should provide a summary of their procedure
16 and a reference to the full procedure, setting out how
17 they will provide with the CSM."

18 That CSM for risk evaluation and assessment, that
19 was what we have just been looking at?

20 A. Correct.

21 Q. So there is a direct link between that and these
22 criteria?

23 A. That's if it's significant. But we would also expect
24 any what I would call -- rather than using
25 the word "significant" -- major change that Network Rail

1 goes through a process that is -- it's their own process
2 in fact, their own change management process.

3 Q. Yes.

4 A. Which applies the same sort of general principles of
5 good risk management.

6 Q. But it might apply to all kinds of risks, like apply to
7 safety risks but also to business risks and a whole
8 bunch of other things.

9 A. Yes.

10 Q. Criterion B:

11 "Risk control related to the supplier of
12 maintenance ..."

13 Here, B.1:

14 "There are procedures to derive maintenance
15 requirements ... from safety data."

16 That does not seem to relate to the supply of
17 assurance of a qualification system like RISQS on its
18 face, would you agree?

19 A. I'd have to look at the change. It says "maintenance
20 requirements, Network Rail".

21 Q. But what it is saying here is there are procedures
22 specifically to derive maintenance requirements from
23 safety data. That does not appear to be what
24 Network Rail uses RISQS for?

25 A. It's most likely the case, yes.

- 1 Q. Then B.2:
- 2 "There are procedures to adapt maintenance intervals
3 according to the type and extent of service performed."
- 4 Now, Network Rail does not use RISQS for that,
5 does it?
- 6 A. No.
- 7 Q. "There are procedures to ensure that the responsibility
8 for maintenance is clearly defined ..."
- 9 Network Rail does not use RISQS for that in terms of
10 working out who has responsibility for maintenance?
- 11 A. No.
- 12 Q. "There are procedures to collect information on
13 malfunctions ... defects arising from day-to-day
14 operation ..."
- 15 I imagine Network Rail has all sorts of systems for
16 that, but that is not what RISQS does, is it?
- 17 A. It depends how they go about doing it. That can cover
18 all multiple of things. Network Rail's a very complex
19 operation.
- 20 Q. But I had not understood -- correct me if I'm wrong but
21 I had not understood that RISQS --
- 22 A. No, it's not.
- 23 Q. -- was a means of collecting information on malfunctions
24 and defects arising from --
- 25 A. No, it's not, but it depends how you define

1 a malfunction or a defect in day-to-day operation.

2 You're correct, but there are suppliers that do actually
3 carry out inspection work, obviously, for Network Rail.

4 Q. Yes.

5 A. A substantial amount of inspection work.

6 Q. B.5 requires that:

7 "There are procedures to identify and report risks
8 arising from defects ..."

9 That is not what RISQS does either, is it?

10 A. That's -- no, that would be their -- their own
11 procedures.

12 Q. Okay. B.6:

13 "There are procedures to verify and control
14 the performance and results of maintenance to ensure
15 they comply with corporate standards."

16 That is not what RISQS does either, is it?

17 A. No.

18 Q. So, would you agree with me, I mean, I think we have
19 seen that criterion A is of relevance to supplier
20 assurance, but criterion B is not particularly relevant,
21 is it?

22 A. Well, I might disagree with you on that.

23 Q. Well, we have just been through each of the
24 sub criteria, none of which seem to apply to RISQS, so
25 how is it of particular relevance?

- 1 A. Well, it depends on -- it very much depends on how --
2 this covers a whole multiple of activities.
- 3 Q. Yes.
- 4 A. So there could be cases where suppliers are involved in
5 some of these activities and need to actually collect
6 information, for example.
- 7 Q. Yes, so I can see that there will be suppliers who are
8 doing these things, and there are risks and they need to
9 be controlled, and those suppliers may also be -- very
10 likely to be -- ones who are RISQS registered, but this
11 criterion itself does not relate to what RISQS does,
12 does it?
- 13 A. Well, again -- well, I think we had a view when we
14 looked at this that it could well do.
- 15 Q. Okay.
- 16 A. Okay?
- 17 Q. "We" being?
- 18 A. Myself and my team.
- 19 Q. Okay.
- 20 Were your team involved in the drafting of your
21 statement?
- 22 A. I -- with any inspector, you -- you check it with
23 another inspector.
- 24 Q. Then if we can look on criterion C, and I can speed
25 along a bit here. Criterion C:

1 "There are procedures to verify the competence of
2 contractors (including subcontractors) and suppliers."

3 That could clearly relate to supplier assurance?

4 A. Absolutely.

5 Q. Indeed, the remainder of those, albeit perhaps not all
6 of them so directly but all of them could relate to
7 supplier assurance, in particular C.4.

8 Can I just have a look over the page, at 1396, which
9 is what the applicant would be expected to provide so
10 what would be assessed in respect of this criterion C,
11 which is risk control for the use of contractors. So:

12 "The applicant [has to] provide a summary of:

13 "Procedures to verify ... competence ... particular
14 arrangements and procedures for controlling risk ..."

15 And specified things:

16 "... the arrangements and procedures for the
17 provision of accurate and complete safety information.
18 These should cover the receipt, identification,
19 selection, dissemination and recording of information,
20 and method and format of ... documentation."

21 So, specifying the method and format of
22 documentation relevant to safety is something that
23 applicants, through authorisation, are meant to do?

24 A. Yes.

25 Q. But also on page 1397, the second bullet point, so it

1 starts on the previous page:

2 "Each TU/IM is responsible for ..."

3 Then over on to 1397:

4 "... carrying out a monitoring process ... [and]
5 ensuring that, through contractual arrangements, risk
6 control measures implemented by their contractors are
7 also monitored in compliance with the CSM."

8 Supplier assurance could relate to that, could it
9 not?

10 A. Yeah.

11 Q. That is something that could be done through contractual
12 arrangements -- the ensuring that it is done properly?

13 A. It could be.

14 Q. Over the page, criterion S, "Provisions for recurrent
15 internal auditing of the safety management system".

16 There are various specific requirements here but
17 there is an internal auditing system. Again,
18 Network Rail does not use RISQS as its internal auditing
19 system for assessing the safety management system,
20 does it?

21 A. No.

22 Q. "There is a schedule of planned internal audits which
23 can be revised ..."

24 RISQS has nothing to do with that, does it?

25 A. Yeah, but this is about -- no, you're -- this is about

1 how Network Rail actually achieves -- it says,
2 you know, "its own internal auditing and safety
3 management system".

4 Q. It is, and what I am putting to you is actually -- I can
5 run through the criteria, but none of these criteria
6 have any bearing on RISQS, because if you look at them,
7 they are all requirements that Network Rail --

8 A. What we're talking about here is a potential change
9 which could have an impact on their internal auditing
10 system.

11 Q. That is what I am a little confused about, because
12 the requirements in criterion S require Network Rail to
13 have a system for auditing a safety management system
14 that meets certain criteria, and what I am putting to
15 you is that changing anything about RISQs -- we can see
16 there are other criteria which have to be applied but
17 this criteria just simply has no application to that
18 kind of change because this is not a change to
19 Network Rail's internal auditing system.

20 A. No, but the -- the change that's proposed may cause them
21 to make changes here, so it could become part of
22 the change process.

23 Q. Okay, but the internal auditing system here is an
24 auditing system for auditing the safety management
25 system; that is right?

1 A. Yeah, but what we're talking about here -- and this is
2 why we've got this point -- is that we're talking about
3 the fact that the safety management system would change.

4 Q. Yes, I understand that. So we're talking about
5 different things. Criteria S, if we could just focus on
6 that for a second, that sets out a series of
7 requirements that Network Rail must meet as to how it
8 audits its safety management system, and Network Rail
9 must have in place procedures for such internal audit,
10 it must do them at certain intervals and so on. But
11 changing anything to do with RISQS would not be changing
12 Network Rail's system for internally auditing its safety
13 management system, would it?

14 A. It depends on what you mean by them having to change,
15 because what we would look at in this particular
16 scenario is -- potential scenario is how they were going
17 to ensure that, you know, their internal audit regime
18 would cover a multiple supplier system.

19 Q. Which internal audit system?

20 A. Theirs.

21 Q. But Network Rail has many internal audit systems
22 I assume?

23 A. I know, but they would have -- (overspeaking) --

24 Q. But would that affect what the internal audit of their
25 safety management system does?

- 1 A. Well, I think it might do.
- 2 Q. Okay.
- 3 Well, I would suggest to you that criterion S is not
4 of particular relevance for what --
- 5 A. It's not as strong as some of the others, that's
6 correct.
- 7 Q. Criterion V, that is on page 1401, it is the last one,
8 requires that:
- 9 "There are procedures to ensure that the maintenance
10 of the infrastructure is undertaken safely, [with] clear
11 management control and documented audit and inspection."
- 12 We see how that could relate to supplier assurance.
- 13 Yes?
- 14 A. Pardon?
- 15 Q. We can see how that could relate to supplier assurance?
- 16 A. Oh, yeah. This whole was full -- this is a very
17 important provision (unclear).
- 18 Q. Absolutely. Then, finally, just can I note, on
19 page 1403 there is the safety authorisation, starts
20 there. So there is an EU safety authorisation issued
21 under the directive cited and applicable national
22 legislation?
- 23 A. Yes.
- 24 Q. It is valid from 25 May 2017 to 17 May 2022, but
25 actually it is signed a week before it becomes valid, if

1 you turn over the page?

2 A. Yeah.

3 Q. Date issued, 17 May, and your signature. So did you

4 sign this on 17 May?

5 A. Yes.

6 Q. Fine. So just to get a sense of what your careful

7 review would involve then, it is back to paragraph 24 of

8 your statement. You would be looking at that mass of

9 documentation with -- (overspeaking) --

10 A. Potentially --

11 Q. -- the risk assessment -- if it was a significant change

12 there would be that, and you would be assessing it

13 against such of those criteria as are of particular

14 relevance. That is quite a substantial exercise?

15 A. Well, it can -- it could be. You know, any -- the whole

16 assessment process that we do when we do them every five

17 years is quite a substantial -- a very substantial

18 process.

19 Q. You would look at any changes carefully, as you say?

20 A. We'd look at -- if they seemed to be sort of major, yes.

21 Q. If I could take you to the health and safety management

22 -- leave your statement open, we will come back to your

23 statement obviously -- if it is all right, I am going to

24 use the version of the health and safety management

25 system -- they are all the same -- in bundle G4, tab 42.

1 Just to explain, the HSMS is large and appears in
2 multiple places. If we stick to referring to it with
3 all witnesses in the same place, in bundle G4, any notes
4 you may have will stay in the same place.

5 Tab 42, do you have that in front of you?

6 A. Yes.

7 Q. Just to note, on the front page it is signed by -- it's
8 effected from September 2018, it is signed by three
9 people -- its approval and authorisation, it is prepared
10 by Ian Blanchard, approved by Allan Spence and
11 authorised by Graham Hopkins, and all those signatures
12 are dated 20 May 2017, so that was signed after you
13 signed the safety authorisation. Is that common -- is
14 that how it works?

15 A. That can be how it works, yes.

16 Q. So would you see the sort of final version of this
17 before you signed the safety authorisation, or would
18 it -- how does that change get mapped?

19 A. Well, this -- this is only a few days between them, so
20 this is just a matter of process.

21 Q. Okay, so it is a matter of ... okay, lovely. Thank you.

22 If I can ask you to turn to page 1080 because what
23 we have is a series of documentation of what the changes
24 are, like all these things, and at page 1080 we have
25 the contents page. It might just help, I think,

1 the Tribunal -- you will be quite familiar with this
2 document, I imagine?

3 A. Not in detail, but --

4 Q. Right.

5 A. I understand the whole -- the aspects of it.

6 Q. The Tribunal, for their benefit, if you look down
7 the contents page, if you look at the main heading: so
8 1 is "Health and safety management system"; then we
9 have 2, "Leading"; 3, "Risk Management"; 4,
10 "Implementing Controls", which you can see covers all
11 sorts of things, like fatigue, drugs and alcohol,
12 maintenance operations, public safety, a whole bunch of
13 stuff before; 5, we have "Network Rail standards and
14 controls"; 6 is about "Managing Interfaces", and we will
15 come back to that; 7 is "Measuring and Monitoring"; and
16 8 is "Learning". So that is the broad section, how it
17 fits together.

18 So within 6, if we look at 6.2, "Suppliers", which
19 we see is on page 143 of the HSMS, that is on page 1224
20 of the bundle, if I can just ask you to turn to that.

21 It begins by talking about how Network Rail's
22 expenditure with suppliers is managed and refers to
23 a particular NR standard.

24 A. Sorry, which page is that?

25 Q. Sorry, page 1224.

1 So this is within the heading 6.2, "Suppliers", so
2 this is the section of the HSMS which deals with
3 suppliers, and I believe it is the section which you
4 have referred to in your statement?

5 A. Yeah.

6 Q. It begins by referring to an NR standard with a long
7 number, NR/L1/CPR102 Sourcing and Supplier Governance
8 Policy. Am I to understand that CPR means it is
9 a standard relating to procurement? Is that what
10 CPR means in this context?

11 A. I believe so, but I don't know Network Rail's procedures
12 in detail.

13 Q. But even though it is a CPR standard, it may have some
14 relevance to safety?

15 A. Yes.

16 Q. Then it sets out what the NR Group General Council does,
17 and it refers to a methodology for procurement in five
18 stages, which you will have seen before, so it goes --
19 it demands the strategy for procuring, implementation
20 and so forth.

21 6.2.3, it refers to a high level document, level 1
22 standard, of the "Supplier Assurance Framework", which
23 it says:

24 "... describes the framework by which Network Rail
25 obtains assurance that all reasonably practical steps

1 have been taken to appoint suitably competent ...
2 suppliers."

3 Then we have 6.2.4, which refers to "supplier
4 qualification" being set out in a standard called
5 CPR201 --

6 A. Mm-hm.

7 Q. -- and another standard for the principal contractor
8 licensing scheme. Is that all familiar to you?

9 A. Yes, those schemes are, yes.

10 Q. Okay.

11 "The purpose of this document is to specify the
12 arrangements for the qualification activity within ..."

13 That framework.

14 A. Yes.

15 Q. "It describes the qualification activities that show
16 assurance suppliers have met the minimum pre-determined
17 qualification criteria to supply a specific product
18 category, and that the requirements of the Utilities
19 Contracts Regulations are met. Those standards include
20 the arrangements for the:

21 "RISQS ...

22 "Licensing of Principal Contractors."

23 And, on occasion, developing contract-specific
24 requirements as well. Another layer.

25 We are going to be focusing on the supplier

1 qualification section here. It says:

2 "... it is necessary to --

3 6.2.5:

4 "... it is necessary to confirm that potential
5 suppliers have the requisite qualification ...
6 determined by the assessment of supplier organisations
7 against pre-determined qualification criteria ...
8 require to be qualified ... via ... RISQS ..."

9 Then it describes RISQS over the page. Previously
10 known as Link-Up. 6.2.7:

11 "The process of qualification initially requires
12 the completion ... of [a] ... questionnaire ..."

13 Collecting a variety of data: commercial,
14 operational, technical, including health and safety.

15 "Subsequent qualification stages will depend on
16 the products or services ... to be supplied ..."

17 Then it refers to hierarchical stages; yes?

18 Just to check, so we have "Registration", "Scored
19 Evaluation" and "Auditabile". Now, "Registration", it
20 says is designed for non-critical goods and services, so
21 by definition that is not a safety risk, is it?

22 A. No, and we're really talking about safety-critical
23 stuff.

24 Q. "Scored Evaluation", 2, business-critical, something can
25 be business-critical without being safety-critical, can

1 it not?

2 A. Yeah.

3 Q. So what we are really concerned with is 6.2.10, which is
4 "Auditable":

5 "These product groups are designed for suppliers of
6 safety-critical products and services."

7 So this is where RISQS becomes relevant to safety,
8 because it applies to certain safety-critical products
9 and services?

10 A. That sounds quite a lot.

11 Q. Sorry?

12 A. It's quite a lot.

13 Q. When you say "quite a lot", do you mean there were quite
14 a lot of products and services or that this is quite an
15 important --

16 A. This is very important, this.

17 Q. Just focusing in, so there are three elements that are
18 labelled there:

19 "In addition to the completion of
20 the questionnaire ..."

21 One is:

22 "... the capabilities of each supplier will be
23 assessed annually by RISQS via an audit against the
24 requirements of NR Standard ... CPR302 Supplier
25 Qualification - Core Requirements ..."

1 So that is the first element there that applies to
2 auditable categories.

3 Secondly, it says:

4 "... bespoke technical audit protocols derived by
5 the specific product groups selected by the suppliers."

6 So there will be a bespoke audit against specific
7 product codes. That is the second element.

8 The third element is that:

9 "Where the supplier is awarded the full NR Licence
10 ... the annual assessment ..."

11 So the assessment of -- I believe against
12 the CPR 302 standard will be undertaken by the assurance
13 licensing team rather than by RISQS. Is that your
14 understanding of what that paragraph means?

15 A. Yes. But they're talking about principal contractors
16 here.

17 Q. The last one is about principal contractors whereas
18 the other two would apply to other contractors?

19 A. And all these principal contractors would be major
20 organisations.

21 Q. Yes. So is this your understanding of how Network Rail
22 is currently doing its auditable --

23 A. Yes.

24 Q. -- categories? Okay.

25 Well, CPR 302, if I could just ask you to take up

- 1 bundle 1 for the moment.
- 2 A. What's that?
- 3 Q. Sorry, G1, I should say. G1. Sorry, my mistake. Can
4 we make it bundle -- it is bundle G1, I do apologise.
5 At tab 9 of that bundle we have that document, which is
6 NR/L2/CPR302, "Supplier qualification core
7 requirements".
- 8 A. Which tab was that, did you say?
- 9 Q. Tab 9.
- 10 A. "Supplier qualification core requirements"?
- 11 Q. Yes, that is right.
- 12 Now, just to check that that is a document that you
13 understand is being referred to in 6.2.10 of the Health
14 and Safety Management scheme; yes?
- 15 A. Yeah, it's the same number.
- 16 Q. Well, I am afraid to tell you, Mr. Prosser, that in this
17 respect the Health and Safety Management System is out
18 of date because in fact suppliers are not audited
19 against this document by RISQS, NR/L2/CPR302, they are
20 audited against what is called the IMR audit protocol
21 that sits within the confines of the RISQS scheme, and
22 that is the audit that is carried out.
- 23 A. I'm not familiar with the detail of that.
- 24 Q. Okay.
- 25 Well, perhaps if I can just show you that -- put

1 that bundle away now, that is fine -- and take you to
2 bundle G2/15. I am afraid there will be quite a lot of
3 zipping around between bundles. Perhaps if you hold on
4 to bundle G1, because you will be needing it in
5 a moment.

6 MEMBER 2: Sorry, what is the next bundle?

7 MR. WOOLFE: Bundle G2/15. If you keep both bundles because
8 we will be needing both of them.

9 We can see a document there, "RISQS audit protocol
10 industry minimum requirements", and we heard both from
11 Mr. Nelson from Achilles but also Ms. Scott, from the
12 RSSB, who used to be at Network Rail, that this is
13 a document against which suppliers are audited under
14 RISQS.

15 A. Okay.

16 Q. In fact they have been audited against the version of
17 this IMR standard since about 2015, or indeed earlier,
18 about 2014. So that comes as a surprise to you?

19 A. I know that the -- I'm not completely familiar with all
20 the detail here, but I knew that there was a -- an audit
21 protocol inside RISQS.

22 Q. We heard from Ms. Scott yesterday that, due to
23 a standards moratorium, CPR302 had not been removed but
24 effectively an audit was being done against the IMR.

25 In fact, I mean, to get confirmation of that, I am

1 afraid if I can take you back to bundle G2 again --
2 sorry, G1/5. I apologise. G1/5.

3 Look at page 129 of that tab. Sorry, G1/5 is
4 the principal contractor licensing scheme, and page 129
5 sets out, at 8.2 to 8.4, the requirements that
6 Network Rail is applying, and effectively it is
7 referring across to the IMR --

8 A. Yes, it is.

9 Q. -- module. Network Rail is, in this document, choosing
10 to adopt the requirements of the IMR.

11 The second element -- you can keep those bundles
12 with you -- in the Health and Safety Management System
13 was the application of bespoke technical audit
14 protocols. Now, that used to be done by Link-Up, did it
15 not? There would be product code specific audits
16 carried out under Link-Up?

17 A. I guess so. I don't know all the details.

18 Q. We heard from Mr. Nelson yesterday -- and I think in the
19 end Ms. Scott agreed -- that that is no longer done
20 under RISQS. What we have is RISQS modules, and --
21 audited against those modules, and they are not product
22 code specific?

23 A. Yes, they would be done against the modules.

24 Q. Against the modules. But there were no longer bespoke
25 audit protocols by product code.

1 So in fact the second element in 6.2.10 of
2 the Health and Safety Management System, that is also
3 out of date, is it not?

4 A. Which one are you on now?

5 Q. Sorry, 6.2.10, within that I picked out three
6 requirements. The first is that the audit is against
7 the requirements of NR standard CPR302. We have seen
8 that actually that's simply IMR standard now.

9 "... further, bespoke technical audit protocols
10 derived by the specific product group selected ..."

11 I do apologise, so it is page 1226 of bundle G4.

12 Actually, we can do it from your witness statement
13 if that is easier. If you look in your witness
14 statement on page 54 of the witness statement bundle,
15 a bit above paragraph 21 of your statement, you actually
16 set out the relevant part of the Health and Safety
17 Management System.

18 Have you got that in front of you?

19 A. Which? Yes? Paragraph?

20 Q. So where you quote 6.2.10 of the ...

21 A. Yeah.

22 Q. So within that we have seen that the first requirement
23 was that capabilities are assessed annually by RISQS via
24 an audit against the requirements of a certain
25 Network Rail standard, and we have seen that that is no

1 longer structurally accurate.

2 The second:

3 "... and further, bespoke technical audit protocols
4 derived by the specific product group ..."

5 What I am informing you is that we heard from both
6 Achilles and RSSB yesterday that that is no longer what
7 happens under RISQS, so in fact the technical audit
8 function is no longer part of RISQS.

9 A. Okay.

10 Q. Then finally, the element of auditing, an annual
11 assessment against 302 standards being done for
12 principal contractors by the assurance licensing team.

13 We also heard from Ms. Scott yesterday that that is
14 not in fact what happens anymore, for everybody it is
15 undertaken by RISQS.

16 A. Okay.

17 Q. So in fact, this paragraph of the Health and Safety
18 Management System, it has not been changed, but what
19 Network Rail has done has changed, has it not?

20 A. It would appear so.

21 Q. You have had a change as to what the relevant standard
22 is. It has also changed who sets it, because the IMR
23 protocol is in the control of RISQS and the RISQS board
24 rather than directly within the control of Network Rail.
25 Then we have also had the dropping of the technical

1 audit product specific codes and a change of who does
2 the audit in respect of the principal contractors. That
3 has all been going on since 2014, so the last five
4 years. Would you say that that is a major change -- if
5 those were written in, would they be a major change to
6 the Health and Safety Management System?

7 A. They may not be.

8 Q. So those changes as to who controls the protocol, that
9 would not count as a major change?

10 A. Well, they can make changes. I -- I don't know if
11 they've discussed those with us in detail.

12 Q. But what about a change as to who is actually carrying
13 out audits? Is that a major change?

14 A. Who's actually carrying out the audits?

15 Q. Yes, a change to the identity of the person carrying out
16 audits. Is that a major change?

17 A. Not necessarily.

18 Q. So for instance, in 2018, where it changed from being
19 Achilles carrying out the audits, who had provided
20 Link-Up, to a system where the system is provided as
21 a whole by the RSSB but with service provision being
22 bought in from separate IT providers and audit
23 providers, if that had been written in, which it has
24 not, would that count as a major change?

25 A. That depends.

1 Q. It depends, okay.

2 That might be a convenient moment for the shorthand
3 writer. I realise I have gone on for quite a while.

4 THE CHAIRMAN: Thank you.

5 (11.51 am)

6 (A short break)

7 (12.05 pm)

8 MR. WOOLFE: Mr. Prosser, can you go back to your statement
9 at paragraph 13. You record in paragraph 13 that you:

10 "... have been provided with, and have read, a copy
11 of the witness statement of Allan Spence of Network Rail
12 dated 24 January ... in these proceedings."

13 Your statement is dated 25 January, Mr. Spence's is
14 dated the 24th. So his was prepared and signed, and
15 then you read it in preparing your witness statement.

16 Then at paragraphs 29 through to 31 you set out
17 parts of Mr. Spence's witness statement. You refer to
18 section E in paragraph 29 and 30. At 31 you refer to
19 section F. At 29 you say you recognise and fully agree
20 with the benefits Mr. Spence identified. I am going to
21 deal with Mr. Spence's statement with Mr. Spence rather
22 than with you in detail. You say:

23 "In particular, I would highlight the importance of
24 a consistent and reliable audit process, the output of
25 which can be relied and acted upon in a timely manner."

1 So that is a particular element that you want to lay
2 stress upon?

3 A. Yes, reliable -- it's about having consistency.

4 Q. About having consistency, yes.

5 Then 30 you refer to scope for industry-wide
6 feedback and improvement.

7 Then the safety concerns.

8 I am going to take you to Mr. Spence's statement so
9 we can see exactly what it is that you are --

10 A. Can I get my copy of that?

11 Q. Yes, you should have a copy in the bundle of witness
12 statements of volume D. Do you have --

13 A. Yeah, but I've got my own copy.

14 Q. I would rather you looked at the copy in bundle D.

15 A. All right.

16 Q. Bundle D/1. I believe section E starts on page 15.

17 A. Yes.

18 Q. Then if you can look at how this is written, I think
19 paragraph 67 identifies a series of what it says are
20 specific safety benefits, at paragraphs A through to H,
21 so there are 8 sort of safety benefits identified.

22 Then if I ask you to go forward to section F, which
23 begins on page 17, this, in a sense, is the other side
24 of the coin, you are saying:

25 "... the following safety risks would arise ..."

1 Paragraph 74:

2 "... were Network Rail required to recognise two or
3 more supplier assurance schemes."

4 Then you have sections (a) through (h). I hope you
5 will see that they sort of -- they fit together, so
6 a lot of this covers the same ground from a different
7 angle.

8 I am going to focus on paragraph 67 with you and
9 then I will just go to 74 to pick up anything that may
10 be different.

11 Just to check, at the time of signing your statement
12 then, this was the only document relating to considering
13 the single supplier assurance scheme that you read in
14 preparing your statement?

15 A. This one?

16 Q. Yes.

17 A. I had -- had a -- read/go-through what we'd done in
18 terms of the authorisation.

19 Q. Right, okay.

20 But you did not have a sort of a worked-up risk
21 assessed proposal for how multiple schemes could work,
22 of the kind that we have been talking about for a change
23 to the HSMS, you did not have that --

24 A. No.

25 Q. Okay, so at 67a one of the first benefits he identifies

1 is "a uniform and clear set of safety requirements".

2 I think in the same paragraph it refers to
3 the "consistent standard of audit". So that is the one
4 you pull out as striking you as being particularly
5 important?

6 A. Yes. Well, these are all important, actually. All of
7 his points that he made.

8 Q. That is one you highlight, anyway?

9 A. That's the one I particularly highlighted but I thought,
10 you know, he had done a comprehensive -- when I read
11 this, a comprehensive analysis of what --

12 Q. What I was going to suggest to you is that ensuring that
13 consistent standards are applied through a consistent
14 standard of auditing can be achieved by having, first of
15 all, a clear specification of what has to be audited,
16 and then also a clear standard that the auditor has to
17 comply with in auditing it. That would achieve that
18 benefit, would it not?

19 A. Yeah, that would achieve that particular benefit.

20 Q. That does not require having a single auditor or single
21 scheme, that can be done with multiple auditors?

22 A. Well, it depends on how Network Rail then assures itself
23 that it's got that consistency.

24 Q. Right. But for instance, I mean, if Network Rail
25 specified what had to be audited, it would know that

- 1 that is consistent, would it not?
- 2 A. If it specified what had to be audited, yes.
- 3 Q. As indeed it used to under the CPR302 standard. If it
- 4 had a specification like that, it would say: that has to
- 5 be audited and that is ...?
- 6 A. Yeah, it's about, in particular, how they ensure that
- 7 they get consistent and reliable and accurate audits.
- 8 Q. In terms of the auditing, it could rely upon
- 9 the auditing body being certified by an accredited body
- 10 against the ISO standard, could it not? A relevant ISO
- 11 standard?
- 12 A. It could do, but it's -- you know, it's for Network Rail
- 13 to assure themselves that, whatever that accredited body
- 14 might be, is up to the standard that they require.
- 15 Q. But that system of requiring somebody to use an
- 16 accredited body, accredited against an ISO standard, but
- 17 allowing a person to choose who audits them, that in
- 18 fact is the system which we saw under the Common Safety
- 19 Assessment System, is it not?
- 20 A. Yes, it's possible.
- 21 Q. So what I am putting to you is that applying consistent
- 22 standards through a consistent standard of audit can be
- 23 achieved without having a single supplier of supplier
- 24 assurance?
- 25 A. It is -- it's more difficult, because the -- the -- the

1 key here is how you maintain and ensure that you've got
2 consistent and reliable auditing and the standards of
3 that audit.

4 So it's -- it's -- it's one of the benefits and
5 it's -- it's a matter of being able to assure yourself
6 that you have got that consistency.

7 Q. So I think what you are saying is that having a single
8 scheme is a way of ensuring consistency but there may be
9 other ways of ensuring consistency as well?

10 A. There may be, but it then depends on how Network Rail --
11 and this would be all part of whatever change that
12 they'd -- proposal they made -- how they actually then
13 went about assuring themselves.

14 Q. Okay.

15 So you did not consider any alternative structures
16 that could be used to achieve a consistent standard of
17 audit, you just looked at Mr. Spence saying that this is
18 a benefit of the RISQS scheme and you agreed with him on
19 that?

20 A. Yes, it's a benefit and it's my view.

21 Q. Then, under 67b, he says the benefit of having "no risk
22 of confusion amongst suppliers". Just to check again,
23 you were not asked to consider any way that risks of
24 confusion could be mitigated by other means?

25 A. No, because at this point in time Network Rail is not

1 proposing a change.

2 Q. Right. So all you are saying, all you are agreeing with
3 is that having a single supplier scheme, in that system
4 there is no risk of confusion among suppliers?

5 A. Correct. And we've had a single scheme for a very long
6 time, so -- and that, I think, is a very important
7 factor for the Tribunal to understand, in that -- and
8 that scheme has been market tested, if you like, in
9 terms of the changes that were made, through
10 a competitive process, but the scheme has been developed
11 and improved over a period of time significantly, and
12 supplier assurance in the industry has been approved
13 significantly, and we've seen improvements since
14 the changes that were made in 2018, quite significant
15 improvements, because that competitive process has
16 created improvements by the changes that have been made
17 post that.

18 So, you know, supplier assurance has been the result
19 of many -- quite a large number of rave recommendations
20 over the last 10 years.

21 Q. I think you said that the suppliers assurance has
22 improved significantly since 2018. So, in that sense,
23 if done in an appropriate way, competition can be a spur
24 to improving the safety assurance?

25 A. In the way that Network Rail have carried out the -- the

1 competition -- or RSSB actually did it. You know,
2 they -- from the -- the result of the changes that have
3 been made with the new -- new system and the new
4 auditing process, we've seen improvements.

5 Q. Okay. Then over the page, 67c, there is a reference to
6 dissemination of safety reports, and Mr. Spence says at
7 the end of that paragraph that having this "single
8 portal" -- in the middle of that rather:

9 "... a single scheme provides Network Rail with
10 a single supplier assurance portal through which we are
11 able to send safety-critical updates to our suppliers."

12 A. Yes.

13 Q. So --

14 A. In a timely manner.

15 Q. Sorry?

16 A. In a timely manner.

17 Q. In a timely manner. Your understanding is that that is
18 a benefit of the RISQS portal?

19 A. Yes.

20 Q. But you did not consider whether safety reports could be
21 disseminated in another equally reliable and timely
22 manner? For example, that Network Rail could specify
23 that any alternative scheme would also have to
24 disseminate safety reports?

25 A. No, but we have seen the opposite, if you like, in

1 that -- in other organisations where there isn't -- in
2 a different type of context there has been problems in
3 disseminating safety-critical information to suppliers
4 in a timely manner.

5 Q. But all you have considered in relation to dissemination
6 of safety reports is what Mr. Spence has said here, you
7 have not carried out any other independent examination
8 of what could be done?

9 A. But we have over -- over many years looked at --
10 you know, have inspected this -- this single scheme, in
11 terms of assuring ourselves that it was working.

12 Q. But you have not examined what safety reports RISQS
13 disseminates and how that works?

14 A. My team have probably done in the past.

15 Q. Have probably done that in the past?

16 A. Yeah.

17 Q. Okay.

18 Perhaps, in that case, I will raise it with you
19 then, because certainly during the time that Achilles
20 was running RISQS, so up until May of last year, it was
21 not used for the dissemination of safety reports.

22 Is your understanding that that changed in 2018?

23 A. That's my understanding.

24 Q. Your understanding of that changed.

25 Where did you get that understanding from?

1 A. From reading Mr. Spence's --

2 Q. Okay, thank you.

3 Then 67d, this refers to being able to act:

4 "... in a timely, efficient and effective manner, to
5 monitor, check and act on safety issues ..."

6 I think the reason this is said to be a benefit of
7 the single scheme, if I am being careful about this, is
8 having:

9 "A single audit provider and a single means of
10 addressing supplier weakness ... provides Network Rail
11 with confidence and clarity in acting on safety
12 issues ..."

13 Again, you did not consider whether there were
14 alternative means of getting such confidence and
15 clarity, such as having a single specified set of checks
16 and a specified standard to which they are to be carried
17 out?

18 A. Well, no, you know, I basically agreed with Allan's
19 statement here.

20 Q. You are agreeing with him that that is a benefit that
21 arises from having a single scheme, but you are not
22 expressing any opinion on whether or not that benefit
23 could be achieved by other means?

24 A. Not at this point, because we haven't seen the proposals
25 that would be put forward.

1 Q. 67ae). Then there is a reference to having a single
2 forum, and again it seems to be by agreeing with this
3 you seem to be saying a benefit of having this single
4 scheme is that you get a single forum through which
5 updates can be provided, and that is what you are
6 agreeing with?

7 A. Yes.

8 Q. Okay.

9 Again, you have not considered any proposal as to
10 how it can be done differently?

11 A. Not at this point in time.

12 Q. Perhaps to save a bit of time, 67f, that refers to
13 Network Rail in a sense having influence within
14 the RISQS board?

15 A. Yes.

16 Q. That is said to be a benefit, but it seems to be
17 a benefit to Network Rail.

18 If I can pick up (g), where it refers to:

19 "... compatibility and inter-operability ... with
20 Network Rail's own systems and processes ..."

21 Particularly what it seems to be talking about here
22 is non-duplication of audits.

23 I would just suggest to you that avoiding
24 duplication of audits can just be ensured by, again,
25 having a clear specification of what it is that an audit

1 covers?

2 A. Well, I think this is a valid point that Allan's made
3 here.

4 Q. So it is valid that having a single scheme facilitates
5 these?

6 A. Yes.

7 Q. Right, okay. But you are not expressing an opinion on
8 whether or not that benefit can be achieved by other
9 means?

10 A. Yes, because we haven't assessed any proposals otherwise
11 at this point in time.

12 Q. Then 67h, this in turn seems to be explicitly about
13 a single uniform set of standards rather than a single
14 scheme per se, but it says:

15 "... use of a single scheme with a single uniform
16 sets of standards ... ensures that suppliers are
17 incentivised to invest continuously ..."

18 I suggest to you that as long as the standard set
19 are uniform, the incentives to invest are there, and
20 that in itself is not a benefit of a single scheme, that
21 is a benefit of a single set of standards; would you
22 agree?

23 A. I think you can achieve that more effectively with
24 a single scheme. It's all about consistency, and that's
25 very, very important in this whole process. Consistency

1 and connectivity, so that you have very clear
2 transformation -- transform -- information being
3 transferred and being able to assure that there is
4 consistency.

5 Q. If I can just then take you back to your statement,
6 sorry, which is at bundle D -- oh, sorry, perhaps
7 I should just pick up -- was there anything else in 74
8 I needed to ask you about? I do not think so.

9 Well, perhaps then I will ask you about this. 74 --
10 sorry, this is in Mr. Spence's statement -- page 18. He
11 says various things about what would happen in a certain
12 scenario, and in the last paragraph within 74a, he says:

13 "There would be no practical way for Network Rail to
14 ensure that all schemes continue to operate to
15 a sufficient quality in circumstances where there would
16 be a misalignment of incentives between
17 Network Rail ..."

18 Did you consider whether or not there were any other
19 practical ways?

20 A. Not at that point in time.

21 Q. So when you agreed with section (f) of Mr. Spence's
22 statement, you were not specifically endorsing
23 the statement that there would be no practical way to
24 ensure these?

25 A. Well, I think it did concern me that the head of

1 profession in Network Rail in safety couldn't see a way
2 in which this could be done.

3 Q. So that is a concern you had based on the fact that he
4 was saying it, but I think at paragraph 31 of your
5 statement, if I can take you back to that, so D/3, 31,
6 you also, "recognise and fully agree with the safety
7 concerns that Mr. Spence identifies in Section F of his
8 witness statement", and I am just checking, it seems to
9 me that you are saying that the fact that he was saying
10 that he saw these risks was a matter of concern to you?

11 A. And in my view, I agreed with him --

12 Q. But I think --

13 A. -- and it's my view --

14 Q. -- you said a moment ago that you had not --
15 the specific statement in section F, I am just looking
16 at how detailed your agreement is. In paragraph 74a of
17 his statement where he says:

18 "There would be no practicable way to ensure all
19 schemes continue to operate to a sufficient quality."

20 A. It depends what you mean by "practicable".

21 Q. Well, no, just pause for a second, Mr. Prosser. You
22 said that you had not considered alternative proposals.
23 I put that to you and you agreed with it.

24 A. Not at that point.

25 Q. But are you saying although you have not considered any

1 alternative proposals, you have formed a view that there
2 is no way of practically achieving this?

3 A. Well, at this point in time, what we -- what I've also
4 read in the bundles is the expert witness statements.

5 Q. Right.

6 A. And there could be -- I think --

7 Q. So I will just check, by the time you gave your
8 statement Mr. Prosser -- sorry, I will interrupt you
9 (unclear). You gave your statement on 25 January. You
10 had not read those expert witness at the time of
11 preparing that statement, had you?

12 A. No.

13 Q. Because it is dated before then?

14 A. Yeah.

15 Q. So I just want to (unclear), it seems to me that really
16 what you are saying at paragraph 31 is -- you say you
17 recognise the safety concerns?

18 A. Yes.

19 Q. I am not sure that you are necessarily agreeing with
20 each and every sentence within Mr. Spence's statement;
21 is that true?

22 A. That is probably true.

23 Q. I think we can probably work on that basis.

24 In that case, going to paragraph 32, you say:

25 "Accordingly, any move away from Network Rail

1 specifying RISQS as its single industry-led supplier
2 assurance scheme would be extremely undesirable from
3 the ORR's perspective."

4 I just want to try and understand exactly what you
5 are saying. First of all, this statement was based upon
6 your understanding of what the health and safety
7 management system was, yes?

8 A. Yeah, I know there had been some minor alterations to it
9 between the period of the authorisation and -- as what's
10 being used today.

11 Q. So you are saying those changes before were minor --

12 A. Yes.

13 Q. -- whereas a change to having multiple supplier
14 assurance schemes would be major, in your view?

15 A. Yes, because it's -- in my opinion.

16 Q. In your opinion, okay.

17 But you were saying this on the basis of your
18 understanding of the health and safety management
19 scheme, and you are also saying this based upon what you
20 had read in Mr. Spence's statement --

21 A. Yes.

22 Q. -- at the time you made this statement?

23 Now, this, what you say at paragraph 32, this is not
24 a view that the ORR has ever consulted on? It has never
25 gone to public consultation on this, that there should

- 1 only be a single supplier assurance scheme?
- 2 A. No.
- 3 Q. So it is not an official policy view of the ORR, is it?
- 4 A. No, it's a view of -- this is -- this is my view of --
- 5 as being Chief Inspector of Railways.
- 6 Q. But then nor is it a decision on any specific proposed
- 7 amendment to the HSMS, is it?
- 8 A. No, not at this point in time.
- 9 Q. Because you did not have anything like the kind of
- 10 material that would be required?
- 11 A. No, and we haven't had -- you know, we're talking about
- 12 a hypothetical situation of what might have to -- if
- 13 the Tribunal's decision is such, there might be --
- 14 you know, we're talking about what might happen.
- 15 Q. So you have concerns about how the Tribunal's relief
- 16 might be implemented?
- 17 A. Well, any change is of concern.
- 18 Q. So would it be --
- 19 A. I mean --
- 20 Q. -- fair to say that at the time you wrote this statement
- 21 you had read what Mr. Spence had to say, you had seen
- 22 what he said, and on that basis you had concerns and
- 23 that is what you are intending to express with this
- 24 statement?
- 25 A. Yes.

1 MR. WOOLFE: That is everything I wanted to ask, sir.

2 MR. FLYNN: No re-examination, sir. I do not know if

3 the Tribunal has questions for Mr. Prosser.

4 THE CHAIRMAN: Thank you, Mr. Prosser.

5 A. Thank you very much.

6 (The witness withdrew)

7 MR. FLYNN: Sir, our next witness is Mr. Allan Spence.

8 MR. ALLAN SPENCE (sworn)

9 Examination-in-chief by MR. FLYNN

10 MR. FLYNN: Could you give Mr. Spence bundle D, please.

11 Mr. Spence, in the first tab of that bundle you see

12 a document entitled, "First witness statement of

13 Allan Spence".

14 A. Yes.

15 Q. If you turn to the end of it, page 20, there is

16 a signature and a date. Is that your signature?

17 A. Yes, it is.

18 Q. So do you recognise that as your witness statement?

19 A. Yes, I do.

20 Q. Your evidence in these proceedings?

21 A. Indeed.

22 Q. Is there anything you wish to clarify or correct in that

23 statement?

24 A. Nothing of any materiality.

25 Q. Nothing of any materiality.

1 Then I think Mr. Woolfe will have some questions for
2 you.

3 Cross-examination by MR. WOOLFE

4 MR. WOOLFE: Thank you, Mr. Spence. First of all, it would
5 be good if we could get a shared understanding of what
6 it is that RISQS covers, and for those purposes can
7 I ask you to take up volume G2 of the bundle, or have
8 handed to you bundle G2 and turn to tab 15. Tab 15
9 within G2, so it is the first -- not the first one, the
10 first few tabs.

11 This is the "RISQS audit protocol industry minimum
12 Requirements"?

13 A. Mm-hm.

14 Q. Is this a document you are familiar with?

15 A. No.

16 Q. Sorry?

17 A. No.

18 Q. No, okay.

19 A. The subject is, but not the document.

20 Q. Not the document, okay.

21 In fact, paragraph 1 of your statement you said you
22 are Head of Passenger and Public Safety for Network Rail
23 Infrastructure Limited. Am I right in thinking that
24 sits within the routes part of Network Rail? There is
25 a group called routes?

1 A. No, it doesn't, no. I sit within the Safety, Technical
2 and Engineering Directorate within the business.

3 Q. Which directorate is it that deals with procurement of,
4 sort of, principal contractors and the like?

5 A. So there are a variety of roles in relation to principal
6 contractors. So there is a procurement function that
7 sits within Route Services, and there is an assurance
8 function that sits within Safety, Technical and
9 Engineering Team, not directly reporting to me but in
10 a team alongside mine.

11 Q. So in other words, this assurance stuff, part of it is
12 being done for procurement purposes in, sort of, another
13 directorate. Is "directorate" the right term?

14 A. Yes.

15 Q. Then, partly it is being done in the same directorate as
16 you, but by another team?

17 A. Indeed.

18 Q. Okay, thank you.

19 A. I think it's important to note that the business
20 operates on a matrix structure, so just what the
21 particular line of report is is slightly immaterial.

22 Q. Okay, that's helpful.

23 What I am trying to understand is -- what I do not
24 want to do is take you to documents, or too many
25 documents where you do not know really what they are

1 about. So you are familiar with the subject matter, but
2 you are not intimately familiar with this document?

3 A. Not at the level of detail of knowing that document, no.

4 Q. Okay.

5 So just to check, the purpose of the industry
6 minimum requirements audit protocol -- industry minimum
7 requirements module is to audit the existence of
8 management procedures at the level of an organisation as
9 a whole. Would you say that is a fair description?

10 A. Yes, I would.

11 Q. It is not about spot-checking how things are being done,
12 sort of on site, observing whether people are wearing
13 the right equipment or not? It is not that level of
14 technical safety check?

15 A. No, it's the more fundamental items and the very basic
16 things such as, you know, are people wearing their
17 PPE done up and such like.

18 Q. Basic in the sense of foundational?

19 A. It's the more fundamental issues, the more systemic
20 issues of how safety is managed, rather than those
21 rather trivial matters you've just mentioned.

22 Q. You are saying it is trivial to check whether people are
23 wearing personal protective --

24 A. In relation to systemic management of safety, yes.

25 Q. So the sense in which you are using "basic" is that one

1 of fundamental or foundational, rather than being basic
2 meaning unimportant how some people might sometimes use
3 it?

4 A. Indeed. I'm saying this is at the core of making sure
5 that all the right procedures are in place.

6 Q. Just to (unclear) might be, at section 2, which is
7 a section on safety risk management --

8 A. Section 2 of that document?

9 Q. Section 2 of that document, sorry, which is page 343.

10 2.1:

11 "The auditor shall verify how the organisation
12 incorporates health and safety controls into its risk
13 management process."

14 A. Mm-hm.

15 Q. So this, for example, is ensuring things are documented,
16 defining competency, controls as to how risk assessments
17 are communicated to staff, that there are documented
18 procedures in place for the issue of safety instructions
19 and that the records of the briefing -- presumably
20 records of the safety briefing -- are retained. So
21 the auditor operates at a documentary level checking
22 that these documented procedures exist and that
23 the records are there to, in some sense, give some
24 assurance that they are in fact being actually applied.
25 Is that a fair description?

1 A. It tests whether the business seeking to work on
2 the infrastructure has in place the right management
3 arrangements.

4 Q. Yes, that is right.

5 Now, you can put away that bundle now, G2. If, at
6 the same time, you could be handed G3 as well, that
7 would be good, but I am going to refer you to your
8 witness statement and to volume G3. In your
9 statement -- we are going to be going to tab 39 of that,
10 which is the -- tab 39 of bundle G3, which is the report
11 about the Tebay accident. You deal with that at
12 paragraphs 45 through to 48 of your statement and that
13 is why I am asking you about it.

14 Look at, within bundle G2, tab 39, the front page,
15 to see what this is. This is an inquiry report:

16 "Track worker fatalities at Tebay on
17 15 February 2004."

18 A. Mm-hm.

19 Q. Sadly, we must have almost just passed the 15th
20 anniversary.

21 The report is dated 23 September 2004, so that is
22 about six or seven months afterwards.

23 If we could look at the contents page -- just to
24 check, could you explain, perhaps, to the Tribunal what
25 this kind of report is.

1 A. This report is of a previous era in that, from 2005, we
2 have an independent Rail Accident Investigation Body and
3 the Rail Accident Investigation Branch. Prior to
4 the existent RAIB, very serious incidents, such as that
5 at Tebay, were independently investigated through
6 a panel convened by the Rail Safety Standards Board.

7 Q. This report is a report of such a panel?

8 A. Yes, it is.

9 Q. So if you look at the contents page on 893, we can see
10 how this is set up.

11 A. Mm-hm.

12 Q. There is a "Statement", a "Formal Inquiry Remit", and
13 then a contents?

14 A. Mm-hm.

15 Q. What we have is a series of sections, 1, 2, 3, 4 and so
16 on.

17 Section 8 is a long section, we can see from
18 the contents page, from pages 15 right through to about
19 50, which is a "Summary of Evidence"?

20 A. Mm-hm.

21 Q. Then at Section 9, just over the page, "Factors for
22 Consideration", we also have a fairly long section of
23 15 or so pages from 50 through to 65, where essentially
24 the factors for consideration, as we will see -- the
25 Board of -- "Board of Inquiry", is that a good term in

1 this context?

2 A. Yeah. We worry about terms. We know what that means.

3 Q. Discussed the various factors that it was weighing up
4 and considering?

5 A. Mm-hm.

6 Q. Then at section 10 it deals with "Conclusions", and then
7 11 "Recommendations", and there are some appendices and
8 so on as well.

9 Now, if I can start by taking you to the formal
10 remit -- sorry, before we go there. That structure was
11 a standard structure at the time for how such reports
12 were to be done, was it not?

13 A. I couldn't tell you exactly what the group standard said
14 that directed those. So, it's a structure that I'm
15 familiar with, but I don't know if it was a standard
16 structure.

17 Q. Okay.

18 Well, in fact, if we look at page 898, we have the
19 "Formal Inquiry Remit:

20 "This remit is issued in accordance with Railway
21 Group Standard ..."

22 Then we see a number GO/RT3473:

23 "... and requires an inquiry into the following
24 accident/incident."

25 Just to remind the Tribunal, I will just read it

1 out:

2 "An engineer's rear mounted vehicle ran away and
3 struck several track maintenance employees at Tebay,
4 Cumbria ... resulted in four fatalities and several
5 employees sustaining major and minor injuries."

6 So it was a serious incident, and that is what this
7 whole report is about.

8 Then in the Formal Inquiry Remit, if you go down to
9 5 at the bottom of that page, you can see, Mr. Spence,
10 the objectives of the inquiry, 5.1, the board was:

11 "... required, through inquiry, to identify
12 the circumstances of the accident/event including:

13 "a) The events leading up to the accident [and].

14 "b) Immediate and underlying causes."

15 5.2 sets out certain things the inquiry was required
16 to address in particular, quite a long list of stuff.

17 Then 5.3:

18 "You shall make relevant recommendations for:

19 "a) Action(s) that may be taken to prevent, or
20 reduce the likelihood of the occurrence of a similar
21 accident/incident."

22 Then a second "a", obviously just a typo:

23 "Actions that may be taken to reduce the severity of
24 the consequences of a similar accident/incident."

25 So that is both trying to stop it happening and

1 trying to make it less bad if it does happen, but
2 also:

3 "b) Other matters relevant to safety revealed
4 during the inquiry."

5 So in fact the function of the board is that they do
6 look at the causes of the accident, but they also report
7 along the way on other issues that they happen to pick
8 up and they spot as they go, and that was part of
9 the formal remit; that is right, is it not?

10 A. That's what I'm reading.

11 Q. Okay, thank you.

12 A. I just point out, you talked about 5.2. It does give
13 a long list; it also includes in the heading the words
14 "at least".

15 Q. "At least", yes.

16 So obviously when they started the inquiry, there
17 are some obvious things in their mind and then they
18 write those down, but --

19 A. But it's not constraining --

20 Q. -- not constrained --

21 A. -- the inquiry.

22 Q. -- indeed.

23 At 6.2:

24 "We note the format of structure and report shall be
25 in accordance with Rail Group Standard GO/RT3473."

1 That is in fact what specifies the structure of
2 report, that they have to go through, summarise
3 the evidence, discuss the factors that they consider,
4 all the factors they consider and then come up with
5 the conclusions and recommendations. Now I remind you
6 of it, does that fit with your understanding?

7 A. Yes. As I said, a legacy of history in that since 2005,
8 this process hasn't been in place.

9 Q. Right. Thank you. There we go.

10 If we turn over, at page 902 there is a completion
11 statement signed by some people, including Mr. Jack, as
12 he then was, as well.

13 Then we have the basic sequence of events set out on
14 page 903, and if I could just try and summarise it and
15 just check we are talking about the same facts.
16 Essentially what we have is an RRV -- a road-rail
17 vehicle -- that was packing up bits of scrap rail, it
18 was putting them onto a trailer that was sat on
19 the rails, and the trailer ran away down the lines, for
20 reasons which we will come to, and it ran a long way
21 down, several miles down the line, obviously gathering
22 speed, and hit some people who were working on the
23 track.

24 A. Not quite correct. So yes, it had collected rail onto
25 the trailer. It was then at the access point and was

1 proceeding to unload the rail from the trailer, and it
2 was at that point that the trailer was disconnected from
3 the road-rail vehicle and it ran away.

4 Q. So in the course of using this "RRV with log grab", it
5 says at 2.2.

6 A. Mm-hm.

7 Q. In the course of using that with the trailer, the
8 trailer which still had -- I do not know if it had rails
9 on or not, but that trailer then ran away and --

10 A. It had approximately 16 tonnes of rail on it.

11 Q. Okay.

12 If we just go over the page to 904, it is worth just
13 (unclear)), because the abbreviations are made as we go
14 along, and to understand the later parts of the report,
15 you have to see how it builds up. "Vehicles involved"
16 at section 6. The first is a road-rail vehicle, owned
17 by Hewden Plant Hire Ltd but leased to
18 M.A.C Machinery Services Ltd, MMSL, which is an
19 important part of the report as it goes along, is it
20 not -- MMSL?

21 A. Yes.

22 Q. Then it refers to the two trailers at 6.2, and then it
23 refers to P-Way Trolleys at 6.3, and just to clarify, it
24 was the trailers rather than the trolleys -- one of
25 the two trailers mentioned at 6.2 rather than one of

1 the trolleys that ran away down the line.

2 A. For the sake of detail, a trailer is a heavy item way
3 beyond the ability to -- of an individual person to
4 lift. I couldn't give you an exact weight, but of
5 the order of 1 tonne in weight. A trolley is one that
6 would typically be lifted by three/four people and
7 typically weights just a few tens of kilograms.

8 Q. Right, that is (unclear), but just (unclear) saying,
9 the vehicle mentioned at 6.27, or one of the vehicles
10 mentioned at 6.2 was the one that ran away?

11 A. Yeah. I have to say that it is a term that is
12 frequently, within the industry, wrongly quoted, but
13 you're absolutely correct in your understanding that
14 a trailer is the heavier item and a trolley is
15 the lighter.

16 Q. Okay, thank you.

17 Now we are moving on to section 8, and it is on that
18 same page. Functionally, what section 8 is, it is
19 a recitation of all the evidence which the inquiry took,
20 is it not?

21 A. Mm-hm.

22 Q. Thank you.

23 It is worth just sort of setting it up. At 8.1 and
24 8.2 we have track owned by Network Rail, obviously, and
25 then Carillion was contracted to carry out track

1 maintenance, and I think 8.1.3:

2 "In the case of the work in progress at Scout Green
3 ..."

4 Although the accident is called "Tebay", that is
5 where the workers were sadly killed, the runaway started
6 at place called Scout Green.

7 A. Which is an access point, which is the point I was
8 making earlier.

9 Q. "... Carillion Rail had hired plant and a machine
10 operator (MO) ..."

11 Just note that definition for a moment from MMSL:

12 "... trackmen from [elsewhere] ... and a machine
13 controller (MC) from McGinley Recruitment Services Ltd
14 (MGRSL)."

15 So we have the various actors. You have Carillion
16 who is doing the work on the whole on the track.

17 A. Mm-hm.

18 Q. Plant and machine operators from MMSL, and a machine
19 controller from MGRSL. So we all see that.

20 A. Mm-hm.

21 Q. Now, if I could ask you to go forward, we then have
22 "Background to the Work ..." which I do not think really
23 matters. There was some scrap rail which had been --
24 they had laid some rail and some scrap rail was there;
25 the job was taking it away essentially, as I understand

1 it.

2 8.3 refers to M.A.C Machinery Services Ltd.

3 Just note, 8.3.1.3, it was:

4 "... certified by QMS, a paid-up member of ...
5 [certain bodies] and was, at the time of the accident,
6 Link-Up qualified for the Core Module and for the hire
7 of road-rail equipment."

8 The detail of that we are going to come to in
9 a moment.

10 A. Mm-hm.

11 Q. Can I just ask you to scan down 8.3.2 and just check
12 with me that you agree with my understanding that
13 essentially what had happened was Carillion had been --
14 is that right -- hiring some plant in from Norex for
15 a period of time, Norex had been cross-hiring plant in
16 from MMSL, and it came to Carillion's attention that
17 MMSL was not Link-Up qualified to begin with, and this
18 was raised as a problem, and when it was raised as
19 a problem it was -- after some backwards and forwards,
20 during which it seems they were carrying on hiring
21 staff, they were forced to be Link-Up qualified and that
22 then happened. Is that a fair summary?

23 A. Yes, it's my understanding. I have an involvement of
24 this purely in relation to the enforcement side of
25 things that -- my role at the time, not in terms of this

1 technical investigation. But yes, I have read this
2 report and am familiar with those facts.

3 Q. Okay.

4 Then at 8.3.3 we come to the first section where
5 evidence about Link-Up qualification is discussed.

6 8.3.3.1 refers to what the nature of Link-Up was,
7 the summary as the board understood it to be, to enable
8 people to benefit from:

9 "... employing common audit/assessment protocols and
10 by sharing performance data ..."

11 And the database allows these things to be examined.

12 "Audits are conducted by Link-Up qualified
13 auditors."

14 Then we have:

15 "Following the Carillion Rail assertion ..."

16 This is 8.3.3.3:

17 "Following the Carillion Rail assertion that it
18 [MMSL] must obtain Link-Up qualification before
19 undertaking work, MMSL requested Link-Up to undertake
20 audits to be two product groups - core and RRV with
21 operator ..."

22 That seems to have been an audit against the core
23 supplier qualification specification and against
24 a specific product code.

25 It goes on to say:

1 "The former group covers the central policies and
2 accreditations of the company ... while the latter
3 concentrates on a particular product group."

4 So this was back in 2004, and what I am going to
5 suggest to you is that at that time Link-Up would have
6 been auditing the core elements against the Network Rail
7 CPR 302 standard, and then it would have been
8 undertaking a product code specific audit based on
9 questions specific to the RRV and operator product code.

10 Is that your understanding?

11 A. It certainly pre-dates the plant operation scheme, for
12 example, which looks in detail at the management
13 arrangements for plant.

14 Q. Okay, so it pre-dates the plant operation scheme, but
15 is it your understanding that what I said is correct,
16 that at that time it would have been undertaking
17 a technical code specific audit?

18 A. It's my understanding without any detailed understanding
19 of what was happening at that time. But yes, from
20 reading the report, I agree with you.

21 Q. Okay.

22 Then we can see at 8.3.4 essentially what happened,
23 an audit was undertaken -- a Link-Up audit was
24 undertaken for MMSL.

25 Then 8.3.4.1:

1 "The Link-Up audit report was therefore reviewed by
2 Carillion Rail's Plant Hire Supplier Auditor ..."

3 So somebody internal to Carillion Rail. It says:

4 "... himself a qualified Link-Up auditor ..."

5 Obviously was at the time.

6 "He identified a number of areas of ... report which
7 he considered were either insufficiently clear or were
8 unsatisfactory."

9 So he says there were some problems. He goes on to
10 say:

11 "There were five such areas, and these were drawn to
12 the attention of MMSL ... MMSL were advised that they
13 needed to submit evidence to demonstrate that they had
14 dealt with the first three before they could be granted
15 approved supplier status."

16 So Carillion is clearly saying: "We have got five
17 issues; three you need to deal with or we won't let you
18 work for us, the other two we want to be dealt with but
19 they are not prerequisites. Is that a fair summary?"

20 A. Yes.

21 Q. 8.3.4.4:

22 "The SAF ..."

23 Which is supplier accreditation form.

24 "... and responses to the first three NCRs were
25 received from MMSL and deemed to be satisfactory by

1 the Carillion Rail Plant Hire Supplier Auditor ..."

2 So the one who had raised the issues. Then they
3 were "accorded approved supplier status".

4 So Carillion had in fact closed those queries about
5 the Link-Up audit which were the ones that it had made
6 prerequisites for approving MMSL, had it not?

7 A. Yes.

8 Q. Then 8.3.4.5, there were two left, "two remaining NCRs",
9 so non-compliance reports, I think, is the term --
10 non-conformance reports rather.

11 "... One arose from a misunderstanding and had been
12 closed (No. 5), but the other (... dealing with the
13 instruction and findings of an internal MMSL audit
14 regime) remained outstanding at the time of the
15 accident."

16 So that is the non-compliance with Link-Up audit,
17 which was still outstanding. It was something to do
18 with an internal MMSL audit regime.

19 Then in the course of reciting the evidence
20 the panel notes at 8.3.4.6 that there was:

21 "... uncertainty as to the scope of ... the Link-Up
22 audits and Carillion Rail supplier approval and whether
23 these applied solely to the supply of RRVs and operators
24 or whether attachments were included ..."

25 So a specific issue was raised over whether this

1 audit applies to just the RRV, or whether it applies to
2 the trailers as well -- the scope issue -- and that is
3 the uncertainty that the panel identifies at 8.3.4.6, is
4 it not?

5 A. That's what I'm reading, yes.

6 Q. Okay.

7 Then we have quite a long section of discussion of
8 how the evidence relating to commercial relationships
9 and acquisition of plant, where MMSL had got these
10 trailers from, which we shall see. Then (unclear) 8.5,
11 a section on maintenance of plant, and the board is
12 looking at -- you know, it is going through reciting
13 the evidence as to all these factors.

14 8.6, it refers to "Engineering Acceptance", and at
15 8.6.1.2 it notifies that certification of
16 the trailers --:

17 "Engineering acceptance (EA) certification is
18 undertaken by vehicle acceptance bodies authorised
19 by Rail Safety & Standards Board ... to issue
20 EA certificates for defined classes of vehicle."

21 So that was the system at the time. There was
22 a specific certification of engineering acceptance. Is
23 that still the case now?

24 A. It is for road-rail plant. I have to say I don't know
25 whether that is the case for non-powered attachments.

1 Q. But we have a role there for vehicle acceptance bodies
2 who are authorised by the RSSB and that is entirely
3 separate from the Link-Up audit, is it not?

4 A. Yes, it is, and fulfills a different function. It's
5 looking at the item of plant itself, it's not looking at
6 the management arrangements.

7 Q. It is a bit like an MOT, checking that it is working
8 properly. Is that the --

9 A. It's built to the right specification, it's not looking
10 at the management arrangements. So there's no overlap
11 or duplication; they discharge completely separate
12 functions.

13 Q. Thank you.

14 Then 8.6.1.6, again we have an aside from the panel:

15 "The current RGS ..."

16 Which I think is the railway standards.

17 A. Railway standards.

18 Q. "... classifies trailers as rail-mounted vehicles, along
19 with RRVs, but trailers also qualify as attachments,
20 which is understood to be their classification in
21 earlier versions of the RGS. The Panel does not believe
22 that this is conducive to clarity."

23 So this is another example where they comment along
24 the way about something that they see as an issue which
25 they happen to have spotted.

- 1 A. Mm-hm.
- 2 Q. That is a function of what boards do in these kind of
3 reports, is that right?
- 4 A. Did.
- 5 Q. Thank you.
- 6 Now, if we go on we have discussion of "road-rail
7 Vehicle". On page 915 of the bundle we come to
8 the section on trailers, which obviously does matter for
9 the accident.
- 10 If we look at 8.6.2.2.2 starting, "Since 2001...",
11 those three paragraphs there, if I could just ask you
12 just to read that and then I will check that my
13 understanding is correct.
- 14 A. Forgive me, you said 8.6.2.2?
- 15 Q. 8.6.2.2.2. So yes, the section headed, "Trailers",
16 the section paragraph under that starting:
17 "Since 2001, GM/RT1300 ..."
18 If you could just read that paragraph and I will
19 just check if I have it right.
- 20 (Pause)
- 21 A. Yes, I've read those paragraphs.
- 22 Q. So my understanding is that these trailers are meant to
23 be attached to some vehicle that tows them, essentially,
24 the RRV. They work as an attachment; is that right?
- 25 A. They're non-powered, so to move and to be useful around

1 the network, they're attached to a motive source.

2 Q. They are supposed to have brakes which apply
3 automatically if they become uncoupled from whatever it
4 is that is pulling them. That is the nature of
5 the system?

6 A. That was the change that the paragraphs you've
7 highlighted introduced.

8 Q. So they are supposed to be modified to have that, to
9 work in that way, and MMSL's had not been modified in
10 that way. They were supposed to be quarantined --
11 sorry, perhaps -- is that right here? So following down
12 at point 5, they had in fact transferred them to
13 a quarantine area, and you were not supposed to use them
14 until they had been modified.

15 If you look over the page, what MMSL had done, they
16 had not -- 8.6.2.2.6, they said that:

17 "... a reissue of the engineering acceptance
18 certificate had not been sought. In fact, [this]
19 GMRT2000 [standard] obliges the operators [so MMSL] to
20 notify the VAB that the vehicle is no longer compliant
21 ..."

22 That is what they should have done but they did not;
23 is that correct?

24 A. Well, bearing in mind the company we're talking about it
25 as a limited company, it's a very small company, it was

1 effectively a sole trader directly running that,
2 Mr. Connolly, and not only had he not discharged that
3 function, as we -- presumably you wish to come on and
4 discuss, he was subsequently convicted of gross
5 negligence manslaughter in relation to not just
6 the failings but also the direct tampering with those
7 brakes. So it's little less than just leaving them
8 unmodified, they were actively deactivated.

9 Q. Things are being sort of cut or looped round in such a
10 way that they were not functioning; is that right?

11 A. There was additional components inserted which held
12 brake plates off, yes.

13 Q. Right, yes. As you said, he was convicted of gross
14 negligence following this.

15 A. Yes, extremely unusual circumstances.

16 Q. Manslaughter by gross negligence, presumably?

17 A. Gross negligence, that sort of thing. A common law
18 offence, not the corporate offence that was introduced
19 some years later.

20 Q. I think the proceedings about this went on for quite
21 a long time after this report that you refer to, so
22 I think some facts may have actually have come out about
23 that later.

24 A. The conviction, if I recall correctly, was in
25 March 2006.

1 Q. Run through this. Paragraph 8.7 describes the supply of
2 plant to Carillion Rail, and essentially what happened
3 was they were short and this got shipped in at the last
4 minute. Is that a fair summary of what had happened?

5 A. My understanding is that Carillion had a number of
6 suppliers and they were seeking to source equipment for
7 use on that job, and they went down their list of
8 suppliers and got to a supplier that was below many
9 others that they would normally use, and it was --

10 Q. And that was MMSL.

11 A. -- Mr. Connolly.

12 Q. Sadly so.

13 Then we have 8.8 where there is a discussion of
14 the trailers and the braking system, and there is
15 a slightly longer explanation of what it is that we have
16 just been discussing before about how the braking system
17 works and how it was supposed to come on.

18 8.9 describes previous runaway incidents. So this
19 is not stuff that is causative of this accident, it is
20 just reciting the fact that there had been previous
21 runaway incidents that were known about?

22 A. Indeed.

23 Q. 8.10 deals with safety management, and it recites
24 the safety briefing, the safety feedback and so forth.

25 Then 8.11 refers to the planning on page 921, what

1 the planning process was.

2 8.12 recites the worksite possession. "Possession"
3 seems to be a word used as a synonym for "site"
4 sometimes, in this context.

5 A. It's a railway-specific term. So an engineering
6 possession is when the line is taken out of normal
7 traffic so that intrusive work can be done. So it
8 wouldn't be safe to operate trains, or isn't the space
9 to operate trains, an engineering possession, and then
10 within there, there may well be a number of work sites.

11 Q. That is a helpful clarification. I will (unclear) on
12 technical terms we come across. It is useful to know
13 exactly what they mean.

14 8.13 describes the personnel present and the plant
15 and equipment.

16 A. It's an important point, 8.13. An entirely different
17 structure of the industry at that time in that Carillion
18 were not just a contractor doing individual tasks, they
19 had the lead responsibility for maintenance over a chunk
20 of the national infrastructure, somewhere roundabout --
21 from memory, about 10 different contracts. So you
22 divide the nation by 10 and they were responsible for
23 that.

24 Q. But the lines in a particular area, essentially?

25 A. For all of the maintenance activity in there. That's

1 not how Network Rail has worked since 2000--and -- later
2 2004, in fact.

3 Q. Then we have a description of the work site.

4 There is quite a long description at 8.14 of
5 the work site and so forth. I think the key point,
6 there was a slight but long gradient -- is that a fair
7 description of that work site -- that enabled
8 the trailer to run away and, when it ran away, to run
9 and go very fast?

10 A. It becomes slightly immaterial to argue about the type
11 of gradient or the distance. Suffice to say the machine
12 was not braked, started to run away, built speed and
13 because of its mass achieved something like
14 40 mile an hour at the time that it hit the group of
15 workers, killing the four men.

16 Q. Fine. I am just trying to finish section 8 before we
17 break for lunch. A description of the on-tracking at
18 page 927, "Rail Cutting and loading ..." at 928, and a
19 description of the "Unloading of the Trailers" on
20 page 929, and you are right, it was during the unloading
21 that the runaway happened.

22 There is a reference about evidence regarding timber
23 that may have been used as chocks at 8.14.6.3, and
24 a description of the runaway at 8.15 and everything that
25 happened there. So this is a long detailed discussion

1 of the evidence.

2 The Tebay gang at 8.15.2. A suggestion of possible
3 mitigation about rerouting the trailer whilst it is
4 running away was made by somebody to this inquiry. It
5 is recorded there as evidence, but ...

6 Then looking at 8.16, reporting the accident
7 management, so things that again are not causative of
8 the accident but how it was dealt with thereafter that
9 they are looking at. A long section at 8.16.

10 8.17, on page 936, we have, "Post-Accident
11 Examination", and 8.39, "Post-Accident Instructions".

12 Then, having recited all of that evidence, we then
13 come to "Factors for Consideration". Just my final
14 question to you before lunch. Link-Up is only a very
15 small part of that evidence, is it not? It is referred
16 to in one part of a very long description of all of
17 the evidence that the inquiry took.

18 A. To answer that simply in terms of the amount of space on
19 paper would be entirely misleading. So yes, it is, in
20 terms of the content of the report. In terms of its
21 significance that was contributory in relation to
22 the accident, I don't believe it was insignificant.

23 MR. WOOLFE: Okay. Well, we are going to come back and look
24 at the "Factors for Consideration", section 9, after
25 lunch.

1 So if that is a convenient moment, sir.

2 (1.04 pm)

3 (The short adjournment)

4 (2.00 pm)

5 MR. WOOLFE: Mr. Spence, before lunch we had just run
6 through section 8 of the RSSB report, the board of
7 inquiry report into the Tebay accident.

8 Then we come to Section 9, which deals witness
9 factors under consideration.

10 Could I ask you just to, on page 940, that is where
11 we will be going to, could you just sort of put one hand
12 in page 940 and turn back to page 894, and look at
13 the contents page for a moment.

14 What we can see, under "Factors for Consideration",
15 9.1 to 9.15, they consider 15 different areas, do they
16 not, as factors for consideration?

17 A. I haven't counted them but I can see it's of that order.

18 Q. It goes down to 9.15, yes.

19 Link-Up audit is mentioned as one subsection of 9.3,
20 so that is where it sits in the factors for
21 consideration.

22 A. It's mentioned there in relation to page 51, yes.

23 Q. Yes, there we are, we will come to it in a second.

24 So we can see the board of inquiry discusses factors
25 relating to planning in 9.1, and 9.2, factors relating

1 to risk assessment and method statements, which were, as
2 you can see, produced by Carillion Rail, and
3 the briefing pack which they prepared.

4 You can see, for example, that the sort of things
5 they are doing, at 9.2.5, they're considering whether
6 the use of generic method statements or risk assessment
7 is unacceptable, and they say no, but there are
8 limitations in their uses. They are the sort of things
9 they are weighing up and considering. They refer to
10 the fact it was dark in 9.2.7.

11 Then we come to 9.3, which is the introduction of
12 MAC Machinery Services Limited. So by "introduction",
13 I think they mean that they got introduced into this
14 project, I think is the point.

15 At 9.3.1 they express some views about the Link-Up
16 audit protocol as it stood at that time in question. So
17 they say:

18 "The Panel is inclined to the view that the Link-Up
19 audit protocol is applicable to existing medium/large
20 size organisations that have operated in the given field
21 for some time and therefore have auditable records,
22 which can support a successful audit outcome. In
23 the case of a relatively new organisation, such as MMSL,
24 these do not generally exist, and consequently
25 the auditor is more dependent on experienced judgement

1 rather than demonstrable track records."

2 Then they have their comment on it:

3 "The Panel does not believe that this is
4 fundamentally wrong. It is almost certain to be
5 the case with any newly formed company. However,
6 the panel believes that accepting a new company as an
7 approved supplier solely on the basis of this approach
8 entails an avoidable degree of risk."

9 So they are pointing out there a sort of inherent
10 problem, are they not, with the Link-Up system as it
11 applies to new companies; is that fair?

12 A. At that time, yes. I think you need to put the context
13 of this business into this. So if you remember, I was
14 describing a very small business, in Mark Connolly's
15 business --

16 Q. He had a couple of fitters working for him, is that
17 right?

18 A. Indeed, but just to give you an idea that when
19 inspectors working for me went to search his premises
20 for various documentation, this was an earth-floored
21 domestic dwelling that the business was based in. It
22 was an extremely primitive business, with very, very
23 crude and ineffective management systems.

24 Q. Right. So the comment here on the Link-Up -- they said
25 it is not fundamentally wrong to use the protocol as it

1 stood then, but (unclear) that(unclear) it is more
2 suitable to organisations who have been in business for
3 some time.

4 9.3.1.3:

5 "Noted the audit indicated a number of shortcomings
6 but did not specify the detail of what these were other
7 than by area."

8 That is noted there.

9 Then:

10 "Records to demonstrate compliance were in short
11 supply."

12 Then at 9.3.1.4 there is a specific record of
13 concern by the panel:

14 "The Panel was concerned that the extent to which
15 the audit did or did not include trailers or other
16 attachments was somewhat ambiguous, but notes that
17 the auditor was clear that it did not apart from
18 excavator buckets. However no record of limitations as
19 to the Link-Up qualification was made and this was
20 interpreted as indicating that MMSL were qualified for
21 the supply of RRVs and all attachments, including
22 trailers."

23 So there was a specific issue there about the scope
24 of the audit as it existed at that time in question.

25 That is fair, is it not?

1 A. Yeah, and because it -- it's talking about a hardware
2 audit rather than, as we have now, much more of
3 a management system audit.

4 Q. Yes. At the time it was part of the function of
5 a Link-Up audit to do a technical audit --

6 A. Yes.

7 Q. -- to some extent, and that no longer is the case?

8 A. I'm sorry?

9 Q. It is no longer the case --

10 A. It's a management systems audit, which is that more
11 systemic way that you manage risk.

12 Q. Yes. Okay, so that is what the panel actually says
13 about Link-Up in its weighing up of factors. They would
14 discuss the Carillion Rail assessment. Then, as we turn
15 through the pages, the employment of MAC Machinery
16 Services Limited at 9.4. They discuss competencies at
17 9.5. On to, at page 945, sign-in and site briefing and
18 pre-use checks. That is at 9.7. 9.8, securing
19 trailers.

20 Perhaps pause there for a moment. At 9.8.2.1 there
21 is perhaps an important finding, that:

22 "Neither of the staff involved in unloading
23 the trailers at Scout Green indicated that they were
24 aware that the trailer brakes were not functioning.
25 They did not appreciate the ruling gradient at Shap, and

1 their attention had not been drawn to this during their
2 briefing."

3 So those are quite important facts, are they not, in
4 the context of how this accident came to happen?

5 A. Yes. One of those individuals was also convicted of
6 gross negligence manslaughter, I understand.

7 Q. Right? I am not supposed to comment on what the witness
8 says, but that's -- yes, we see that.

9 9.9 discusses the trailer brakes, and I think
10 9.9.2.1 refers to the fact that:

11 "The brakes ... had been rendered totally
12 inoperative by the fact that none of the Bellville
13 washers ..."

14 Which are a particular type of component:

15 "...which provide the clamping forces ... were in
16 place."

17 Was that what you were referring to --

18 A. Yes, so components had been removed from the system
19 so -- so that the brakes could not automatically
20 -- (overspeaking) --

21 Q. Yes, so that is, again, quite a significant factor in
22 the context of this event.

23 A. Absolutely right. The management arrangements within
24 that business had allowed that to happen.

25 Q. Then 9.10 deals with the method of unloading, where it

1 discusses in the centre a hypothesis of the Tribunal
2 but, I would suggest, quite a plausible one, that
3 the unloading dislodged the trailers when they were
4 chocked and caused them to run away, which I think is
5 not surprising. They note that:

6 "Had the trailer brakes been working to
7 specification there would have been considerable margin
8 in their holding capacity."

9 So it is right that had the trailer brakes been
10 working, the unloading would not have dislodged it and
11 caused it to run away, is that a fair ...?

12 A. The unloading action triggered the movement, and as
13 I mentioned earlier, once you have some movement and
14 the momentum gathers, then the speed of the trailer
15 increased.

16 Q. At 9.10.3 they say:

17 "Had the trailer brakes been working to
18 specification there would have been considerable margin
19 in their holding capacity."

20 So what they are saying there is, had the trailer
21 brakes been working effectively there would have been
22 enough margin of error --

23 A. Had the brakes been working, it shouldn't have run away.

24 Q. Yes, okay.

25 Some factors relating to vehicle certification

1 at 9.12.

2 At 9.12.2, the trailers, there is discussed
3 the certification of the trailers. In particular what
4 it says is that they are certified but the standards
5 changed effectively, as we saw before.

6 At 9.12.2.2:

7 "Despite the implementation date having passed these
8 certificates had not been cancelled. Had they been
9 presented at site the panel believes they would have
10 been accepted."

11 There is an issue about recertification.

12 9.12.2.4 the panel records -- in discussing this,
13 effectively a finding:

14 "The panel believes that these aspects of the EA
15 (engineering acceptance) certification process, are
16 unsatisfactory and should be addressed. Where the
17 compliance date for a mandatory retrospective
18 modification has passed without the modification being
19 carried out, VAB certification for the vehicle concerned
20 should be withdrawn."

21 Now, was that something which, in your view, was
22 causative of the accident, the fact that
23 the VAB certification did not comply with current
24 standards?

25 A. I don't have the benefit of having undertaken

1 the investigation in full, but from first principles, if
2 we have people who are inclined to tamper with brake
3 systems, the VAB certification would have been something
4 they would equally well have found a way of defeating.

5 Q. Right. So are you saying that this was not an important
6 fact in terms of how the accident came to happen?

7 A. I'm not saying it's not important, what I'm saying is
8 you have to see it in the context of the business and
9 the individuals involved, for which they were
10 subsequently convicted --

11 Q. I think you are saying --

12 A. I'm trying to put context around your question rather
13 than just the narrow "was that causative". Yes, there
14 were a whole number of layers, and I'm sure you maybe
15 appreciate -- may appreciate the common use description
16 of the Swiss cheese model, a number of barriers, each
17 with holes, which line up and allow bad things to
18 happen.

19 Q. Yes.

20 A. In this instance, that's one of the layers of Swiss
21 cheese, but it's by no means the only one.

22 Q. But it is one of the important --

23 A. One of the layers of protection.

24 Q. Yes. 9.13, a relatively simple thing, they reject
25 the idea that somebody should have managed to divert

1 this trailer when it was rolling through the darkness,
2 which is perhaps unsurprising.

3 Then they discussed the accident management, and
4 that is, as I understand, not to do with preventing
5 the accident from happening but just discussing how
6 the response occurred and how good the response was.

7 A. One of my inspectors was out on site within a couple of
8 hours of this event and was faced with an extremely
9 traumatic environment, as I'm sure you can imagine --

10 Q. -- (overspeaking) -- with respect --

11 A. -- with the sorts of events, with four people having
12 been killed and a number of others injured.

13 Q. At 9.15, "Post Accident Control Measures and Advice",
14 they suspend use and so on. They discuss certain
15 aspects of that being satisfactory and certain being
16 unsatisfactory.

17 Then we come to section 10, which was, finally,
18 the conclusions that the panel draws.

19 The primary cause, no surprise:

20 "The staff were killed or injured by a trailer that
21 ran away from a work site in an adjacent possession."

22 So Scout Green rather than Tebay:

23 "... due to an absence of function of parking brakes
24 on the trailer when left unattached on a 1:76 falling
25 gradient."

1 That is what they call the primary cause. Then they
2 (unclear) the underlying causes. They
3 refer to: the disturbance of the trailer which permitted
4 the means of chocking it to fall off the rail head,
5 the disablement of the brakes, which is I think what you
6 referred to, an absence of clear, explicit and practical
7 instructions for checking the effectiveness of
8 the trailer parking brakes, and a failure to verify that
9 the parking brakes were fully functional, awareness on
10 the part of the machine controller or operator on the
11 gradient and pressures from the use of very short lead
12 times.

13 So none of those factors there, underlying causes,
14 the board of inquiry does not identify any failures in
15 the Link-Up audit as being causative of this accident,
16 do they, as an underlying cause?

17 A. The board of inquiry didn't. I've referred a number of
18 times to seeing this in context and seeing this in
19 context of an event which is 15 years ago.

20 Q. Yes.

21 A. If you were to have done a similar forensic analysis of
22 one of the rail accident investigation branches'
23 investigations of recent years you will have found real
24 and much more systematic underlying causes than this
25 board found in this instance. I think this is an

1 investigation of its time rather than one that we would
2 see today.

3 Q. If I can just take you quickly to page 959 -- so over
4 the page, 956 and 957, we have a series of
5 recommendations. Do you recall that we looked at
6 the remit, recommendations were to cover both sort of
7 causative factors, factors that made an accident worse,
8 but also anything else they happened to come across?

9 A. Mm-hm.

10 Q. I will just take you to recommendation 9 on page 959.
11 They make a recommendation as regards the Link-Up
12 process for assessing small and newly established
13 companies, and that is the recommendation they make in
14 respect of Link-Up.

15 So just returning -- (overspeaking) --

16 A. You're absolutely right to -- the one relating to
17 Link-Up. I think it is also important to look at No. 10
18 which is actually about the mentoring of new plant
19 suppliers and such like, so this is about
20 the relationship of the players in the supply chain. So
21 there's only one, you're absolutely right, that mentions
22 Link-Up, but that's not the only one that addresses
23 the integrity of the supply chain.

24 Q. Okay, because if I can just take you back to
25 paragraph 46 of your statement --

1 A. I don't think my statement had -- oh, paragraph?

2 Q. Paragraph 46 in bundle D/1.

3 A. Yes.

4 Q. You refer, at the bottom of page 10, to you were
5 principal inspector on the HSE at the time. You were
6 not involved in this formal inquiry but I think you said
7 you were directly involved in actions.

8 What you say about this is that it demonstrates, you
9 say, absolute clarity about arrangements and consistent
10 approach, and you mention what happened with
11 Carillion Rail:

12 "When the usual suppliers do not have the kit
13 available, MAC Machinery Services was instructed to
14 carry out ..."

15 Then you single out one part of the report. You
16 say:

17 "Although Link-Up had, prior to the accident,
18 conducted an audit of MAC Machinery Services in order
19 ... to become registered supplier ... the audit had not
20 covered the trailer used that evening and a number of
21 concerns raised by Carillion Rail after the Link-Up
22 audit but before the accident took place were not
23 addressed, to a large extent due to confusion and
24 misunderstanding ..."

25 Just take those elements separately. The fact that

1 the audit did not cover the trailer, that was something
2 we see was picked up in the board of inquiry
3 recommendations. That was recommendation 9. The fact
4 that a number of concerns raised were not addressed,
5 well, I think we looked at that. I think five concerns
6 were raised: three were addressed, one was cleared up as
7 a misunderstanding and one remained. So when you say
8 a number of concerns were not addressed, in fact there
9 was a concern that was not addressed; that is right, is
10 it not?

11 A. Yes, it is.

12 Q. That formed part of the board of inquiry's recitation of
13 the evidence, it did not form any part of their
14 conclusion as to what was causative of the accident,
15 did it?

16 A. No, I did describe my view of the report being of its
17 time, and I am giving evidence in this statement in
18 relation to this case. You said I picked out one item.

19 Q. Yes.

20 A. That long exploration you had of various technical
21 failures was interesting but not very relevant to this
22 process that we're here today, whereas that item
23 I believe is.

24 Q. You describe the incidents and you pick out Link-Up, and
25 what I am suggesting to you, Mr. Spence, is that your

1 account of picking out Link-Up gives a rather distorted
2 impression of what was actually important and causative
3 of that accident.

4 A. Link-Up was the way in which the industry formed a view
5 about those who supply services or, indeed, equipment
6 for use on our infrastructure at that time. So, in
7 picking out the concern that I have about the
8 effectiveness of those assurance processes, it's
9 a reference to the importance today, which I'm sure
10 you'll agree appears through the vast majority of my
11 statement.

12 Q. Well, that's good, because the rest of your statement we
13 will come on to and it deals with what you say are
14 the benefits of having single supplier system, but just
15 returning to Tebay for a moment, that was something that
16 happened in a single supplier assurance scheme
17 environment, wasn't it?

18 A. Yes, it was.

19 Q. So the fact that an accident like that happened when
20 there is a single supplier assurance scheme tells you
21 nothing about whether it would be more or less likely to
22 happen if there were multiple supplier assurance
23 schemes?

24 A. No, but it does tell us something about
25 the effectiveness of the assurance scheme at the time

1 and the criticality of an effective assurance
2 arrangement and the criticality of the improvements
3 which we and others have made to those assurance
4 arrangements since 2004.

5 Q. I suggest to you the board of inquiry's comments on
6 Link-Up are made in the course of an inquiry that
7 identify a failing, and they mention it, but that
8 actually the accident itself is not -- there was no
9 causative link between the Link-Up audit failures and
10 the accident?

11 A. I would not acknowledge that there was no causative
12 link. I've described it as one of the layers of Swiss
13 cheese which allowed failings to get to the point where
14 such a terrible event occurred. For me it underlines
15 the criticality of -- the importance of --
16 the criticality of an assurance regime.

17 Q. Sure. (unclear) the audit had not covered the trailer
18 used that evening a factor that you pick out, but --
19 I mean, an audit, a management systems audit, or in
20 a technical -- is a snapshot in time?

21 A. Yeah.

22 Q. I think at the time the audit was done, the trailers
23 were not at the site, they were somewhere miles away,
24 over in Anglesey I think; is that right?

25 A. I don't recall the detail of where they were but you're

1 absolutely right, they were not inspected during
2 the course of that audit.

3 Q. Is it not a more relevant factor that the trailers did
4 not have engineering acceptance certificates? Would
5 that not have been a more relevant factor to pick out as
6 to why the accident happened?

7 A. No, I don't believe it is, in that this was not
8 primarily just a technical failure, this was a failure
9 by criminality of people involved in the business. So
10 there's no suggestion that those undertaking
11 the assurance activity were in part to blame for that.
12 Two people were convicted and imprisoned. However,
13 the importance of a rigorous assurance arrangement,
14 where suppliers are tested with the effectiveness of
15 their management systems, is underlined by this
16 illustration of what can go wrong if that doesn't work
17 effectively.

18 Q. Now, at paragraph 48 you make an observation about
19 Tebay, the significance of the words "every day", and
20 you were saying:

21 "It is simply not adequate to rely on luck ..."

22 Now, I want to suggest to you that if you have
23 a market with multiple supplier assurance schemes, each
24 of which was working to a clear specification, and each
25 of which was appropriately certified against a relevant

1 auditing standard, that would not be relying on luck,
2 would it?

3 A. That in itself is not the matter that I'm talking about
4 luck. Here we have an illustration of why management
5 arrangements can be okay and good enough most of
6 the time, but that relies on a great deal of luck that
7 we don't have bad events happen. Such bad events are
8 rare events, and hence you need the rigour of
9 the management arrangements to stop them happening, and
10 hence the need for explicit and clear assurance
11 arrangements, that everyone understands, there is no
12 risk of confusion, there's no risk of any kind of
13 trade-off of interest in making sure that the people who
14 work on our infrastructure have the systems in place
15 that will stop such things happening, not just rely on
16 luck.

17 Q. Paragraph 48 at the end you refer to your single system:

18 "To fragment that regime would jeopardise our
19 hard-won present day safety performance."

20 Then at paragraph 50 you go on to say, at the bottom
21 of the page, in the middle of that paragraph, the fact
22 that:

23 "... Network Rail specifies that that members of the
24 ... Schemes ... are required to be audited by RISQS.

25 This has been the long-standing policy of Network Rail

1 ... At no stage have we deviated from that policy and,
2 indeed, any deviation from that policy would need to be
3 validated from a safety perspective in accordance with
4 our internal processes ..."

5 Now, were you here this morning when I was --

6 A. Yes, I was.

7 Q. -- asking questions of Mr. Prosser. I was going through
8 the common safety method risk evaluation regime. Is
9 that the kind of thing one would do?

10 A. That's one component but only one component. There was
11 a little confusion I think in the conversation earlier.
12 There was constant reference to "major"
13 or "significant". There are different terms used.

14 So --

15 Q. But a major change is what has to be notified to the ORR
16 under ROGS -- (overspeaking) --

17 A. The language -- (overspeaking) --

18 Q. -- (overspeaking) --

19 A. The language of the legislation is "substantial", which
20 was interpreted, I believe, in Mr. Prosser's statement
21 as "major". But "significance test" is what appears in
22 the CSM.

23 I talk in the statement about internal processes.
24 There is a company standard about safety validation of
25 organisational change which -- and process change,

1 sorry, which is one I'm responsible for, and that
2 standard is the one that directs how we go about our
3 internal validation of change.

4 Q. Then you go on to say -- I mean, it would require your
5 approval:

6 "At no stage had this been proposed to, or
7 considered by, me or (to the best of knowledge) my team
8 or anyone else within Network Rail ..."

9 So you have not considered any thought-through
10 proposal as to how this would work; is that what you are
11 saying?

12 A. There has been no proposal put to me and I cannot
13 imagine how that would work, yes.

14 Q. Right. So what then follows is you imagining what might
15 be said and then setting out what concerns you might
16 have about the things you imagine might be the case; is
17 that fair?

18 A. The reason we are here is there is a proposal that
19 the existing single clear assurance arrangements be
20 exposed to multiple different players and hence, yes,
21 I've considered the impact of that in my statement.

22 Q. Okay.

23 Now, can I take you to the health and safety
24 management system, which is at bundle G4/42. If you
25 still have the Tebay accident report open, you can put

- 1 that away.
- 2 A. Mm-hm.
- 3 Q. Now, on the front page of that, 1072, that is your
4 signature, is it not --
- 5 A. Yes, it is.
- 6 Q. -- in the middle of page. You signed on 25 May 2017?
- 7 A. That's the date when the signature was appended to it.
8 I realise you had that conversation looking at dates
9 with Mr. Prosser. Perhaps I can help clarify that?
- 10 Q. Yes, please do.
- 11 A. The process for submitting either a five-yearly review,
12 which this was, of the management system, or indeed
13 a change after substantial change, involved submitting
14 the documents, a review by the inspectors against
15 the criteria, any questions and challenges being raised,
16 in some instances the text of the management system
17 being updated to the point where we and the regulator
18 are satisfied, and then this document is signed as
19 the one which is the one representing the certificate.
20 I think that may help resolve your question about the
21 different dates.
- 22 Q. Yes, so it seems to be a technical process but that --
23 although the date of the authorisation is slightly
24 earlier, it was an authorisation which is based upon
25 the safety management system --

1 A. So this document is submitted, reviewed, scrutiny,
2 tweak, minor changes, authorisation issued, this is
3 signed as the document at that point.

4 Q. I will be taking you to section 6.2 of that document,
5 which is on page 1224. Presumably this is a document
6 you are intimately familiar with?

7 A. I'm reasonably familiar with it, yes.

8 Q. But it was prepared by Ian Blanchard?

9 A. That's correct.

10 Q. It says on the front. Approved by you?

11 A. That's correct.

12 Q. Authorised.

13 Beginning with 6.2. Now, you refer to 6.2.3 --
14 I think actually it is in your statement at
15 paragraph 52. Do you have your statement there in front
16 of you? You refer to 6.2.3 to 6.2.21, this section of
17 the statement, which you say:

18 "... sets out in some detail how the RISQS scheme
19 operates and how it operates as part of a single,
20 integrated system, alongside the relevant NR Schemes."

21 A. Mm-hm.

22 Q. You want to highlight the key points.

23 I will take you to point (b). You say:

24 "The document clearly sets out our approach to
25 supplier qualification and licensing."

1 So in your statement you are saying that
2 the approach set out in the HSMS is the approach that
3 Network Rail takes. That is what you are saying, is it
4 not?

5 A. Mm-hm.

6 Q. At (b)(i) you say:

7 "All potential suppliers must be pre-qualified ..."

8 Then at (ii) you say:

9 "For suppliers of safety-critical products ...
10 further stages, including audits ... will be carried out
11 by RISQS ... to assure Network Rail that the supplier
12 has processes in place to minimise the extra risk ..."

13 Then you say here:

14 "The capabilities of each supplier are assessed
15 annually by RISQS via an audit against the requirements
16 of the NR Standard ..."

17 It refers to CPR302 standard. That is what is set
18 out in the HSMS at paragraph 6.2.10, but that is wrong,
19 is it not? That is not what the RISQS audits against,
20 is it?

21 A. I heard your discussion earlier today. That was news to
22 me at that point. You will find that -- I'm sure you
23 appreciate the scale of this document --

24 Q. Yes.

25 A. -- with the many hundreds of related parts of

1 the control framework which, no, I don't personally
2 check every page of every one of those linked documents.

3 Q. Okay, but you, in signing this witness statement, were
4 saying that suppliers were assessed annually by RISQS
5 against the 302 standard. So that is what you believed
6 to be the case at the time you signed the statement; is
7 that right?

8 A. I believed that there was that assurance, yes.

9 Q. So you do not deal very much with the RISQS scheme
10 yourself, do you?

11 A. Not in detail directly. You have another witness who is
12 coming who has the first interface with that. I have in
13 the past had more direct involvement, including when
14 the RISQS scheme was set up, and my then head of
15 workforce safety led the piece of work to establish that
16 as the co-ordinated arrangements for suppliers when we
17 implemented the improvements in 2013.

18 Q. You go on in paragraph 52(b)(iii) to say:

19 "... [they] are assessed annually ... further,
20 bespoke technical audit protocols derived by
21 the specific product groups selected by
22 the supplier ..."

23 So did you believe at the time you wrote this
24 statement that suppliers were assessed against bespoke
25 technical audit protocols for the specific product

1 groups in question?

2 A. I think you'll find that reflects the information in
3 the 302 standard and the management system, which was my
4 understanding when I signed that statement.

5 Q. So you, when preparing this statement, were working off
6 the basis of what was in the HSMS and --

7 A. Indeed.

8 Q. -- what was in the standard, not reflecting personal
9 knowledge of what it is that RISQS actually does?

10 A. Not the detail that the RISQS scheme does, no, in terms
11 of process, and that's because it's an industry scheme
12 which is operated on behalf of the whole industry,
13 including Network Rail.

14 Q. Then the final element, which I think you do not mention
15 in your statement, but is the last element in 6.2.10 of
16 the HSMS, is this issue about:

17 "Where a supplier is awarded a full NR licence so
18 therefore PCL (principal contractor licence), the annual
19 assessment against the CPR302 is undertaken by the
20 assurance licensing team."

21 That is not right, is it, anymore? Ms. Scott said
22 yesterday that that in fact is not what happens anymore.

23 A. So there is still a principal contractor licensing
24 arrangement that builds upon the detail of the -- sorry,
25 the base level of the industry minimum requirements,

1 and -- that's my understanding and it reflects what's in
2 the management system.

3 Q. Because I think --

4 A. I think -- (overspeaking) --

5 Q. -- just to clarify what we are talking about, what we
6 understand to be the case is that the RISQS assurance of
7 management systems having been undertaken, then
8 the PCL team undertakes a further series of checks on
9 top of that, including on-site checks and spot on-site
10 checks, and a variety of things, but that base level, to
11 use your term, of assurance is now done annually by
12 RISQS not by the PCL team. Is that your understanding
13 as well?

14 A. So I've heard, yes. But that's news to me, as I said,
15 since the time I signed that statement, which reflects
16 the information I had at the time. You've referenced
17 there principal contractors only, and of course that's
18 only one of the groups who are subject to the need to
19 have the RISQS accreditation.

20 Q. Yes, I am dealing with 6.2.10 of the Health and Safety
21 Management System where they are mentioned.

22 But everything else in your statement is built, is
23 it not, on your understanding of what it is that RISQS
24 does?

25 A. Everything else in my statement is built on my

1 understanding of the need for and the effectiveness of
2 the assurance regime.

3 Q. Okay.

4 So you are setting out general views as to
5 the importance of assurance rather than specific
6 knowledge of how RISQS works?

7 A. Specific knowledge of those standards or the specific
8 ways in which auditors undertake their work, yes, you're
9 right.

10 Q. Then if I can take you to paragraph 42 of your
11 statement. You say there that:

12 "I should add that supplier assurance is not only in
13 relation to workforce safety ..."

14 You refer to risk to passenger safety and so on.
15 Then you go on to say:

16 "I am aware, for example, that in other countries
17 there have been instances of collisions between on-track
18 plant and trains which have involved passenger
19 fatalities. This is another aspect which the current
20 RISQS scheme helps to control."

21 I suggest to you that it only helps to control those
22 risks at the level of management systems. That is
23 right, is it not?

24 A. The word "only" in that question is --

25 Q. I do not mean "merely", I mean --

1 A. But you said "it only helps", is underplaying
2 the significance of the management systems, which are
3 critical to make sure that such events don't happen.
4 I referred earlier to not trusting to luck. There's
5 the rigour of process which is described in
6 the management arrangements. Such things as the death
7 of the passenger at Kimstad were because of inadequate
8 control of a supplier arrangement through a principal
9 contractor, and just the sort of thing as we would want
10 to avoid here in the UK.

11 Q. Okay.

12 Now, you mention at paragraph 59 of your
13 statement -- I appreciate I am bossing about a bit
14 here --

15 A. Sorry, I didn't catch the number.

16 Q. 59 of your statement. You refer to RISQS at
17 paragraph 58 and you say:

18 "The obvious parallel for this new industry scheme
19 was the RISAS scheme, which regulates supplier assurance
20 for certain safety-critical products ..."

21 You refer to the fact that RISAS had its origins in
22 the Cullen Report coming out of the Ladbroke Grove
23 crash?

24 A. Mm-hm.

25 Q. There we are.

1 I would like to take you to the RISAS scheme, if
2 I may. You can put away the Health and Safety
3 Management scheme now, bundle G4 -- oh, actually, yes,
4 I do apologise, there was one further point arising out
5 of the Health and Safety Management scheme. Perhaps --
6 it is at paragraph -- ... if you have it available --
7 page 1201, 4.20.22. It says there:

8 "The Sentinel scheme was designed to ensure only
9 workers who are competent to care out safety-critical
10 work do so."

11 It describes the thing. It says at the end of that
12 paragraph:

13 "Control is achieved through links between
14 the Sentinel and the RISQS Qualification Scheme
15 databases."

16 Do you have any personal knowledge of whether such
17 links actually exist between the two databases?

18 A. Any company which is a sponsor -- so I will -- certain
19 background, perhaps, before I answer.

20 I was involved in implementing the current Sentinel
21 arrangements, I have system-wide access and therefore
22 quite a regular involvement with that database. To be
23 a sponsor of workers in that database there is
24 a requirement that the company has RISQS accreditation.

25 Q. Yes --

- 1 A. That's the reference here, the link between the two
2 schemes.
- 3 Q. Okay, so this is not saying that there is a link at
4 the IT level between the RISQS database and the Sentinel
5 database?
- 6 A. It's absolutely not saying there is a link at the
7 IT level, however, if the -- if a business fails its
8 RISQS assurance activity, then the consequence is
9 a takedown of its ability to sponsor workers.
- 10 Q. Yes.
- 11 A. And I have been involved in reported incidents where
12 that has been a -- a prospect, and a need for immediate
13 action to stop that happening.
- 14 Q. As I understand, certainly what has happened when
15 Achilles ran RISQS, when somebody failed an audit,
16 RISQS/Achilles sent an email to Mitie, who run
17 the Sentinel database, and they instantly turned off, in
18 effect, access to track for all the individuals who are
19 sponsored by that firm. Is that it?
- 20 A. I don't know the detail of the audit -- of the -- of the
21 email trail. That's not my experience. My experience,
22 which does date back now of the order of 2014, and
23 I can't give you a precise date, one of the large
24 engineering consultancies -- I won't name them for
25 the sake of propriety here -- failed on a number of

1 significant questions -- I can't remember how many, but
2 sufficient, if they did not act immediately, that it
3 would be taken down. And the contact came through
4 the RISQS scheme administrators, not directly from
5 Achilles as the scheme provider. So that's my personal
6 experience of a specific example.

7 Q. Thank you. Now you can finally put the Health and
8 Safety Management System document away, so thank you for
9 that.

10 The RISAS document I was going to take you to is in
11 bundle H/13 --

12 A. Sorry, which volume are we in?

13 Q. You are going to be handed it. There are so many
14 bundles, you need a ... when I call out a bundle number,
15 it is an instruction to your helper.

16 It is pages 3765. This is a document that sets
17 out -- on its face, it says:

18 "The principles of the Railway Industry Supplier
19 Approval Scheme."

20 Are you familiar with the RISAS scheme?

21 A. In outline, but not detail.

22 Q. But the outline of it, tell me if I am wrong, is that
23 bodies known as RISABs, rail industry supplier approval
24 bodies, who are accredited by the RSSB, under RISAS,
25 certify, effectively, companies who make certain

1 equipment. Is that a fair summary?

2 A. Yes.

3 Q. If I can take you to page 3767. It says:

4 "RISAS has been designed by the industry for
5 the industry to ensure that duty holders and other major
6 companies such as ROSCOs ..."

7 For the Tribunal's benefit, can you explain who
8 ROSCOs are?

9 A. It's the rolling stock companies. When British Rail was
10 broken up in the early/mid-1990s, a number of different
11 components, these were the people who owned all
12 the trains.

13 Q. "RISAS has been designed ... to ensure ... that they are
14 able to rely upon common third party assessments by
15 accredited railway industry supplier approval bodies,
16 RISABs. This is implemented by Cullen."

17 It says:

18 "It was consistent with international accreditation
19 and conformance certification requirements, with
20 additional features designed to assist the industry
21 to ..."

22 Then a set of aims are set out, which is: to enhance
23 safety, comply with legislation, remove duplication and
24 waste, improve performance, reputation, reduce cost, and
25 so on.

1 Indeed, if I can just ask you now to turn the page
2 to 3768. You see in the green box, under 2.1,
3 the vision for RISAS is that this should be universally
4 recognised as the GB rail sector's "most effective and
5 efficient method for assuring our most critical supply
6 chains".

7 What I am going to put to you is that RISAS shows
8 that one can have a system designed so that
9 certification or audit approval can be carried out by
10 different assessment bodies, and that is a safe system.
11 That is right, is it not?

12 A. In the context of products, yes, it is. I do not
13 believe that is correct. In the context of the much
14 more complex relationships between businesses when we
15 have tiers of contracting, I would not apply the same
16 principles.

17 Q. So, as I understand, you are trying to draw a general
18 distinction between, what, physical products and
19 services, and saying you can only have a single source
20 of approval for services, whereas for products you can
21 multiple sources of approval?

22 A. I'm saying that in the case of products I can see that
23 this is both a reasonable and an achievable assurance
24 arrangement. In the case of the tiers of contracting
25 and the complex relationships between different

1 businesses and the need for absolute clarity to maintain
2 the rigour that we've achieved through such things as
3 the Sentinel arrangements and our principal contractor
4 arrangements, having a consistent assurance arrangement
5 is more critical.

6 Q. But in the context of this scheme, where you have two
7 RISABs -- there used to be a third -- there is no issue
8 about there being a race to the bottom as regards
9 standards of audit, is there?

10 A. This is about products and not about the complex
11 relationships of businesses. But I am content that in
12 this environment, given the nature of manufacturing
13 items, hardware, that it's an appropriate regime, and in
14 fact it operates in many other sectors and aspects of
15 industry, yes.

16 Q. Yes. So (unclear) another example. If I want to check
17 that risks of asbestos are controlled in a building or
18 that it tested the air quality, for example, I could
19 pick many people who could test for that, could I not?

20 A. That's just a testing service, that's not an assurance
21 activity.

22 Q. No, okay. But perhaps in the field more generally there
23 are lots of people who carry out assurance of works, for
24 example, in --

25 A. I've said that for products, I absolutely agree this is

1 appropriate.

2 Q. But also in an area which is not products, we saw this
3 morning the Common Safety Method for Risk Evaluation,
4 the document published by the ORR. Indeed, perhaps
5 I can take you to it. That is in bundle G4.

6 A. I think I've got that here. Is it between 40 and 42?

7 Q. No, it should be right at the back of that.

8 At the very back of bundle G4.

9 A. What's your page number, sir?

10 Q. It does not have a page number because it was handed up
11 this morning so it should be non-page numbered.

12 A. G/42 has a Health and Safety Management Systems first
13 document. Is that what you're meaning?

14 Q. No, I am looking at the very, very back of that tab.
15 I think Mr. Prosser may have taken it.

16 We have a copy here.

17 A. So we're not in volume G?

18 Q. No, it was supposed to be(unclear) added.

19 It is not a witness's job to keep bundles updated,
20 so I make no complaint about Mr. Prosser.

21 In that document --

22 A. Yeah.

23 Q. -- we saw this morning, if you turn to annex 3 at
24 the back, which is on page -- if I may turn to it --

25 A. 46.

- 1 Q. Page 46, indeed. So under this -- is this CSMRA? Is
2 that a regime that you are familiar with?
- 3 A. Yes.
- 4 Q. Under that regime, the carrying out of independent
5 safety assessments of significant changes that may
6 affect safety on a network are to be reviewed by a body
7 which has to be certified to an ISO standard, 17021.
8 Now, that is a very important job, is it not?
- 9 A. It's absolutely an important job. It's not the same as
10 an assurance regime.
- 11 Q. No, I appreciate that, but it is a situation in which
12 one can rely upon the competence, impartiality and
13 the procedures in auditing adopted by a body because
14 you know it has been certified to the appropriate
15 standard. That is right, is it not?
- 16 A. And because you have evidence of that individual's
17 capability in doing so. So in selecting an assessment
18 body to work with me on validating change, I will want
19 some confidence in the individual as well as the body
20 that's doing it.
- 21 Q. But you have a choice, do you not, of assessment bodies?
- 22 A. You do.
- 23 Q. That is an instance where the selection of audit bodies
24 works well?
- 25 A. But it's where I take a judgement on the capability of

1 the individuals involved and the body themselves to
2 discharge the particular function at that time. If I'm
3 just undertaking a safety validation of a major change
4 within Network Rail and selecting the body that will do
5 that and the people that will help, will be something
6 that is part of the criteria not simply a question of
7 depending on anyone who happens to, if you like, come
8 off the street.

9 Q. Well, no, not coming off the street, because everybody
10 who is allowed to do it has to be certified to
11 the relevant standard, do they not?

12 A. Indeed. But I don't have --

13 Q. You --

14 A. I don't have to use them. I will choose one of those
15 and take a professional judgement about whether
16 the person doing the role and the body they work for has
17 the capabilities that I need for that task.

18 Q. You would have a choice, would you not?

19 A. That's right.

20 Q. That.

21 Now, can I take you to paragraph 60 of your
22 statement. You say there:

23 "Network Rail's experience of RISQS to date from
24 a safety perspective is that it has facilitated a number
25 of improvements to the way in which safety is managed."

1 You refer there to the IMR module. This is somewhat
2 confusing because I think you told me that the earlier
3 part of your statement you drafted on the basis that
4 people were being audited against the 302 standard,
5 whereas you seem to be aware here that they are being
6 audited against the IMR standard?

7 A. I'm aware of the development of the IMR model -- module
8 when the scheme was changed and became RISQS, in 2014.

9 Q. Yes. So you were aware of the IMR module but you were
10 not aware people were being audited against that and not
11 against the 302?

12 A. It was the level of detail about -- 302 is still an
13 existing company standard, as I think you explored this
14 morning. It's still part of Network Rail's control
15 regime and I believe you've heard evidence in relation
16 to the standards moratorium as to why that is still
17 there. And my understanding is it will very soon be
18 going, along with a number of other standards, as part
19 of a rationalisation.

20 Q. Has the standards moratorium come to an end now?

21 A. Yes.

22 Q. Why did the stands moratorium apply, when did it come
23 into effect?

24 A. I can't be specific on dates for you --

25 Q. About 2012?

1 A. Slightly later than that is my recollection, so
2 I believe it was 2013 that the moratorium was put in
3 place, and it was put in place to minimise the amount of
4 change during the course of development of an
5 alternative approach to our control regime.

6 Q. When did it come to an end, the moratorium?

7 A. That date is far from clear, in that there was
8 a progressive cessation of the moratorium, but of
9 the order of 2017/2018. It's in that ilk.

10 Q. So around 2017 it had come to an end?

11 A. Yeah.

12 Q. Thank you.

13 Then in paragraph 60 of your statement A, and you
14 refer to the IMR, and you said:

15 "It was intended to capture the requirements of both
16 Network Rail and other buyers within the industry's
17 requirements so that an industry standard audit could be
18 carried out against these and to reduce the audit burden
19 within the industry."

20 I am going to suggest to you that that is an
21 efficiency point, not a safety one, is it not?

22 A. That's one of the purposes of doing this, yes. And the
23 buy-in across the industry was also about having
24 consistency across whether that was ourselves buying
25 the service or AN Other buying the service.

1 Q. Then at paragraphs 61 and 62 you go on to say you have
2 always specified for the relevant NR schemes that you
3 are required to source supplier assurance through RISQS
4 has been consistent.

5 Then you say the RISQS audit provides you with
6 the confidence that you need. There is no dispute you
7 do rely upon it for those purposes.

8 In 62 you say:

9 "A further element which has remained constant is
10 that we do not direct our tier 1 contractors should
11 themselves use RISQS to audit companies in their own
12 supply chain."

13 They are free to do it, you say:

14 "... either to audit their contractual
15 subcontractors in-house or use a third party scheme."

16 I just want to explore with you that for a moment.
17 Now, if any subcontractor wants to put workers on track,
18 they have to be authorised through the Sentinel scheme,
19 do they not?

20 A. Indeed, yes, so that becomes rather different. They're
21 not all of the suppliers, so in many cases people will
22 have components delivered that don't involve going to
23 site -- don't involve going onto the track, I should
24 say, and as part of the supply chain, the tier 1
25 contractor may well choose to use a different

1 arrangement.

2 Q. Yes, but for people who are carrying out the kinds of
3 services for which you require access to track, they
4 have to be RISQS audited, do they not? RISQS audited
5 and go through the Sentinel module?

6 A. And they have to be RISQS audited for the consistency
7 and the rigour that applies through that single scheme
8 applying to both the Sentinel arrangements,
9 the principal contractor arrangements and the plant
10 operation arrangements.

11 Q. But just looking at the point, just trying to, in
12 a sense, rather than debating the merits in a broad
13 sense, we take it in a structured way what you are
14 saying at 62. You are saying that tier 1 contractors
15 are free to use a third party scheme, but in practice,
16 all the people who need to get onto track have to be
17 registered with RISQS because of the Sentinel scheme, do
18 they not? And a tier 1 contractor, in order to know if
19 somebody is Sentinel approved, they have to go through
20 RISQS at the moment, do they not?

21 A. To become a Sentinel sponsor you have to be RISQS
22 accredited, but you were misleading -- and I wouldn't
23 accept -- to say that all of the supply chain has to go
24 through RISQS. Not all of the supply chain comes to
25 work on our infrastructure.

1 Q. No, other people go and do other things but those who
2 need to work on infrastructure have to go through RISQS,
3 and tier 1 contractors who want to find people to work
4 on track have to use RISQS, effectively, as well, do
5 they not?

6 A. For the consistency that applies throughout that
7 assurance arrangement, yes.

8 Q. No, that is your reason why you say they should do, but
9 okay.

10 Similarly, if anybody wants to put plant on track,
11 if you are a plant supplier, you have to be approved
12 through RISQS for the on-track -- so the POS module
13 I think it is called?

14 A. That's right, the Plant Operation Scheme. We only have
15 to look back at the circumstances of Tebay as to why we
16 have such a close focus on plant operations.

17 Q. Yes.

18 Now, if I could take you to -- you can put H13 away
19 if you still have it around.

20 A. I have a number.

21 Q. Take bundle G2/13. You will see here a document called
22 the "Rail industry supplier qualification scheme
23 charter". Are you familiar with this document?

24 A. Not in its -- as a specific document, no, I haven't
25 signed it or authored it, but I'm familiar with

1 the principles.

2 Q. Okay. This sets out a statement of belief:

3 "... responsibility of all buyers of services and
4 goods to ensure the quality of our suppliers ..."

5 Through various things, including enhanced health
6 and safety environmental management.

7 Then it states:

8 "We believe that this will be achieved most
9 efficiently if there was a central service and system
10 providing the base level assurance for all industry
11 suppliers."

12 So there is a statement of belief there about
13 efficiency, if there was a central service, and it says:

14 "The RISQS system managed through RSSB provides such
15 a service and we therefore commit to maintaining our
16 involvement with RISQS. Where we use a supplier
17 assurance scheme ... auditable categories, we will
18 utilise RISQS to provide ... based on assurance ...
19 suppliers for our work."

20 Now Network Rail has signed this charter, has it
21 not?

22 A. I'm not aware because I haven't signed it, but you
23 presumably have such a signed document.

24 Q. Well, that is statement on the RSSB website that it has
25 been signed by RISQS. If you like, I can take you to

- 1 it. It is in --
- 2 A. I'm not disputing that they have, but I am just very
3 conscious of things which I know and things which I am
4 told. I don't know that and I am relying on your
5 assurance.
- 6 Q. Okay, there we are. It is in bundle G4 if we need to go
7 there, but that is the case.
- 8 What I am going to put to you is that
9 the justification, the reason for using RISQS
10 that's(unclear) put forward there is an efficiency one,
11 is it not?
- 12 A. Yes.
- 13 Q. It is not stated here that it is essential for safety
14 reasons to have a single central service?
- 15 A. No, I take you back to the point we were discussing
16 a few minutes ago, that those who are providing
17 the critical services, accessing track, providing plant
18 operations, do need to be part of that for good safety
19 reasons. There are plenty of others who may not need to
20 be and yet there would be efficiency in them being part
21 of it. That's what I understand this document to cover.
- 22 Q. You can put that one away now and if I can take you to
23 bundle C1/2. There are various documents behind that
24 tab, but at page 29 -- perhaps if I start you at
25 page 28, a letter from a Mr. Jay Katzen, who is

1 the chief executive officer of Achilles, and it is
2 a letter dated 10 April 2018 to Network Rail and indeed
3 the Sentinel scheme (unclear) manager too, referring to
4 previous letters:

5 "Please accept this letter as confirmation that,
6 with effect from 1st May 2018, Achilles Information
7 Limited ... will continue to offer to the rail industry
8 a supplier pre-qualification management registration
9 scheme in relation to [the] questionnaire and
10 Network Rail audit modules - OTP, RIP and Sentinel."

11 RIP I understand is to do with the planning of work?

12 A. Yes.

13 Q. (unclear) recognised. So that is where Achilles is
14 telling -- I mean, I think it had been raised before but
15 Achilles there is telling Network Rail what it intends
16 to do.

17 There is a reference to the certificates that could
18 be given:

19 "Achilles will start to communicate ... availability
20 ... to customers on ... 16 April ...

21 "Achilles will provide Sentinel with any assurances
22 it requires in relation to the operation of Link-Up
23 TransQ and will provide any information to Sentinel that
24 it may require to satisfy itself that Link-Up TransQ
25 complies with ..."

1 Certain standards, and invited to be included in
2 participation in industry meetings.

3 Now, at that point, Achilles is clearly saying, "We
4 want to provide a competing scheme". Did you become
5 aware of it at that juncture?

6 A. No.

7 Q. When did you first become aware of it?

8 A. I've seen this document as part of papers that I've seen
9 in preparing for this event.

10 Q. Then we come over the page to a letter which will apply
11 to Mr. Jay Katzen, 14 May 2018, so some time later.
12 This is signed by Mr. Graham Hopkins. Can you just
13 explain for the Tribunal who Graham Hopkins is?

14 A. Graham Hopkins was at that time the group safety
15 technical engineering director, the head of the part of
16 the business that I work in. He retired from
17 the business in summer 2018.

18 Q. So he sort of sat immediately above you, in hierarchical
19 terms --

20 A. Two layers above me.

21 Q. Two layers above you. So he is -- (overspeaking) --

22 A. You'll find his signature on the Health and Safety
23 Management System, if you recall.

24 Q. Yes. So I think you approved it and he authorised it,
25 is that the technical distinction?

1 A. That was the check, yes.

2 Q. Thank you.

3 Is he the most senior person, or he was at the time,
4 within that group safety technical and engineering
5 group?

6 A. He's the director. He was an executive director of
7 the business leading that part of the business.

8 Q. So he would know about safety issues, would he not?

9 A. His background was engineering but I'm not saying he
10 doesn't know about safety. He's -- he clearly is
11 supported by a number of people in his team, not least
12 of all those of us who act as professional heads in
13 particular areas.

14 Q. So his letter in response:

15 "I acknowledge receipt of the above titled letter
16 dated 10 April 2018 ..."

17 So that is referring back to the previous tab and
18 notes:

19 "... I note that it is Achilles' proposal to
20 continue to offer a rail industry supplier
21 pre-qualification registration scheme."

22 And refers to the fact that RISQS is introduced as
23 a mandatory requirement for the Sentinel scheme, PCL and
24 plant operator schemes.

25 "No alternative pre-qualification scheme is

1 identified ..."

2 So he is saying that this is not allowed,
3 essentially, under our rules?

4 A. That's right.

5 Q. But he gives a reason, which says:

6 "... as a key objectives of RISQS was to have
7 a single rail industry scheme allowing overheads to be
8 kept to a minimum, to reduce duplication and reduce
9 audit burden throughout the supply chain."

10 What I am going to say to you is that the director
11 of group safety, who is the most senior individual
12 within Network Rail in that department, has replied to
13 the suggestion that there be competing schemes, and he
14 has produced what is an efficiency justification. He
15 has not said, "No, that would be horrendously unsafe",
16 has he?

17 A. He hasn't said in that letter, no. I'm not sure of
18 the English in "a key objectives", but I do see
19 the word "key" as opposed to "the only objective".

20 Q. So you think he had some other key objectives that he
21 had in mind that he did not put in the letter even
22 though -- (overspeaking) --

23 A. I cannot read his mind.

24 Q. What I am going to suggest to you is that Network Rail's
25 thinking at the time was that this was about efficiency,

1 and it is only later in the course of this litigation
2 this series of safety concerns about having multiple
3 schemes have been considered and views expressed about
4 that?

5 A. As a witness of fact it's difficult for me to answer
6 what was in Graham's mind when he wrote that letter.
7 However, I can say that as the owner of the Health and
8 Safety Management System, at no point did anybody come
9 to me and propose a different approach. Had they done
10 so, then my advice would have been exactly the same as
11 the advice I have provided in my statement to this
12 Tribunal.

13 Q. But there was not at this time a considered view within
14 Network Rail as to whether multiple schemes would be
15 safe or unsafe.

16 A. It hadn't become an issue. Had -- had there been
17 a proposal to say, "Okay, shall we change", then that
18 would have needed to go through the safety validation
19 that we've covered in some detail earlier. And as
20 I said, had that been brought to my attention as
21 the person responsible for the management system,
22 I would certainly have been making exactly the same
23 points as I have in evidence here.

24 Q. So it had not become an issue so therefore it had not
25 been thought about?

1 (Phone interruption)

2 A. You must have said "Siri"!

3 Q. What I was putting to you was that it had not been an
4 issue, that there might be multiple schemes, therefore
5 this was not something that Network Rail had thought
6 about; is that fair?

7 A. It certainly hadn't been brought to my attention as
8 the person responsible for the management system and,
9 indeed, responsible for providing advice and -- and, in
10 some cases, overseeing safety validation.

11 Q. So everything you say in your statement all comes from
12 considering this in the context of this litigation?

13 A. I was not aware of this letter and exchange at the time.

14 Q. Okay, thank you.

15 I am going to be moving on to paragraph 67a of your
16 statement where you set out certain benefits of
17 the scheme. I just wonder, sir, whether that might be
18 a convenient breaking point?

19 THE CHAIRMAN: Yes.

20 (3.07 pm)

21 (A short break)

22 (3.22 pm)

23 MR. WOOLFE: Mr. Spence, I was going to be asking you about
24 paragraph 67 of your statement, but the issue I want to
25 address is the benefits you put forward of a single

1 supplier assurance scheme and the risks of having
2 multiple schemes, and I just want to check, in order
3 that we are doing this in a sensible way, it does not
4 take along too long.

5 At 67 you set out at paragraphs (a) through to (h)
6 a series of eight benefits.

7 A. Mm-hm.

8 Q. Then at paragraph 74 you set out a series of safety
9 risks that would arise. Again, paragraphs (a) to (h).

10 It seems to me those two sets of paragraphs largely
11 tally up -- (overspeaking) --

12 A. They're -- (overspeaking) --

13 Q. -- to a large extent the risks are the absence of the
14 benefits. There are some additional points
15 -- (overspeaking) --

16 A. They're largely the(unclear) opposite points, that's
17 right, yes.

18 Q. But with some additional points of detail in 74?

19 A. Mm-hm.

20 Q. So if it is all right, what I will do is look at you
21 with sort of (a), (b), (c) in this way, and we will bear
22 in mind what is said in 74 at the same time; is that,
23 I hope, nice and clear?

24 A. Mm-hm.

25 Q. I should also just say, as a note to sort of everything

1 here, when I ask you questions about the benefits or
2 risks, what we are focused on is the mandating of
3 a single supplier assurance scheme as opposed to
4 allowing multiple supplier assurance schemes, and so
5 I just ask you to sort of bear that in mind when
6 answering the questions.

7 A. I don't quite understand your distinction, because just
8 as you've said the benefits are the opposite of
9 the risks, the way you've described that, one is
10 the opposite of the other?

11 Q. Perhaps I can clarify. There is a distinction between
12 a single supplier assurance scheme being a way of
13 achieving something, on the one hand, and it being
14 the only way of achieving something, and it is that we
15 are going to be exploring.

16 A. I understand, yes.

17 Q. Okay.

18 It just helps to keep our interchanges on point.

19 A. Yes.

20 Q. Now, at paragraph 67a you say that:

21 "A benefit of using a single supplier assurance
22 scheme is that it ensures there is a uniform and clear
23 set of safety requirements. It also ensures that these
24 consistent standards are applied through a consistent
25 standard of audit."

- 1 A. Mm-hm.
- 2 Q. What I am going to suggest to you is that what
3 determines whether there is a uniform and clear set of
4 safety requirements is whether those uniform and clear
5 safety requirements are specified in a clear form. That
6 is what matters, not whether there is a single supplier
7 assurance scheme.
- 8 A. It's partly specification and it's partly delivery.
- 9 Q. So -- (overspeaking) --
- 10 A. So you can set out your expectations of an assurance
11 scheme. If there are multiple different suppliers of
12 that assurance activity then those, experience tells me,
13 will be interpreted in different ways or risk being
14 interpreted in different ways, and hence you increase
15 the risk of them being less effective.
- 16 Q. But auditors -- so you accepted, I think, that having
17 uniform and clear safety requirements is about the
18 specification of the standard that you are auditing
19 against; that is right, is it not?
- 20 A. Yes.
- 21 Q. Then it is a question of, as you say, how consistent
22 auditors are being, but you control that through
23 specifying the standard of auditing, do you not?
- 24 A. And through the internal and other checks that go about
25 the way in which that is done.

1 Q. Yes, so, for example, if I can take you to Mr. Nelson's
2 statement, perhaps as convenient a way of doing it as
3 any other, bundle B/4. If I can take you to
4 paragraph 26 of his statement, he refers to certain
5 standards Achilles are certified against. Paragraph 27
6 he refers to ISO 9001, which is a quality management
7 standard. That ensures -- it says at the end there:

8 "Certification against ISO 9001:2015 ensures that
9 Achilles has an appropriate quality management system in
10 place for conducting its operations in the field of
11 supplier assurance."

12 He goes on to mention ISO 17021 on conformity
13 assessment, which he says is not accredited against but
14 could be.

15 So that is the overall framework.

16 Then I think at paragraph 46 he sets out compliance
17 and assurance in relation to the IMR audit module. You
18 need to check how auditors work. So even within
19 a single scheme there is a job to be done, is there not,
20 of ensuring that individual auditors are consistent?

21 A. Absolutely right. My experience is the more that you
22 fragment a process, the greater the risk of difference
23 between the parts of that process. So you are
24 absolutely right that within one business the different
25 people delivering it are elements of fragmentation.

1 The more that you fragment the system for delivering
2 that, so with multiple providers, the greater the risk
3 of difference between those providers. That's the point
4 I was making in this part of my statement.

5 Q. So you are making a general statement of opinion from
6 a risk management perspective that it is better if one
7 body does everything?

8 A. My experience is that if you have a fragmented process
9 with multiple different deliverers, there is greater
10 risk of gaps and difference appearing.

11 Q. But as we established before the break, you are not
12 really that familiar with the RISQS audit protocols
13 themselves, are you?

14 A. Not the detail of them, no.

15 Q. So what you are setting out there is a general view as
16 to the fragmentation of systems, as your opinion?

17 A. It's a general view based on my professional expertise
18 in the field of safety management and the way in which
19 we have achieved significant improvement in the existing
20 arrangements.

21 Q. Then at paragraphs 84 and following, Mr. Nelson sets
22 out -- it is in relation to the auditor competency
23 management manual and so on.

24 What I am going to suggest to you is that problems
25 of consistency of audits can be managed inside an

1 organisation at any rate by the application of standards
2 like that; that is right, is it not?

3 A. Yeah, and of course Mr. Nelson's statement is, of
4 course, of great interest in describing the processes
5 within Achilles; it doesn't describe the processes
6 within the N Other assurance businesses that may seek to
7 become part of this if our intended and the current
8 system of one provider becomes disrupted.

9 Q. But there are internationally recognised standards, are
10 there not, ISO standards, that deal with conformity
11 assessment, of which an audit body undertaking these
12 kind of schemes could comply with that would ensure
13 the delivery of their product is appropriate, or that
14 delivery of their services is appropriate; that is
15 right, is it not?

16 A. There's a whole range of standards. We were talking
17 earlier about railway group standards and we also
18 explored in some depth in your questioning about the way
19 in which those standards aren't always met.

20 Q. Yes. But, indeed, that is the standard to which RISQS
21 is supposed to work, the 17021 standard?

22 A. Exactly right. And with the RISQS scheme I have
23 confidence in the way that is managed.

24 Q. Just returning, then, to paragraph 67a of your
25 statement, the general issue of ensuring that consistent

1 standards are applied through a consistent standard of
2 audit does not require that only one body delivers all
3 the assurance, does it?

4 A. I think your precursor point that you wanted to cover
5 before we answered this, there was a thought in my head
6 which I have to voice at this point, and that's about
7 the hierarchy of risk control. There is a principle in
8 health and safety law that elimination is the first
9 choice, elimination of hazard is the first choice, and
10 then through a series of steps, before you come to
11 processes and other less effective means, that you
12 control risk.

13 By introducing the scope for confusion, we're
14 already a step down that risk control hierarchy.

15 Q. Sorry, I do not -- by introducing?

16 A. The scope for difference, we are already a step below
17 the most optimum arrangement, which is to have a clear
18 single approach, the elimination of the risk of
19 confusion.

20 Q. Okay.

21 At the bottom of paragraph 67a you refer to:

22 "The use of a single scheme also means there is no
23 risk of schemes competing for suppliers based on how
24 easy it may be for suppliers to pass an audit. There is
25 no safety risk of a race to the bottom on audit

1 quality."

2 What I was going to suggest to you is that the risk
3 of a race to the bottom can be controlled through
4 insisting that the person doing the audit, the body
5 doing the audit, is certified to appropriate standards?

6 A. And therein my reference to the risk control hierarchy,
7 you're already a step or two below the optimum, you've
8 introduced the scope for there to be difference and
9 you're putting in a process to try to reduce the risk of
10 that difference. My point is that where you introduce
11 those other -- other schemes, those other deliverers,
12 you increase the risk of difference.

13 Q. But it can be manageable, can it not, to have multiple
14 people assuring the same activity, in certain
15 circumstances?

16 A. I go back to my point about the risk control hierarchy
17 can be managed is very different from the most optimum
18 way to manage. Our responsibility as an infrastructure
19 manager -- in fact, our duty in law is to make sure that
20 risk is managed by the most effective means following
21 that risk control hierarchy.

22 Q. But at the moment, as we will have seen at various
23 points, in respect of on-track plant and principal
24 contractors, Network Rail in a sense subcontracts some
25 of its assurance to RISQS, does some of it there, then

1 relies on that, takes that assurance and relies on it
2 for its own internal assurance purposes. So there are
3 circumstances, are there not, in which you do have
4 multiple bodies carrying out assurance and interacting,
5 and that is an acceptable level of risk?

6 A. We have one external supplier that is an industry
7 supplier that provides consistency across all of those
8 arrangements, not just the industry minimum
9 requirements, in the base requirements for those other
10 two modules, and there is some further testing of that
11 in relation to Plant Operation Scheme, you're correct.

12 Q. The logic of your general principle that -- your risks
13 hierarchy that you talked about, that the moment one
14 introduces multiple bodies there is complexity and
15 therefore risks, that is a very general statement of
16 principle, is it not, and is not one that is applied by
17 Network Rail in this area because they do use RISQS
18 rather than doing everything in-house?

19 A. It is one we apply in this area because we only have one
20 external supplier, we don't have the range of players
21 who might be interested in this market, just one of
22 which is Achilles.

23 Q. Then look down to b. You say:

24 "Having a single supplier assurance scheme means
25 there is no risk of confusion amongst suppliers."

1 You explain a little bit more what you mean, because
2 you say:

3 "They are clear that they will be required to meet
4 the relevant requirements of the RISQS scheme modules."

5 I was going to suggest to you that the clarity here
6 is given by having a single standard not by having
7 a single provider of assurance.

8 A. Absolutely not. There are many players in this
9 industry, there are many relatively small companies, who
10 see the rewards available for working in the rail
11 industry, who are relatively unsophisticated.

12 The clarity that having a single arrangement brings
13 that -- to -- to become eligible, to become -- for
14 example, a Sentinel sponsor, you need to go through an
15 accreditation approach with one provider, is absolutely
16 valuable.

17 Q. You say here that they are clear they will be required
18 to meet the relevant requirements of the RISQS Scheme's
19 modules.

20 If you have a situation where the requirement is
21 that one pass a Sentinel scheme module with a supplier
22 of assurance who is recognised by Network Rail, that
23 would be perfectly clear, would it not?

24 A. No, it wouldn't, in that, "So who do I go to to get
25 that, then?" or, "There's any number of players in

1 the market, go and find one and ask if they will deliver
2 something that meets this standard", is hardly as
3 effective as the clarity that the single assurance
4 arrangements provided by the industry scheme,
5 the competitively tendered RISQS scheme, delivers for
6 the industry.

7 Q. But you refer to Sentinel. There would be no confusion
8 on the part of Mitie, would there? They would know,
9 receiving a notice that somebody had been audited, they
10 would know whether the person who provided that audit
11 notice was recognised by Network Rail as one of
12 the people they are allowed to recognise, there would be
13 no risk of confusion there, there would be no risk of
14 anybody gaining any access to the track in an
15 unauthorised manner, would there?

16 A. There's an additional task for the scheme administrator
17 to take in satisfying themselves that that is one of
18 N assurance providers. The clarity that is provided by
19 the single scheme reduces the risk of confusion and
20 people getting through that should not.

21 Q. For Sentinel, Mitie who run Sentinel, Mitie is
22 a significant and sophisticated provider of outsourcing
23 services. It would be quite a simple task, would it
24 not, for them to recognise if an audit against
25 a Sentinel module had been carried out by an authorised

- 1 provider or not; would it not?
- 2 A. It depends on the number of authorised providers.
- 3 I think you perhaps have in mind a world of two. I have
- 4 in mind a world of 20.
- 5 Q. It is not hard to find out if somebody has been
- 6 authorised by 1 of a list of 20, is it?
- 7 A. I'm saying that the scope for error is greater
- 8 the bigger that number, and it only is created when that
- 9 number gets greater than 1.
- 10 Q. Are you suggesting there was a significant safety risk
- 11 as a result of Mitie, in running the Sentinel scheme,
- 12 allowing somebody in as a Sentinel sponsor who have been
- 13 audited by an assurance provider who is not on the list,
- 14 that Sentinel will make that level of mistake, of, "You
- 15 are not on the list", and therefore there should only be
- 16 one provider; is that what you are saying?
- 17 A. I'm saying that by having a single scheme there is no
- 18 risk of that confusion. You're saying that -- you're
- 19 making the case seeking to argue that there are other
- 20 ways that that could be covered. I'm saying that it is
- 21 strongest when there is a single competitively tendered
- 22 industry-wide provider of that work.
- 23 Q. Okay. If that is what you have in mind, you go on to
- 24 say you could not in your professional capacity support
- 25 a weakening of those critical safety arrangements. So

1 you could not countenance the possibility of anything
2 other than a single provider to mitigate this risk that
3 we are talking about, of Mitie make an error of
4 mis-attributing an audit report?

5 A. The scope for confusion and error being made weakens
6 the measures that are in place at the moment, whether
7 delivered before 2018 by Achilles or currently by
8 a different provider. That provides us with the most
9 rigorous arrangements and it has served us well. It's
10 taken us from the dark days, when we had such events as
11 Tebay, into the much better performance that we have
12 today. To weaken that and dilute it with alternative
13 providers would risk taking us backwards, and that is
14 what I cannot countenance.

15 Q. Okay, so it would risk taking you backwards but there
16 were not in fact different providers(unclear) at the
17 time of Tebay, were there?

18 A. My point was that safety performance in the industry at
19 that time was much worse than it is today. Just before
20 there I would -- my round figures are that in that time
21 we were killing roughly a worker every two months, and
22 now, thankfully, that is down to a much less frequent
23 event of, in recent times, perhaps a couple of years
24 between worker deaths, and hence we are now
25 a significantly safer industry, delivered in large part

1 by the rigour of the supplier assurance arrangements.

2 That is what I cannot countenance diluting.

3 Q. If I can take you on to your paragraph 67c. You refer
4 to RISQS as:

5 "... [giving] Network Rail the ability to ensure
6 that safety reports are disseminated and acted upon by
7 Network Rail's relevant suppliers in a timely and
8 efficient manner."

9 A. Mm-hm.

10 Q. You say:

11 "A single seem provides Network Rail with a single
12 supplier assurance scheme portal through which we are
13 able to send safety-critical updates to our suppliers.
14 It is vital for safety that these are received and acted
15 upon and the single portal provides us with reassurance
16 that they will be received."

17 Then you have an exhibit of some documents. If
18 I can take you to that, it is labelled S, the bundle is
19 in fact E1. In the way of lawyers we rename everything
20 for trial just to introduce confusion. It is at
21 the very, very back of that bundle E1.

22 A. Do you have a page number?

23 Q. Yes, I will do in a moment, but if you get to 476,
24 I think, and you will see in the larger numbering -- on
25 each page we have a larger page number, which is

1 the trial bundle number, and then a smaller number,
2 which is your exhibit. So we can see here, 475 -- this
3 was the document you exhibited, 475 to 480, and you
4 exhibited it in support of the point that -- the use of
5 RISQS as a portal for the distribution of safety
6 information.

7 Now this, at 475, is an email chain. It starts down
8 the bottom of the page, from safety communications at
9 Network Rail --

10 A. So, forgive me, page 475 is a glossary of terms.

11 Q. Yes, you will see that there are two numbers at the
12 bottom of that page, one says 474 and one says 475. If
13 turn over the page you will see one labelled 475 and
14 476. This is the document to which you were referring
15 in 67c. Do you recall seeing this at the time you wrote
16 your statement?

17 A. Yes.

18 Q. Were you suggesting that this is a safety communication
19 from RISQS?

20 A. So the distribution of the --

21 Q. Just, please, were you intending to suggest that this
22 was a safety communication from RISQS?

23 A. Yes.

24 Q. Okay. Let us start down the bottom of the page. It is
25 from Safety Communications, mail to

1 safetycommunications@networkrail. Is that a RISQS email
2 address?

3 A. No, it isn't. That's the origination of this which goes
4 to internal players and then on to the RISQS registered
5 suppliers.

6 Q. So 2, Martin Stewart -- stewartmartin@networkrail, and
7 a safety bulletin.

8 It is then forwarded by Martin Stewart on
9 12 November, some three days later, at 8.09 in
10 the morning, to a range of people at Balfour Beatty,
11 Siemens and so on. So I am guessing these are some
12 principal contractors, are they not?

13 A. This is not the arrangement I was referring to.

14 Q. No, so this is the document that you have exhibited --

15 A. Yes.

16 Q. -- in support of your contention that RISQS distributes
17 safety alerts?

18 A. But actually the document I'm referring to is the one at
19 page --

20 Q. Okay, let us just start here. This goes on and you have
21 an email chain that forwards this up, saying:

22 "Please find a safety alert below for onward cascade
23 to your people. Please display on your notice boards."

24 So the means by which this is going out to a small
25 number, albeit to very important suppliers, is via an

1 email from Network Rail for display on notice boards;
2 that is correct, is it not?

3 A. No.

4 Q. Why is that not correct?

5 A. Because if you refer to the document which is an --

6 Q. No, I will come to the document, do not worry, I will
7 get there, Mr. Spence, but we are talking about how it
8 gets distributed.

9 A. This is a -- this is someone who is doing the good --
10 the honourable thing and doing a secondary distribution.
11 This is not the primary distribution to RISQS registered
12 contractors.

13 Q. So, put it another way, is this email just included by
14 mistake? When you included this email in your exhibit,
15 did you include it by mistake?

16 A. Well, it's a separate way in which it goes to other
17 people. You are stalling me getting to the bit of this
18 which is relevant, which is actually to look at
19 the bulletin itself. Now, you have one here that is an
20 incomplete version. If you go to the one which is on
21 page 480, you'll see the formatted version of a safety
22 bulletin.

23 Q. Can I pause you for a second. Do not worry, I will let
24 you get to all these documents in time. Do not worry.
25 If you look at 477, then, the one you say is incomplete,

1 that has a reference number NRB1816, date of issue is
2 9.11.2018. So this matches the date of the original
3 email on the previous page?

4 A. Yes.

5 Q. So that seems to be the safety bulletin attached to that
6 email, and I think the point you are itching to make is
7 the fact it says:

8 "Issued to all Network Rail line managers, safety
9 professionals and RISQS registered contractors."

10 So that is who it should go to; is that right?

11 A. Yes, it is.

12 Q. But that is not the same thing as saying it is
13 distributed by RISQS, is it?

14 A. It is distributed by the RISQS administrators, yes.

15 Q. Your belief is it is distributed by the RISQS
16 administrators?

17 A. Yes.

18 Q. That is the basis on which you are putting forward what
19 you say in paragraph 67c?

20 A. Yes.

21 Q. But it also goes to all Network Rail line managers and
22 safety professionals; it does not go to them via RISQS,
23 does it?

24 A. Oh no, absolutely not. So you're confusing two parts
25 there. So I realise you want to do it at your pace, but

1 when we do get to page 480 you'll see the issue 2 that's
2 set out in a clearly formatted document that says it's
3 issued to "all Network Rail line managers, safety
4 professionals and RISQS registered contractors".

5 Q. It says that at 477 as well, the issue 2, it is the same
6 wording. The format is different but the wording is
7 the same.

8 A. That goes to a total of sum -- approximately
9 16,000 people, 6.5 of whom are internal to the business
10 and the rest are external.

11 Q. So we have page 477, the one you say should be
12 distributed by RISQS. Now if you look on page 478,
13 a couple of things I would like to draw your attention
14 to. First of all, under "Discussion Points", you will
15 see the very small writing says:

16 "Copies of safety bulletins are available on Safety
17 Central."

18 A. Yes.

19 Q. Indeed, all safety bulletins will be available on
20 Safety Central; that is right, is it not?

21 A. Not just safety bulletins but safety alerts at shared
22 learnings and such like.

23 Q. Then can I draw your attention to the very bottom of
24 the page, between numbers 477 and 478. It says:

25 "This message was sent to Stewart Martin at

1 Network Rail by Network Rail. Follow this link to
2 manage preferences or unsubscribe."

3 So it looks to me -- and I ask you to accept this is
4 right -- that somebody has received this email because
5 they have signed up to a distribution list?

6 A. No. So you're making a wild presumption there. This is
7 sent to that individual because they are on the list
8 from our internal directory of people who are either
9 line managers or safety professionals. That's
10 distributed by a system known as MailChimp, which allows
11 us to track precisely who reads and forwards, how many
12 people it goes to and the various analysis of it.
13 Separately there is the distribution to the RISQS
14 register contractors.

15 Q. So this email here, with the attachment, distributed by
16 MailChimp, as you say, by Network Rail to somebody
17 within Network Rail who subscribed and so on?

18 A. Correct.

19 Q. It is then forwarded on for onward cascade and display
20 on notice boards, and we see where that is dealt with.
21 So that is an example from November. This email chain
22 in itself does not show that RISQS has -- is what is
23 used as a safety portal, does it?

24 A. No, but it is used as the safety distribution for that
25 information.

1 Q. That is what you believe to be the case; yes? That is
2 your --

3 A. Absolutely right. I've already given you the data of
4 the number of players that it goes to.

5 Q. So go to 480, because you say this is the better
6 formatted one. Now, this is a safety bulletin about
7 a different incident, is it not?

8 A. Indeed.

9 Q. It has a different NRB number, and the date of issue
10 19 May 2017. So this dates from the time when Achilles
11 was running RISQS?

12 A. Mm-hm.

13 Q. This has the same thing. It says. "Issued to: all
14 Network Rail line managers, safety professionals and
15 RISQS registered contractors"?

16 A. Mm-hm.

17 Q. But certainly at the time when Achilles was running it,
18 RISQS did not function as a portal for the distribution
19 of these bulletins; that is right, is it not?

20 A. That would not be my understanding.

21 Q. That is what I suggest to you is correct.

22 The same "Issued to" wording identifies that it
23 should go to all RISQS registered contractors; it does
24 not mean that it is distributed by means of RISQS; it is
25 you who is making an assumption, is it not?

1 A. No, that's not correct, there is a process for doing
2 this. On a personal basis I have sampled with RISQS
3 registered contractors the bulletins they receive and
4 what they do with them, so I am confident it gets to
5 them.

6 Q. You are confident it gets to them, but have you sat
7 there and seen them being delivered by the RISQS portal?

8 A. You would -- no, you wouldn't have expect me to have
9 done so.

10 Q. No, okay.

11 If I can take you to --

12 A. You appear to be disputing that that goes to the RISQS
13 registered contractors --

14 Q. No --

15 A. -- and that is something which I will contest and
16 continue to contest.

17 Q. For absolute clarity, I am not contesting it goes to
18 RISQS registered contractors.

19 A. Okay.

20 Q. I am testing with you whether it goes via the RISQS
21 portal.

22 A. And I am saying to you that it doesn't go in the ad hoc
23 way that you've suggested in your questioning, it goes
24 in a managed way to each of the RISQS registered
25 contractors.

1 Q. But just going back to what you say in your statement
2 for a moment, you say:

3 "A single scheme provides Network Rail with a single
4 supplier assurance portal through which we are able to
5 send safety-critical updates."

6 I am suggesting to you that at the very least you do
7 not know that is correct, you do not know it is through
8 the portal that they are distributed, do you?

9 A. There is a single channel to go to RISQS registered
10 contractors. No, I have not personally delivered and
11 tested that, but I have sampled the receipt of that and
12 am confident that it happens.

13 Q. You don't know what that channel is, do you? You say --

14 A. No.

15 Q. -- you know there is a channel, but you do not know what
16 that channel is. Okay, there we are.

17 If I can take you to bundle -- just briefly --
18 G4/42.

19 A. There's a fair point I ought to make on that one, if you
20 have left that point, sorry --

21 Q. I have, yes.

22 A. -- and that's that a coroner, only two to three weeks
23 ago, was significantly reassured by the evidence
24 Network Rail provided about the distribution of such
25 documents through the channels that I have described

1 here --

2 Q. Okay.

3 A. -- and was particularly reassured such that they didn't

4 feel a need to make further recommendations after

5 a tragic fatality.

6 Q. I am not going to test what may have been found by

7 a coroner in another case.

8 Bundle G4/42.

9 A. If you lose sight of me, I have disappeared behind

10 bundles.

11 Q. Indeed, that is always a risk. If you can keep your

12 statement open.

13 A. G4?

14 Q. Yes, G4, and it is quite a short point.

15 A. And which document?

16 Q. It is behind 42a. Have you got a one saying 42a,

17 the tab?

18 A. Yeah.

19 Q. Page 1300.

20 A. No, you have the march on me, because mine only goes to

21 1274.

22 Q. Has it not been added to your bundle?

23 A. Is it this document here (indicates) by any chance?

24 Q. No, it is not.

25 In the interest of time, it is simply to note that

1 -- perhaps I can just ask you whether this is the case.
2 On the safety central website, it describes itself as
3 a "one stop shop". Are you aware of it being described
4 as such?

5 A. Yes, and that of course is a mechanism that people can
6 visit to pull information from that relies on people
7 going looking for it, rather than a mechanism of pushing
8 information to have confidence it gets to the right
9 people.

10 Q. Yes, okay.

11 A. It's a useful additional mechanism in addition to
12 the distribution.

13 Q. Thank you.

14 Just to check, 67c, you are talking, are you not,
15 about safety information coming out from Network Rail,
16 rather than the receipt of reports of safety incidents
17 back to Network Rail? That is your focus there; is that
18 a fair description?

19 A. Yes.

20 Q. Now, 67d, you say there that having a single scheme:

21 "... enables [you] ... in a timely, efficient and
22 effective manner, to monitor, check and act on safety
23 issues or concerns raised ..."

24 I think you say, at the bottom of the paragraph:

25 "Our employees are clear that there is one scheme

1 which they need to check to ensure that suppliers have
2 been properly audited and comply with safety-critical
3 requirements."

4 Achilles have put in evidence to say -- and I can
5 take you to it -- that that information could be
6 supplied from Achilles to Network Rail by means of an
7 API, which would integrate with Network Rail's system.
8 So that could be perfectly clear for employees, could it
9 not? They could check it within a single system if they
10 needed to, in principle.

11 A. And as I've mentioned previously, that's one possible
12 alternative supplier, should we have to change our
13 arrangements and dilute the existing arrangements.
14 However, that's not necessarily the case for the other
15 N number of suppliers that would also wish to compete
16 with Achilles.

17 Q. But Network Rail could insist, could it
18 not -- hypothetically, what if Network Rail were to
19 insist, as a condition of being authorised, that
20 information was supplied in that way? Would that not
21 meet your concern?

22 A. And the greater the number of interfaces, the greater
23 the risk of gaps appearing.

24 Q. I think that is possibly a slightly separate point,
25 because your point here is about employees knowing that

1 they only need to check in one place. My point is that
2 Network Rail could insist that it be delivered in such
3 a way that they do only have to check one place. That
4 is a possibility, is it not?

5 A. And that relies going to an alternative system,
6 the internal purchasing system, as opposed to checking
7 whether there is a business registered on the RISQS
8 scheme, the single industry scheme which is
9 competitively tendered.

10 Q. But your fear is based upon assuming that Network Rail
11 would not be able to insist on that and would have to
12 have employees checking in lots of different systems all
13 over the place. That is your assumption that you have
14 made.

15 A. I'm saying that's one of the possible risks that would
16 be imported to Network Rail should we be forced to
17 change.

18 Q. But it depends rather what Network Rail specifies,
19 does it not?

20 A. I don't know the technology of whether it is feasible to
21 do that. I'm sure that might be a question that
22 Mr. Blackley can answer for you when he gives evidence.

23 Q. Then we come to 67e and you refer to having "a single
24 forum and process for feedback from industry-wide
25 experience". Now, one can achieve a single forum by

1 allowing everybody to participate, can you not?

2 A. In principle, you are correct. If those businesses are
3 then competing, there is a question in my mind whether
4 that would work as effectively as we have with
5 the arrangements that are in place at the moment.

6 Q. So you have a question in your mind which you would
7 wonder about.

8 You note that there can be feedback.

9 Just at the bottom of that, you say:

10 "This broad industry representation and
11 industry-wide feedback loop ..."

12 Underneath the quoted paragraph:

13 "... the quality of safety assurance [is] likely to
14 increase as there is greater availability of information
15 on incidents ..."

16 And so on.

17 Now, RISQS itself is not used as a safety incident
18 reporting system, is it?

19 A. That isn't the point I'm making. I'm saying that
20 through that forum where feedback can be provided to
21 ensure that the assurance scheme is -- continues to
22 evolve and continues to improve, is able to draw on
23 the widest body of knowledge.

24 Q. I presume you are. Are you aware of a system run by
25 the RSSB called "SMIS"?

- 1 A. My team manages 85% of all of the input to
2 the SMIS database.
- 3 Q. Can you describe to the Tribunal what SMIS is?
- 4 A. A Safety Management Intelligence System run by the Rail
5 Safety & Standards(unclear) Board.
- 6 Q. What is the function of that system?
- 7 A. It's collation of incident data, whether that is asset
8 failure, operational risk or worker injury.
- 9 Q. It is collated in such a way that can be analysed and
10 reports can be pulled out and the like; that is right,
11 is it not?
- 12 A. Yes, it is.
- 13 Q. Also what is the -- it is called the "Close Call
14 Reporting System"? Can you describe what that is as
15 well?
- 16 A. The system that is currently provided for us by RSSB
17 through a system known as Close Call System -- CCS2
18 I think is its module at the moment -- enables our
19 workforce and the contractors' workforce to report
20 incidents of near misses, for want of colloquial phrase,
21 that allow us to resolve things before bad things
22 happen.
- 23 Q. Near misses is not trains nearly missing each other,
24 this is near miss in the sense of failures that are
25 observed that do not actually lead to negative outcomes

1 in that case but that could do in another. Is that a
2 close call?

3 A. Unsafe conditions/unsafe behaviour that leads to local
4 control.

5 The point I'm making here is rather different to
6 the two schemes you're describing. I'm talking about
7 feedback into the assurance mechanism rather than
8 determination of the effectiveness of risks control.

9 Q. I see. You did remember refer to the greater
10 availability of information on incidents, but there is
11 in fact an industry scheme that is there to provide
12 information on incidents which is separate from RISQS?

13 A. Indeed, but my point is about input back into
14 the assurance arrangements which, in complex
15 arrangements provided by multiple different providers,
16 becomes a more challenging task to make sure that is
17 consistently heard and consistently acted upon.

18 Q. So you are talking about, in a sense, a forum for
19 debate, such as the RISQS board, where people sit down
20 and discuss how things can be improved?

21 A. Which is the context of this paragraph.

22 Q. What I suggest to you is that can be conducted by
23 inviting people into the room and talking to them, can
24 it not?

25 A. So it has the option of providing that feedback of

1 operational intelligence, if you like.

2 Q. What if, for example, Network Rail were allowed to
3 stipulate as a condition that in order to be allowed to
4 operate as an assurance scheme, one had to participate
5 in a certain forum? Would that resolve your concerns?

6 A. That would mean there would have to be different forum,
7 an additional forum to the board which controls the
8 single industry scheme, the RISQS scheme.

9 Q. Yes, there might be, but we will come to that.

10 Then we come to f:

11 "Sixthly, Network Rail's representation on the RISQS
12 Board also contributes to our ability to ensure that the
13 ... requirements meet [your] ... own needs."

14 I am just going to suggest to you that you can
15 ensure it meets your own needs by setting out what your
16 needs are and insisting that any scheme meets them, can
17 you not?

18 A. The most effective way to do that is to have the direct
19 input, as opposed to just publishing something and
20 hoping that people follow it.

21 Q. But we saw that there was, for instance, in the past --
22 I mean, the Sentinel scheme rules fundamentally are
23 owned by Network Rail, are they not; it specifies what
24 has to be met in respect of the Sentinel scheme?

25 A. Yes.

1 Q. That is right.

2 Previously it specified what its core requirements,
3 were; that is right, is it not?

4 A. Before the industry minimum requirements.

5 Q. But as regards the industry minimum requirements,
6 Network Rail specifies that those are what has to be
7 met, it is just that those are set in debate and
8 discussion with other people; that is right, is it not?

9 A. Yes.

10 Q. So in fact, Network Rail would always be able to ensure
11 that it meets their needs simply by specifying, in fact
12 as it does at the moment, what those needs are; that is
13 right, is it not?

14 A. For multiple assurance schemes where we would have to
15 have that input to many, many different providers, then
16 that becomes less consistent than the input we are able
17 to have into the existing scheme.

18 Q. Well, no, because what I am suggesting to you is that
19 you could simply specify what your requirements are that
20 you require to be audited in order, for example, to
21 accept somebody as Sentinel approved, as you do at
22 the moment. There is no need to enter into any
23 discussion with anybody else, you just specify what your
24 requirements are and then your needs would be met, would
25 they not?

1 A. And hope that they're met, you're absolutely right.
2 That's the only chance we've got, unless there is an
3 additional tier of assurance to make sure that each of
4 those multiple different assurance providers follow
5 the necessary specification.

6 Q. Can we just try and make sure we deal with separate
7 points, because I think you make two points in fact, to
8 be fair, at section f, where you say:

9 "... contributes to [your] ... ability to ensure
10 that the scheme's requirements (and the standard of
11 audit against them) meet [your] ... own needs."

12 I think, as regards the scheme's requirements, what
13 I am suggesting to you is that you can set out your
14 needs, and if you say, "We will only accept assurance
15 against this specification", that would meet your needs;
16 that is right, is it not?

17 A. Providing that is followed -- first of all understood
18 and then followed by the multiple different schemes.

19 Q. Okay, so that is a point relating to the standard of
20 audit then, is it not?

21 A. No, it isn't, because if we're feeding into many
22 different schemes, there is the greater risk of
23 different interpretation. Putting that in through our
24 membership of the RISQS board enables us to achieve
25 the absolute clarity.

1 Q. So it is the control of the interpretation then, you are
2 saying, not the control of the requirements per se?

3 A. It's not the requirements per se, it's the way in which
4 they would be heard and acted upon.

5 Q. I have suggested to you previously -- I am not going to
6 go over it -- that the standard of audit can be
7 controlled by other means.

8 Then 67g --

9 A. But equally, if you will permit me, I will reiterate my
10 point that it can be controlled, but there is still
11 the greater risk of difference the more that you have
12 beyond the number 1.

13 Q. 67g, you refer to facilitating "compatibility and
14 interoperability". Now, I just want to clarify, are you
15 meaning compatibility and interoperability in an IT
16 sense or in a sort of management systems sense?

17 A. Management systems sense. So this is the joining up of
18 each of the assurance arrangements.

19 Q. Okay, so you are not making any point about how APIs
20 could work or anything like that?

21 A. It's not IT, and I wouldn't be competent to talk to you
22 about IT, so I wouldn't dream of putting it in
23 a statement.

24 Q. So I think the point you are making is that the audits
25 which Network Rail carries out, the relevant technical

1 and on-site audits, are additional to and do not
2 duplicate those carried out by RISQS. That is really
3 the point that you are making in this paragraph; is that
4 right?

5 A. Complementary to and do not duplicate, that's right.

6 Q. It says "additional". If you want to
7 say "complementary", I will note that.

8 But that benefit can be achieved by specifying
9 clearly what the audit has to cover, can it not?

10 A. We've covered this point previously, but I'll reiterate
11 that where you have the matrix of assurance arrangements
12 and the single industry supplier provides the base level
13 for each of the industry minimum requirements, the POS
14 scheme, the Sentinel scheme and such like, and then
15 that's complemented by deeper probing in areas such as
16 POS and PCL enables consistency. If that is -- if that
17 becomes further broken up, there is the greater risk of
18 lack of interoperability. It's an unfortunate phrase,
19 because it's a word that's also used in the European
20 railway legislation, but it's essentially the way that
21 the management systems inter-operate.

22 Q. I think it is clear what you mean by that here.

23 Then at 67h you refer to the benefit of:

24 "... the use of a single scheme with a single
25 uniform set of standards that are consistently applied

1 ..."

2 A. Mm-hm.

3 Q. "... ensures that suppliers are incentivised to invest
4 ..."

5 I would say to you again that having a uniform set
6 of standards so suppliers know what they have to meet,
7 once they know that, they will invest freely or not, as
8 they see fit, in whatever systems they think are
9 appropriate and you do not need to have a single scheme
10 to achieve that, do you?

11 A. I disagree. As you dilute the market and the existing
12 scheme becomes -- risk of being separated between many
13 different providers, there is reduced incentive to
14 invest in developing the schemes.

15 Q. But there are many situations, are there not, outside
16 the railway context -- I appreciate railways are what
17 you talk about -- where you can have a single standard
18 that is set, multiple people can deliver against
19 the standard, and that is a system which is considered
20 to encourage incentives to invest; that is right, is it
21 not.

22 A. Whereby there is competition which drives up
23 the quality, absolutely right. However, in the context
24 -- and you -- whether you were going to explore all
25 parts of my statement -- but the complexity of

1 the railway industry, the complexity of the -- or,
2 sorry, the criticality of the controls we're talking
3 about means that the importance of continuing to
4 develop, continuing to evolve and improve those
5 arrangements is achieved and has been achieved very
6 successfully both -- until recently with Achilles and
7 then through a different provider in the single scheme.

8 Q. Okay, but your point here, I put it to you, is not
9 really about -- you are making a point about incentives
10 to invest, and to put the example to you of
11 the RISAS scheme, we have a single set of standards,
12 there are at least two -- there were three -- bodies
13 that audit against it, and the fact that you have
14 different bodies there auditing against the standards,
15 that would not discourage people from investing; they
16 would know what standards they have to meet and they
17 could invest.

18 A. I find it a slightly difficult argument. We've already
19 discussed this at some length. I can reiterate, if you
20 wish, that I do believe there's a distinct difference
21 between product approval and the complexity of
22 management systems and interrelationships between
23 contractors that we're talking about here. But as
24 Achilles were the single sole provider of this service
25 without competition for many, many years, your point

1 would suggest that they didn't invest at all and that's
2 entirely the opposite. There was considerable
3 improvement over the time of Achilles' stewardship of
4 the system which led to improvement.

5 Q. I did not intend to suggest to you that there would be
6 no incentives on a single supplier to improve. What
7 I was dealing with is your contention here that having
8 a single uniform set of standards incentivises suppliers
9 to invest, and I am suggesting to you -- and I think you
10 said what you were going to say about it -- that you can
11 achieve the same incentive to invest by having a single
12 uniform set of standards without necessarily having only
13 a single scheme.

14 A. To dilute the number of players that each of those many
15 providers deal with would, I believe, act against it and
16 not in favour of it.

17 Q. Now, I am going to go through paragraph 74 of your
18 statement, but I am going to do it a bit more quickly
19 because I think we established that a lot of this is
20 the flip side of the benefits that you refer --

21 A. You did.

22 Q. So I will just pick up points that are sort of new in
23 this context. First of all, paragraph 74a, in
24 the second -- sorry, the third paragraph down starting,
25 "Whilst safety failures ..." I just want to check,

1 halfway through that paragraph is a sentence where
2 I think there may be a sort of a typographical error and
3 I just want to give you the chance to correct it.

4 A. I apologise if that's the case.

5 Q. "In practice, a significant burden would be placed on
6 Network Rail to satisfy itself that each of the NR
7 Schemes and its audits quality were adequate and that
8 all NR schemes applied a sufficiently high set of safety
9 requirements."

10 I want to check, do you mean "NR schemes" there, or
11 what do you mean by "NR schemes" there?

12 Perhaps (unclear). Elsewhere in the document,
13 I think you use "NR schemes" to refer to Sentinel and
14 PCLS and so forth, and I am just not sure that you
15 probably quite meant this as it stands.

16 A. Yeah, my purpose here -- and if that's inconsistent with
17 elsewhere in the statement -- my purpose here is
18 referencing the integrity of the assurance arrangements,
19 whether provided through the IMR or the base POS audit
20 and Sentinel audit, etc.

21 Q. When you say that:

22 "... All NR Schemes applied a sufficiently high set
23 of safety requirements and applied these with a
24 sufficient qualify of audit ..."

25 I assume that's "quality". The NR schemes there you

1 seem to referring to, I think you are talking about
2 the sort of multiple providers that would come into
3 the market. Is that what you mean by that?

4 A. That is my point. It is the opposite of point A in the
5 previous section we were discussing.

6 Q. Right, so I suspect the words "NR Schemes" may not be
7 right but I think it is clear what is intended.

8 Essentially there, in there in that paragraph as
9 a whole, you say it would:

10 ... shift the choice entirely to suppliers (which
11 would have an incentive to join the scheme which is
12 the easiest to comply with)."

13 That is a race to the bottom argument, essentially,
14 is it not?

15 A. Yes, so who gets my ticket easiest, and in a very
16 challenging market I could imagine that different
17 assurance providers might want to have a march on
18 another and therefore the risk of it being easier to
19 achieve your ticket with supplier A rather than
20 supplier B.

21 Q. But you can have a situation -- and again with RISAS is
22 an example -- where you have multiple providers of audit
23 and certification, you are free to choose who you want,
24 but that is not considered to lead to a race to
25 the bottom that is so disastrous to safety; that is

1 right, is it not?

2 A. And I -- we've have explored it a number of times.

3 I will reiterate that I believe there's a fundamental
4 difference between product supply and the complex
5 interrelationship between contractors, many of whom are
6 of a less sophisticated nature.

7 Q. So to take the other example we explored, the one that
8 Network Rail is free to choose who it wants to do its
9 safety risk assessments, provided they are accredited.
10 That does not necessarily lead to a race to the bottom,
11 does it?

12 A. Those providers that you've talked about earlier do not
13 do the safety risk assessment, they do a review of the
14 assessment undertaken by Network Rail. It's rather
15 different to what you've just said.

16 Q. But still, it is not considered to lead to an
17 unacceptable risk that you will(unclear) pick a provider
18 who will give a favourable opinion, is it?

19 A. So go back to -- if you look at the rest of my statement
20 and the role of Network Rail in the industry, the fact
21 that we are the infrastructure manager for the entire
22 mainline network, we have the obligation under the ROGS
23 regulations and as such we have an input ourselves in
24 that change management process, which is fundamentally
25 different to the issue we are discussing here about

1 assuring us of the quality of potential suppliers, and
2 indeed continuing quality of suppliers.

3 Q. Looking at that European regime as a whole, you are
4 looking at the independent assessment being used as part
5 of a scheme that allows a risk assessment in effect to
6 be portable from one country to another. That scheme
7 does not just apply to Network Rail, it is not just
8 about what you decide to do, it is a scheme that is
9 applied generally across the rail sector in the whole of
10 the European Union and it allows people to choose which
11 supplier they want to audit and review their risk
12 assessment for things to have significant safety
13 consequences, and that is not considered to lead to an
14 unacceptable race to the bottom, is it?

15 A. It's not dealing with the complex interrelationship
16 between contractors that we've described a number of
17 times, and Network Rail, as the infrastructure manager,
18 with the legal accountability for safe operation of
19 the network, designs the arrangements that we need to
20 help us achieve our legal obligations. If we are forced
21 to change those determined best option for us, then
22 we would -- that accountability would be diluted and
23 become a lot less clear.

24 Q. I can see you are making a point about accountability.
25 The question I am asking you here -- you are making --

1 you made a comment or a point here in paragraph 74 about
2 the effect of shifting the choice to suppliers and you
3 are claiming they would have an incentive to join
4 the scheme which is easiest to comply with. There is
5 a very specific point there, and it is not about
6 complexity in the supply chain, it is about suppliers
7 having a certain incentive, and I am suggesting to you
8 that it is not the case that a race to the bottom is
9 a risk that cannot be mitigated. It can be, by putting
10 in place appropriate standards.

11 A. I go back to my point about the risk control hierarchy.
12 When you need to apply processes which mitigate
13 the additional risk that you've built in, it's less
14 effective than where you have a single approach.

15 Q. So your evidence is that in your professional judgement,
16 as a matter of the risk control hierarchy, what? That
17 that you are at a different level of risk control
18 hierarchy if you have multiple schemes; is that your
19 point?

20 A. Because you're having to mitigate risk which is
21 introduced by the difference which can be there between
22 providers.

23 Q. Thank you.

24 Then 74b, there is "risk of confusion". I think we
25 have covered that already under 67, so I will not go

1 over that again.

2 Then at 67c we have the same point about -- you say
3 here:

4 "We use RISQS to send safety-critical updates to
5 relevant suppliers."

6 I think where we got to on that was that you said
7 that all RISQS qualified suppliers get the updates, but
8 you are not sure of precisely what the channel is by
9 which they are sent?

10 A. And it's not the channel on the documents that you
11 referred to -- referred me to in the bundle.

12 Q. The documents which you exhibited to your statement.

13 A. As an example of the documents which are distributed,
14 indeed.

15 Q. I think 74d is just the flip side of your 67d. We have
16 explored all of this.

17 A. Yes, 74c, of course, includes a much more recent example
18 of specific arrangements for distributing via
19 the channel that I've described a number of times.

20 Q. Yes, so that is a point there, is it not, about you
21 have -- you can share -- you can send out to everybody.
22 That is the point?

23 A. Exactly so. It was just a more recent example of
24 the way that works.

25 Q. So if you have a channel for getting it to everybody,

1 that is important for you?

2 A. Exactly so.

3 Q. Just look back at paragraph 71. I just want to check
4 your point. I think there is a factual assumption which
5 you are setting out, I want to check what it is. Start,
6 perhaps, in first sentence. You say:

7 "Were the Claimant to be successful ... Network Rail
8 would be obliged to deal with multiple schemes which
9 claim to satisfy RIS-2750 and that they are 'adequate to
10 meet the needs of supplier assurance'."

11 Now, that is not quite what we said, is it? You
12 have missed off some words, because in fact, I believe
13 the wording is "adequate to meet the needs of supplier
14 assurance in the rail industry". That is an important
15 qualification, is it not?

16 A. Additional words, and yes, it's --

17 Q. But it is quite --

18 A. I'm not sure what your point is.

19 Q. It is quite different to say something is adequate to
20 meet the needs of supplier assurance in the rail
21 industry than simply saying it is an adequate form of
22 supplier assurance in general.

23 A. Yes, it's in the context of this --

24 Q. Yes, exactly.

25 A. -- whole statement.

1 Q. Then you go to say:

2 "I am aware that many potential scheme providers
3 prequalified during RSSB's tender for the provision of
4 RISQS ..."

5 A. Mm-hm.

6 Q. "... and many more potential orders that are UKAS
7 accredited."

8 So is it your assumption that there will be many
9 more people coming into the market -- the 20 I think,
10 that you have suggested? Is that based upon the number
11 of scheme providers who prequalified for the RSSB
12 standard?

13 A. No, it isn't. It was simply a number picked out of
14 the air, because no one can know how many others may
15 wish to take part. It's not part of the statement,
16 I was simply using it to illustrate that this is not
17 a matter of one or two, it's a matter of one or many.

18 Q. But the assumption on which we should proceed is that
19 that number of schemes would be adequate to meet
20 the needs of supplier assurance in the rail industry?
21 That is the assumption we are proceeding on?

22 A. Well, the existing arrangements are adequate. In fact,
23 they're succeeding very well in meeting the needs of
24 the rail industry.

25 MR. WOOLFE: Can I just have one moment, sir, to check if

1 there is anything else I need to ...

2 Sir, those are all the questions I had, thank you.

3 THE CHAIRMAN: Thank you.

4 MR. FLYNN: I have no re-examination for Mr. Spence. I do
5 not know if the Tribunal has questions.

6 Questions from THE TRIBUNAL

7 THE CHAIRMAN: We have a number of questions, Mr. Spence.

8 In practice, supposing the Tribunal was to require
9 Network Rail to recognise other providers of supplier
10 assurance, is this right, that Network Rail would then
11 have to consider whether that was a significant change
12 to its HSMS and then go to ORR? Is that right? Is that
13 what would happen?

14 A. If -- I tried to clarify earlier, and if I may just take
15 a moment. The process of understanding the potential
16 impact of change considers first the extent of that
17 change and its significance. They apply the CSM,
18 the Common Safety Method of risk evaluation and
19 assessment, which determines the significance.

20 Depending on where that comes out, it determines
21 what the next stages of safety validation would be of
22 that change. At an insignificant change, it would
23 remain entirely within the business at a relatively
24 limited extent and simply amending some words of
25 a management system. If our judgement was that

1 the safety impact was greater and it was significant,
2 then it would mean that we would go through the full
3 CSM process involving the independence that was being
4 described through the ASBO and we would determine
5 whether that was a safe change to make.

6 The next tier is if it drives a substantial change
7 to the safety management system, which is where we then
8 have to seek reauthorisation from the regulator,
9 Mr. Prosser, that you heard earlier.

10 THE CHAIRMAN: Presumably, if you do not get that
11 authorisation, you cannot proceed with it?

12 A. Well, there's a number of layers there, of course,
13 because first of all it's the company's duty to
14 determine whether this is safe and can it safely go
15 ahead. If we believe it can and we still wish to do it
16 and it is substantial, then we do have to have
17 the regulator's consent for that to happen.

18 MEMBER 3: But in that context, is it within your
19 organisation that you are also thinking, "Well, we would
20 not do it on a blanket way, we would have to introduce
21 these conditions and these are the conditions we would
22 be thinking about"? Is it internally an iterative
23 process where you work out: how would we do it whilst
24 still achieving our safety goals?

25 A. It is an iterative process. There's a -- I don't

1 believe -- I haven't heard it being introduced in your
2 evidence bundles, but there is a document, a process
3 advocated by the Rail Safety Standards Board known
4 as "Taking Safe Decisions" that described just that sort
5 of iterative process.

6 But I go back to the point that our primary
7 obligation is not to introduce risk and then mitigate
8 it, our primary obligation is to operate without that
9 risk in the first place. That's the first duty in
10 safety law.

11 MEMBER 3: So I had a separate question, if I may, and just,
12 partly, because I think I have been a bit slow with
13 this, but you were questioned extensively on
14 the possible comparisons with the RISAS scheme --

15 A. Mm-hm.

16 MEMBER 3: -- and you said that the difference between RISAS
17 and supplier assurance is principally the difference
18 between products on the one hand and the need for
19 assurance in relation to complex interrelationships
20 between contractors. I wonder if you could amplify that
21 for me, because the supplier assurance process is not
22 auditing or reviewing interrelationships, is it, it is
23 taking each supplier on their own, it is not actually
24 looking at contractual relationships? So why is
25 the interrelationship label the distinguishing feature

1 for you, since -- I may have got this completely wrong,
2 but my understanding of RISQS is you look at a company,
3 you look at its processes, you assess whether they are
4 safe or not, you move on, so there is no testing of
5 interrelationships.

6 A. The first step obviously is: are things managed
7 effectively within a single business. But where you
8 have a complex system -- and it is -- the rail industry
9 is unusual -- it's not unique but it's unusual, and
10 perhaps if I could illustrate by reference to perhaps
11 the airline industry where yes, the engine manufacturers
12 need to make absolutely sure that their engines are
13 safe, and then there is the relationship of how that's
14 built into a plane, and then the plane lands in an
15 airport and the interrelationship with the air bridge
16 and such like. So there are some other areas where
17 there is that complexity of companies working together
18 which are rather different to the simple product supply
19 that RISAS addresses, which is: are these brake shoes
20 manufactured to a standard such that they can go into
21 a train and the train operator or maintainer does not
22 need to go and do a separate audit of the quality
23 control processes in that supplier.

24 In this instance what we are looking at is the way
25 in which a business manages all of its aspects of

1 RISQS -- the people aspects in most instances -- and
2 then the way in which they interact with the other
3 players that they have to deal with. So it is about
4 a complexity of railway system and not just about
5 the single business.

6 MEMBER 3: But what is it in the nature of the standard or
7 the auditing that is not related to the instant target?
8 I mean, the target in RISAS is: I am verifying
9 the production of goods. The target in supplier
10 assurance: I am reviewing that company and its ability
11 to operate safely within the railway. Those are still
12 discrete component parts. I am struggling for
13 the weight you attach to the difference.

14 A. Okay. It's about the deeper management systems that
15 manage humans as opposed to machines, perhaps, and
16 the way in which people operate -- I mean, the sorts of
17 things we're exploring are fatigue management
18 arrangements, drug and alcohol management arrangements
19 and such like, which are rather more complex than just
20 about dimensions, components, specification and such
21 like.

22 MEMBER 3: But that just suggests they are harder or they
23 are more important rather than they are different,
24 does it not?

25 A. Yeah, and in seeking to ensure that the entire system of

1 assurance builds together, we have identified
2 the advantage of the single industry scheme which allows
3 to us to make sure there is that golden thread running
4 through the IMR, the POS base audit, the Sentinel base
5 audit, and then other layers which we put on there of
6 PCL and POS site inspection, for example.

7 THE CHAIRMAN: Can I ask another question, Mr. Spence. You
8 were taken to the paragraph in your witness statement
9 where you say that with multiple schemes, suppliers
10 would be disincentivised from investing, and that
11 reminded me that the point that Mr. Blackley makes in
12 his witness statement is that Achilles, as
13 the long-standing incumbent, had become, he says,
14 somewhat complacent and investment was taking a long
15 time. Could it not be said that having more than one
16 supplier might act as an incentive to investment because
17 of the competitive angle?

18 A. I understand the point. The point -- the argument I was
19 making, which I believe outweighs that, is that
20 the ability of a single approach meeting the needs of
21 the whole industry with that wider base enables
22 the provider to invest, where if they're at the same
23 time having to compete in the marketplace with others,
24 many other providers of those services, then their
25 income/their supply base is reduced from that which is

1 there with the single industry scheme.

2 THE CHAIRMAN: Thank you very much, Mr. Spence.

3 MR. WOOLFE: Perhaps I might just say one thing arising out
4 of the Tribunal's questioning. Mr. Spence did say that
5 the (unclear) was whether there is a substantial change.
6 I do not mean to contradict, but he was referring to
7 legislation, so it might help you.

8 In regulation 11 of ROGS the test is "substantial
9 change in relation to safety authorisations", which
10 I think relate to train operating companies and
11 the like, whereas the test in relation to safety
12 certificates, which is what applies to infrastructure
13 managers, is "major change".

14 A. It's the other way round, sir.

15 MR. WOOLFE: Other way round. Sorry, I apologise.

16 So the "major changes" are referred to regulation
17 13; "substantial change" is referred to elsewhere. We
18 can go to it as needed, but both terms are used and we
19 can debate what the difference may be.

20 THE CHAIRMAN: At the moment I am struggling to see what
21 the difference might be, but ...

22 Thank you very much.

23 (4.31 pm)

24 (Court adjourned until 10.30 am on Monday, 25 February 2019)

25

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. IAN PROSSER (sworn)1
 Examination-in-chief by MR. FLYNN1
 Cross-examination by MR. WOOLFE1
MR. ALLAN SPENCE (sworn)75
 Examination-in-chief by MR. FLYNN75
 Cross-examination by MR. WOOLFE76
 Questions from THE TRIBUNAL199