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6 **IN THE COMPETITION**

Case No. : 1298/5/7/18

7 APPEAL TRIBUNAL

8 Victoria House,

9 Bloomsbury Place,

10 London WC1A 2EB

11 25 February 2019

12 Before:

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

14 (Sitting as a Tribunal in England and Wales)

15  
16 **BETWEEN:**

17 **Achilles Information Limited**

18 **v**

19 **Network Rail Infrastructure Limited**

20 \_\_\_\_\_  
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28 **HEARING - Day 4**

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**APPEARANCES**

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

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

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Monday, 25 February 2019

(10.30 am)

MR. WOOLFE: Good morning, sir. As you will recall under the trial timetable, we are now interposing Mr. Chamberlain so a return to the claimant's evidence.

MR. MARK CHAMBERLAIN (affirmed)

Examination-in-chief by MR. WOOLFE

MR. WOOLFE: Do take a seat, Mr. Chamberlain. Could you just confirm your name and address for the court, please.

A. Yes, certainly. My name is Mark Chamberlain of 52 (inaudible) in Headington, Oxford, OX3 8TB.

Q. You should have some bundles with you. Could you be handed bundle B, please. Can you turn to tab 3 of that bundle. Do you have a statement there dated 25 January 2019?

A. I do.

Q. Is that your statement?

A. It is.

Q. Could you turn to page 52 of the bundle, please; it is the penultimate page in the tab.

A. Yeah.

Q. You see a scan of a signature. Is that your signature?

A. It is.

Q. Is there anything in that statement that you would like

1 to amend or change in any way?

2 A. No.

3 Q. Then at tab 6 you should see another witness statement  
4 this time dated 1 February 2019, is that right, on  
5 the top right-hand corner?

6 A. Yes. The first one was Katie Ferrier. I'm just looking  
7 for mine.

8 Q. Behind tab 6.

9 A. Behind tab 6, there we are. Yes.

10 Q. Is that your statement?

11 A. It is.

12 Q. Can you turn to page 89, again the penultimate page in  
13 the bundle.

14 A. Yes.

15 Q. You should have a scan of your signature.

16 A. Yes.

17 Q. Is that your signature?

18 A. Yes.

19 Q. Is there anything in that statement you would like to  
20 change in any way?

21 A. No.

22 Q. Do you adopt those statements as your evidence?

23 A. I do.

24 MR. WOOLFE: Sir, there are just a very small number of  
25 questions I wanted to put to Mr. Chamberlain to clarify

1           some points.

2           First of all, can you return to your statement at  
3           tab 3. At paragraph 39 of that statement -- it starts  
4           on page 47, just over the page, there you are talking  
5           about a common specification for data. At paragraph 40  
6           you refer to agreeing a common standard. Then at  
7           paragraph 48 you refer to agreeing a common data  
8           standard or process to a detailed specification. I was  
9           just wondering if you could clarify for the Tribunal  
10          what you mean there when you refer to a "standard" and  
11          when you refer to a "specification".

12          A. I use the terms interchangeably, so a standard would be  
13          a specification.

14          Q. Okay. Thank you.

15                 Then at paragraph 49 you say at the bottom of that  
16                 paragraph -- you refer to the inter-operability point.  
17                 At the bottom of that paragraph you say:

18                         "The actual data-set needed to support  
19                         inter-operability could initially be very small."

20                 What would that data-set look like?

21          A. This would be very much up for the parties to decide,  
22          but at the smallest end of the spectrum, I would see  
23          that that would be information that confirms that  
24          a supplier has met the required assurance level, so it  
25          has passed an assessment. That could simply be a pass

1 or a fail outcome or a score, which we provide in some  
2 other systems and sectors. At the other end of  
3 the spectrum it could be a full data-set; that is to say  
4 all the questions that the supplier has answered  
5 together with the details of the audit outcome, both in  
6 terms of the pass/fail, but also any comments/remarks  
7 made by the auditor in their report.

8 Q. Just to clarify a term which was confusing us all,  
9 I think, the other day. At your statement at tab 6,  
10 your second statement, on the second page in  
11 paragraph 7, you refer to Network Rail's "ERP system"  
12 and I do not think that is defined anywhere. What do  
13 you mean by "ERP system"?

14 A. I understand "ERP" to be an enterprise resource planning  
15 tool, which is quite a generic phrase, but in  
16 the procurement space and the procurement sector it is  
17 usually used as an initialism to capture the software,  
18 and the applications used within a business, a client's  
19 business, that progress a relationship between the buyer  
20 and the supplier all the way through from perhaps first  
21 identification of that supplier through to the  
22 satisfaction of the contract. Some other operators in  
23 the space who provide such ERPs call this "from source  
24 to settle" or "from procure to pay", and that would be  
25 companies like SAP or Ariba or Oracle.

1 Q. Thank you.

2 Then just two final points. First of all, at the  
3 time when Achilles ran RISQS, did it assist Network Rail  
4 in any way with the distribution of safety information?

5 A. To my knowledge Achilles did provide Network Rail with  
6 reports. I understand these were sort of weekly/monthly  
7 and one of those was called "The safety bulletin". That  
8 was a list of email addresses. But that's the extent of  
9 my knowledge in that area.

10 Q. You say there was a list of email addresses. What was  
11 that list of email addresses used for?

12 A. I don't actually know, but I know that those email  
13 addresses were sent in a report, in a spreadsheet, to  
14 Network Rail, I think on a monthly basis, which were  
15 the email addresses -- their printable contact point at  
16 the supplying organisations.

17 Q. Finally, at the time when Achilles ran RISQS, obviously  
18 it showed who had passed what modules, but did it show  
19 whether somebody was actually licensed as a principal  
20 contractor?

21 A. I believe it did, and I say that in that the system that  
22 we still operate, which is relatively unchanged from  
23 when it was operated as RISQS by Achilles, includes  
24 a number of filters which end-users can use to whittle  
25 down to find suppliers who satisfy a particular

1 requirement, and in there we have filters that could  
2 narrow down and return suppliers who had been identified  
3 as having a particular licence. I'm not an expert in  
4 those licences, but the information was in the system  
5 such that it could find those that had a licence.

6 MR. WOOLFE: Thank you. That is everything I wanted to ask.

7 Cross-examination by MR. FLYNN

8 MR. FLYNN: Morning, Mr. Chamberlain.

9 A. Good morning.

10 Q. If you have your first witness statement there in tab 3  
11 and just have a look at paragraph 1. We are not going  
12 to crawl through every paragraph, do not worry, but just  
13 have a look at that one. There you say that your job:

14 "... involves working with existing and potential  
15 customers at the pre-sale stage to identify the goals  
16 and the needs of customers."

17 Are those customers what I think we have generally  
18 been calling "buyers" in these proceedings?

19 A. Generally, yes -- not exclusively. Sometimes I meet  
20 with supplying organisations, but generally, yes.

21 Q. Generally buyers. Those are the people generally for  
22 whom then you map their goals and needs to your products  
23 and services --

24 A. That's correct.

25 Q. -- as you describe in that paragraph.

1           You say that:

2           "This typically involves putting together cost  
3           proposals and technical solutions in the form of an  
4           informal or formal tender."

5           A. Yes, that is correct.

6           Q. So it is normal for buyers, possibly suppliers but  
7           particularly buyers, to tender for services from  
8           a company such as yours?

9           A. Yes.

10          Q. I was going to ask you the sort of things that a buyer  
11          might look for in a provider of supplier assurance. If,  
12          please, Mr. Chamberlain could be given bundle D and,  
13          within that, tab 8. This is a witness statement from  
14          Gemma Pearson of the RSSB. If you look a few pages  
15          in -- I will just find the page for you. Mine is not  
16          paginated, but I am looking at paragraph 30 -- I think  
17          it is page 91 in your bundle. There she is describing  
18          the contract for which RSSB tendered when they adopted  
19          the new service model of taking it in-house and  
20          contracting out the services, which I imagine you are  
21          familiar with -- that that is what the RSSB did. You  
22          recall that? You were familiar with that, were you?

23          A. I'm familiar with the RFP, yes, that was issued.

24          Q. Just to put it in context, she sets out there -- I do  
25          not think we need to go to the annex -- but she sets out

1           there in her subparagraphs (a) and (b) particular  
2           features that they were looking for for the respective  
3           lots, 1 and 2. You see that? They are by reference to  
4           KPIs, key performance indicators.

5           A. Yes.

6           Q. So they wanted to be able to measure performance in  
7           relation to lot 1 system availability?

8           A. Yes.

9           Q. You can see the sense of that?

10          A. Yes.

11          Q. You can see why that would be attractive to a buyer?  
12          Does that surprise you in any way?

13          A. I don't know why Network Rail particularly wanted to  
14          have those KPIs, but I can see that that was  
15          the requirement indeed.

16          Q. Do you find that a surprising requirement that they  
17          would be looking for an indication of system  
18          availability?

19          A. No, I don't find that surprising.

20          Q. "Supplier system response times"?

21          A. No, I don't find that response -- I don't find that  
22          surprising.

23          Q. "Help desk response times".

24          A. Again, no, that's not surprising.

25          Q. You see the others:

1            "... fix times, satisfaction surveys, supplier audit  
2            renewal contact targets and audit publication times."

3            You can see why a buyer might be interested in  
4            those?

5            A. Yes, I can see.

6            Q. Likewise in relation to lot 2, which goes to the audits:

7            "... percentage of suppliers, audited prior to their  
8            previous audit's expiry, percentage of audits carried  
9            out as booked ..."

10           I do not need to read it all out. You see it in  
11           front of you. If there is anything you find surprising,  
12           just tell me.

13           A. No, I recognise that those indeed are the requirements  
14           as set out in the RFP.

15           Q. You do not find it surprising that a buyer would be  
16           looking for those in such an RFP?

17           A. Not particularly, no. I don't find them surprising.

18           Q. Then putting it into a contract with the chosen -- or  
19           the successful tenderer, shall we say, for each of  
20           the lots, you do not find that surprising either?

21           A. No, I don't find that surprising.

22           Q. The process of providing supplier -- sorry, you can put  
23           that away, Mr. Chamberlain, thank you.

24           The process of providing supplier assurance --  
25           sorry, I will let you do that and clear your desk, as it

1           were.

2           The process of providing supplier assurance involves  
3           companies like yours gathering an enormous amount of  
4           data, does it not?

5           A. We gather the data that the buying client asks us to  
6           gather or that we have agreed with the sector is needed  
7           for them to make value -- good value and use of our  
8           service.

9           Q. It is important, is it not, that that data be kept  
10          confidential?

11          A. We do indeed keep that information confidential in so  
12          much as it's not on the public internet. Information,  
13          when supplied by the suppliers, though, is supplied for  
14          the purposes of either satisfying an assurance  
15          requirement or with an opportunity to win some business,  
16          so it is shared with the buying clients who subscribe to  
17          the Achilles service.

18          Q. Within the community, as it were, in your model?

19          A. Correct, yeah, within an Achilles community within our  
20          model.

21          Q. There are terms of the contractual arrangements for  
22          the community within which the necessary level of data  
23          protection is provided?

24          A. Yes, that's correct. There are terms for the community  
25          which are made available to the supplier prior to them

- 1 publishing their information.
- 2 Q. If you still have your first witness statement in front  
3 of you, perhaps you could just have a look at  
4 paragraph 24, page 6. Here you are  
5 talking about the TransQ Global web portal. You say  
6 that it has ..." a 'request for information' tool  
7 (called 'Additional Questions') that buyers can use to  
8 ask chosen suppliers questions specific to a, tender  
9 framework or job coming up". That is a useful function  
10 for buyers, presumably? That is why you have it there,  
11 I imagine?
- 12 A. Yes, we provide that function to our buyer clients.
- 13 Q. So it is something that buyers like to have?
- 14 A. Some buyers -- to my knowledge some buyers make good use  
15 of it, others choose not to use it. It is provided as  
16 part of the service if they wish to use it.
- 17 Q. Part of the service to subscribing buyers, as it were?
- 18 A. Yes, that is correct.
- 19 Q. I cannot go on the internet and find out who your  
20 registered suppliers are and ask them questions directly  
21 myself through your website, presumably?
- 22 A. That is correct.
- 23 Q. So if Network Rail, for example -- it does not at the  
24 moment -- if it continues not to subscribe to  
25 TransQ Global, that is a feature that it cannot use?

- 1       A. That would be correct, yeah. If they unsubscribe to  
2       the service, they wouldn't have access to that  
3       particular feature, that is correct.
- 4       Q. That generally goes to the other features that turn  
5       functionality that you have included in your portal in  
6       a desire to make it attractive to buyers and possibly  
7       suppliers, as you have already explained?
- 8       A. Yes, we have a number of arrangements with our buyer  
9       clients, but ultimately the features and functions that  
10      are available from Achilles are in almost all  
11      circumstances not on the public internet. The user is  
12      required to log-in with a user name and password to gain  
13      access.
- 14      Q. So if in some possible new world Network Rail was not  
15      a TransQ Global supplier, but was given a data-feed of  
16      some description from Achilles, that sort of additional  
17      functionality that we have just been talking about is  
18      something they would have to provide for themselves, is  
19      it not?
- 20      A. In a sort of hypothetical situation where Achilles were  
21      providing data to Network Rail, then I imagine that  
22      there would be an agreement, a contract in place between  
23      the parties, for the provision and sharing of that data.  
24      In most instances where Achilles does that, to my  
25      knowledge we would facilitate access to our live

1 service, our live portal, such that someone could get  
2 access. But if indeed the terms were that only the data  
3 were provided, then, yes, they wouldn't have access to  
4 the additional features and functions that form part of  
5 the platform, just the underlying data.

6 Q. Could you have a look at your second statement, the one  
7 in tab 6, please, and within that paragraph 5. There  
8 you are describing your current understanding of how  
9 RISQS works following the letting of the contracts to  
10 Altius and Capita.

11 A. Yes.

12 Q. At the end of that paragraph you say:

13 "With Achilles ..."

14 So if, instead of the two providers, Altius and  
15 Capita, it was a single provider, Achilles.

16 "... that would be one party in a more streamlined  
17 process. Achilles would be identifying the need for  
18 the audit, would do the audit and notify the buyer  
19 accordingly."

20 A. Yes, that is what I say.

21 Q. So you see the benefit of a streamlined process. That  
22 is a good thing in this area as far as you are  
23 concerned, is it?

24 A. In drawing the comparison, yes, I saw that there would  
25 be an efficiency there for the audit and the publication

1 of that audit to be provided by a single service.

2 Q. So you see it as importing complexity that from your  
3 point of view does not need to be there?

4 A. I don't think it would need to be complex. There are  
5 fewer parties involved, which I think makes it  
6 necessarily a little simpler, but it is -- I don't think  
7 it needs to be complicated and I assume that the current  
8 parties, so Capita and Altius, have indeed found a way  
9 to exchange that information.

10 Q. Thank you.

11 Could we go back to your first witness statement,  
12 tab 3 and paragraph 10 in that statement. You are  
13 describing, again, how you do things on your platform.  
14 In paragraph 10 you are describing the more  
15 comprehensive stage 2 questionnaire and you say:

16 "The content ..."

17 The community questionnaire content.

18 "... is devised based on Achilles' extensive  
19 experience, combined with industry best practice and  
20 feedback from buyer members. Achilles also works with  
21 individual buyers and adapts the questionnaire where  
22 necessary, in particular including buyer-specific  
23 questions."

24 So you are there describing, are you not, a sort of  
25 iterative process that you have with the buyers that you

- 1           have signed up?
- 2           A. Yes, we do operate a process whereby, based on market  
3           need or customer need, we listen to that feedback, and  
4           based on those requirements we may then evolve the  
5           service, perhaps adding questions or adding contents to  
6           meet those customer needs.
- 7           Q. You would see yourself as adding value to that process  
8           from your own experience, I think -- I mean, sorry, from  
9           the company's experience rather than necessarily your  
10          very own?
- 11          A. Yes, I think the company collectively adds value to that  
12          process through our sort of corporate knowledge and sort  
13          of corporate memory, if you like, of operating within  
14          a number of different sectors in this country and  
15          abroad.
- 16          Q. So the content of questionnaires on that sort of portal  
17          would differ as between different assurance providers  
18          depending on their level of experience and the actual  
19          experiences they have had?
- 20          A. In my experience, then the type of information that  
21          a buying organisation, one of our clients, requests,  
22          there is an enormous amount of overlap. When we talk  
23          to -- or when I talk to customers in the construction or  
24          utilities sector and previously in transport, there was  
25          a very significant overlap in the base data, the basic

1 supplier information that they wanted to see, in order  
2 to perhaps shortlist them to consider for future  
3 business.

4 Q. Moving on to paragraph 35, where I think the importance  
5 of a continuous dialogue between the buyer and  
6 the supplier assurance provider is explored. You note  
7 in paragraph 35 a contention that Network Rail is making  
8 in its defence about a specific benefit of having  
9 a single supplier assurance scheme.

10 In paragraph 36 you comment on that. You give your  
11 reaction and you say you accept that, "... facilitating  
12 timely, efficient and effective monitoring of  
13 the ongoing suitability of supplier assurance  
14 arrangements is desirable". You say, though, that it is  
15 not that difficult to achieve the same effect with  
16 multiple service providers. That is your point there,  
17 is it not?

18 A. Yes.

19 Q. Generally, throughout your witness statement, the answer  
20 to contentions of Network Rail that having multiple  
21 service -- or providers of supplier assurance could lead  
22 to technical complications and difficulties on  
23 the database front, if I can put it that way -- you  
24 generally say that these can be overcome, it is not  
25 difficult and it is not expensive. That is the general

1 thrust of your evidence, if I am not mischaracterising  
2 it?

3 A. Yes, that's correct, and if I can just add to that  
4 briefly. That's drawing on my experience over six years  
5 at Achilles where I've seen, in both the utilities  
6 sector in this country and abroad and in  
7 the construction sector, particularly in the UK, where  
8 buying organisations recognise and use more than one  
9 assurance scheme; a particular example that I cite being  
10 Lendlease, a client of Achilles, who uses our  
11 technology, but also uses assurance schemes from other  
12 construction assurance providers, and indeed there are  
13 others in the construction sector who do the same.

14 Q. Are you familiar with a project that was called  
15 Achilles Engage AP2"?

16 A. I don't recognise that specific phrase. I --

17 Q. "AP2"?

18 A. I am familiar with "AP2", yes. That was the name given  
19 to the Achilles platform 2, which was going to be --  
20 indeed is a later edition of an Achilles platform.

21 Q. The idea at the beginning was to have three of your  
22 individual platforms talking to each other, was it not?  
23 I think that is right. If I am right -- and you will  
24 tell me if I am wrong -- RISQS, UVDB, which the Tribunal  
25 has heard something about, and Building Confidence --

1 the original idea was so that they could all talk to  
2 each other and so on --

3 A. The original idea of that platform project was actually  
4 that all the data on the suppliers would be aggregated  
5 into a -- into a single place, but -- that could be  
6 portrayed as talking to one another, but ultimately  
7 for it to be aggregated.

8 Q. Your characterisation would be more accurate than mine.

9 Could we look at bundle H14, please. You have  
10 numbers in the bottom right-hand corner of the page.  
11 Could you look at 4039. It is sideways on. This is an  
12 email from Estelle Whittaker, whose title is given as  
13 "Global head of operations, marketing and  
14 transformation" at Achilles.

15 MR. WOOLFE: What was the page number?

16 MR. FLYNN: Sorry, it is 4039.

17 MR. WOOLFE: Thank you.

18 MR. FLYNN: Generally this is at a time when obviously  
19 Achilles is concerned that it is not the RISQS contract,  
20 as it were, slipping away from it. That seems to be  
21 the general message. There is some talk about  
22 relationship issues, but I do not need to go over those.

23 Just above a little indented paragraph, that  
24 says "Such a shame ...", you will see:

25 "As well as the relationship issues we cause

1           ourselves a lot of damage pushing AP2 and delivering  
2           nothing in the meantime."

3           Do you see that?

4       A. I do.

5       Q. It is fair to say, is it not, that the AP2 project,  
6           which was presented to buyers such as RISQS, such as  
7           Network Rail, as an advantage did not go smoothly?

8       A. The platform that we referred to as "AP2" was used to  
9           serve the construction community. So we moved  
10          Building Confidence buyers and suppliers to it first,  
11          and indeed we subsequently expanded that capability and  
12          offer an additional level of assurance for our  
13          construction buyers and suppliers.

14          As the strategy of the company unfolded, a decision  
15          was made to pause any further investment in development  
16          and in fact to make the existing platform where RISQS,  
17          as it was, and now TransQ Global is based. So  
18          the existing service has been invested in over  
19          the course of the last year or two and continues to be  
20          invested in.

21       Q. But at the time of that email in 2017, it had been  
22          hanging around, Achilles had promised and not delivered  
23          on it, according to Ms. Whittaker?

24       A. Yes, I don't know specifically what she is referring to  
25          there by "delivering nothing in the meantime". At the

1           time I was working in the same department that I am in  
2           now and there was certainly a lot of investment in  
3           the platform in order to transition and bring in the  
4           suppliers in our construction sector, and indeed, since  
5           then, we've set up additional communities on that same  
6           platform.

7           Q. Can we have a look at paragraph 39 -- sorry, that can be  
8           put away, that file, thank you. Then to paragraph 39 in  
9           your first witness statement. This is in a section of  
10          your statement headed "Provision of reports and data to  
11          examine trends and facilitation of inter-operability  
12          through the TransQ Global web portal". You are talking  
13          about here how information can be provided even if there  
14          is more than one provider of supplier assurance  
15          aggregating and bringing together two discrete data-sets  
16          from different operators. That is what you are talking  
17          about.

18                 As you go over the page, you say:

19                 "Ensuring that data conforms to a specification is  
20                 entirely possible, not difficult, and, in fact, done in  
21                 a number of other industries ... There are a number of  
22                 ways in which it can be done."

23                 One is, "... ETL or Extract, Transform and Load, but  
24                 better still [you say] the two or more operators can  
25                 agree and conform to a data specification standard ..."

1           Which you then describe. So that requires  
2           the data-holders, if I can call them that, to agree and  
3           conform to a specific special data specification  
4           standard that they have to agree among themselves?

5       A. Yes. This is very much like data standards that are set  
6       out in, say, the construction sector, where suppliers  
7       are assured to PAS 91, which is the publicly accessible  
8       standard 91 and, within that, safety schemes in  
9       procurement, SSIP. So there are examples of  
10      organisations agreeing to a common set of questions and  
11      data and this is akin to that.

12     Q. So if that were the way forward and that is the one you  
13     say is better than ETL, that would require RISQS and  
14     Achilles to collaborate to achieve that standard if it  
15     were just RISQS and Achilles?

16     A. If it were just RISQS and Achilles, then a collaborative  
17     approach would be one that I would recommend in my sort  
18     of capacity as a designer of solutions that are trying  
19     to achieve the right outcome for the client, but  
20     ultimately the decision would be with the client, be  
21     that RISQS or Network Rail or any other body. It would  
22     be for them to specify the key data or the data that  
23     they needed and then for service providers or providers  
24     of assurance to make a commercial decision as to whether  
25     they want to invest or have to make changes to then

- 1           satisfy that requirement.
- 2       Q.   So if there were five or ten providers of supplier  
3           assurance in that world, then they would all have to  
4           collaborate in what you see as the desirable way?
- 5       A.   I think they would all have to -- if I might  
6           recharacterise that, I would say that they would all  
7           have to conform to the standard if they wanted to take  
8           part in that marketplace. So they wouldn't have to  
9           collaborate. There are instances where Achilles has  
10          been told that we need to provide data in a particular  
11          format and then we have a decision as to whether we wish  
12          to provide it in that format or suffer any consequence,  
13          but a collaborative approach I think would be the one  
14          that would work well.
- 15      Q.   But if it were a standard then set by, say, Network Rail  
16           or the RSSB, that would be a standard that would by  
17           definition not have evolved in an evolving way, which  
18           you say is important, and benefiting from the success of  
19           a particular supplier assurance provider; it would be at  
20           a level above that, would it not?
- 21      A.   If Network Rail chose to set the standard, then we as  
22           a service provider could then seek to meet that standard  
23           or would have the liberty to not to. That would be up  
24           to them to specify the standard, I think. In my role as  
25           a solution designer, I'm interested to hear what the

1 customers' requirements are, what the outcome is that  
2 they're looking for and then to recommend a solution.  
3 But if a standard is set forth, then it's fairly black  
4 and white that, if we need to satisfy it, we need to  
5 satisfy it.

6 Q. Could we have a look at paragraph 34 in that witness  
7 statement, please, page 8. There you describe some  
8 companies providing similar services to Achilles,  
9 vendors from whom you face competition.

10 A. Yes.

11 Q. In (a) your Building Confidence service you say faces  
12 competition from CHAS, Construction Line and Altius.

13 A. Yes.

14 Q. UVDB, competitors including Altius and HICX?

15 A. Yes.

16 Q. Look at (d), FPAL -- I am just looking at the UK ones  
17 for now -- the competitors would include Helios, Altius  
18 and DeepStream.

19 A. Yes.

20 Q. So there are a few existing, as it were, UK-based  
21 competitors.

22 Could we take out, please, bundle I2.

23 Sir, I mentioned this to my friend earlier. He may  
24 not regard it as confidential and we will just have  
25 a quick look at it and make sure that we do not need to

1 go into closed session just to deal with this, but

2 I will also --

3 MR. WOOLFE: Yes, I was going --

4 MR. FLYNN: Sorry, I think Mr. Woolfe would also like to  
5 remind the witness that if we do say it is confidential,  
6 he is not to read out confidential things in open court.

7 MR. WOOLFE: I'm afraid to say I do not yet know which page  
8 it is.

9 MR. FLYNN: 2546. It is a slide pack from March 2017.

10 I cannot believe that the title is confidential, but the  
11 Tribunal sees it and Mr. Chamberlain sees what the title  
12 is. Mr. Chamberlain, if you turn over the page you will  
13 then see a list of topics that the slide pack is going  
14 to cover. You see the second indent in that list.  
15 The first one says "Market size". I cannot believe that  
16 is a confidential phrase. The next one, you see what  
17 that says?

18 A. I do.

19 Q. You do.

20 If we then go to page 551 you will see a graphic.

21 A. I do.

22 Q. In the left-hand box with a red heading, if you have  
23 a colour version in front of you, you see a category of  
24 vendors.

25 A. Yes.

1 Q. Mr. Woolfe will tell me if there is any ...

2 "Direct competitors" -- so the left-hand box refers  
3 to direct competitors, those who compete directly.

4 If you look at the next slide you will see that the  
5 direct competitors are broken down by three types of  
6 activity, and the first one is "Validated supplier  
7 accreditation".

8 A. Yes.

9 Q. If we then go to page 572, you see the same box again,  
10 and at the top of the slide let us know if you spot  
11 a competitor missing from the list.

12 Then if you turn over the page from that box, then  
13 you will see that there follow three pages of validated  
14 supplier accreditation providers, if I can put it that  
15 way.

16 If you look on page 573 and the second column is  
17 "Country of HQs", you see three names we have already  
18 mentioned, Construction Line, Helios, CHAS.

19 A. Yes.

20 Q. If you look on page 574 --

21 MR. WOOLFE: Sorry to interrupt. I think my clients do have  
22 concerns about some parts of this being read out.

23 MR. FLYNN: I'm not --

24 MR. WOOLFE: In terms of -- I would argue I'm going to have  
25 to --

1 MR. FLYNN: I am not going beyond the next two pages, if  
2 that is at all helpful.

3 MR. WOOLFE: Thank you.

4 MR. FLYNN: Have you got page 574, Mr. Chamberlain?

5 A. Yes.

6 Q. The second part of this list of validated supplier  
7 accreditation providers, two more headquartered in  
8 the United Kingdom?

9 A. Yes.

10 Q. Page 3, another two?

11 A. Yes.

12 Q. So if we total all the companies we have or have not  
13 mentioned over the last five minutes, we get to ten  
14 UK-based ones; that is correct, is it not?

15 A. I'll take your word for it.

16 Q. I am very grateful, particularly given my poor  
17 arithmetic, but I do believe it is ten.

18 Ms. Ferrier mentioned the other day a company called  
19 Avetta. Do you recognise that name?

20 A. Yeah, I do.

21 Q. That is also referred to -- and I do not need to go  
22 further, but it is referred to in this slide pack.

23 You, earlier in your evidence, referred to SAP,  
24 Ariba and Oracle. Are those in the same category of  
25 providers? I have only focused in this short bit on the

- 1           verified supplier assurance providers.
- 2           A. I would have to say that the three latter ones, SAP,  
3           Ariba and Oracle, are not in the same category.  
4           Achilles differentiates itself from some of those other  
5           operators who in fact we partner with and work alongside  
6           in that they provide the -- sort of the full suite from  
7           sourcing through to settlement or procure to pay, as  
8           they sometimes characterise it, but typically those  
9           companies do not do the assurance. So they are in large  
10          part, to my knowledge, software companies who are  
11          providing a web-delivered software application or  
12          software suite and are not then assuring the data that  
13          is provided either by a supplier or from another source  
14          is accurate or validated. So the way that we  
15          differentiate ourselves from those is that our data is  
16          validated, whereas typically theirs would not by default  
17          unless sourced from somewhere else.
- 18          Q. So they might be in a slightly different space, but we  
19          have found ten headquartered in the UK without looking  
20          any further?
- 21          A. Yes, I assume that ten is correct, yes.
- 22          Q. Thank you. I am sure it will be checked later, but I do  
23          believe it is. In that case you can put that bundle  
24          away and nerves can settle.
- 25                 Those ten, assuming it is ten, most of those are not

1           currently active in the rail sector, are they,  
2           procurement and rail supplier assurance?

3           A. I think you would probably have to ask them as to  
4           whether they consider themselves active in rail.  
5           I think some of them provide services in the space  
6           around sort of PAS 91 and SSIP, which I know can be of  
7           interest, particularly for contractors who are working  
8           in the rail industry, but I don't think they set out as  
9           specifically providers to the rail industry.

10          Q. But presumably these are all reputable companies or  
11          organisations that you recognise as competitors or did  
12          at the time, assuming they are all still operating?

13          A. I recognise most of those. I didn't recognise all of  
14          them. It's not a document that I recall having seen  
15          previously. I recognise most of those. I don't know if  
16          they're reputable or not. I assume they are.

17          Q. So if we had a world in which, let's say, most of them,  
18          if not all of them, are reputable and have the necessary  
19          accreditations and perform to the necessary standards  
20          against which they are assessed, might you think  
21          nevertheless that having new entrants not familiar with  
22          the industry could be sub-optimal from the position of  
23          the rail industry or particularly from Network Rail's  
24          perspective?

25          A. I don't -- I'm not entirely sure that I agree with or

1 fully recognise "sub-optimal". If I look at comparative  
2 sectors and comparative instances where multiple  
3 operators come together -- providers of a service come  
4 together and agree a standard, then I think there are  
5 examples which give me confidence that, whilst there  
6 would indeed be more providers of the service, it  
7 doesn't present any great headache or insurmountable  
8 issues.

9 So if I might just briefly refer to an example  
10 I gave from the education sector. There are a number of  
11 examination bodies who have agreed a data standard for  
12 the exchange of information between the place where  
13 the test or the exam is carried out and the body that  
14 than awards the grade, and this is the Joint  
15 Qualifications Council. I think there are something  
16 like eight different providers of qualifications service  
17 or awarding bodies who have agreed very comprehensive  
18 data standards for the movement of that data between, as  
19 I say, where the test is taking place and where  
20 the grade or award is made. So I think, yes, there  
21 would be more providers, but I don't think it would  
22 create a significant barrier, providing a data  
23 specification is set out and agreed and adhered to.

24 Q. Your example of the educational field, Mr. Chamberlain,  
25 that is an area that might affect life chances, but if

1           they get it wrong and they do not recognise -- they do  
2           not do the mutual recognition properly, it is not going  
3           to affect lives, is it?

4           A. I would agree that it would not affect lives, but I did  
5           feel that it served as an example of where eight  
6           competing organisations who are providing exam services  
7           and content had agreed a specification for the exchange  
8           of data.

9           Q. At paragraph 12 of your second witness statement you  
10          talk about -- you are responding to what Mr. Cooke has  
11          had to say, and you say:

12                    "As the previous service provider ..."

13                    About a third of the way down the paragraph.

14                    "... the level of risk associated with using  
15                    Achilles is lower than a brand-new entrant which staff  
16                    members have never worked with before."

17                    So you do recognise that new entry heightens risk,  
18                    does it not?

19           A. I think, upon reflection, the choice of the word "risk"  
20           was not ideal. I think the point that I was making  
21           there was that there would be a level of familiarity and  
22           was really setting out to respond to Mr. Cooke's point  
23           that it would increase the workload of the team in terms  
24           of potentially training and familiarisation. So it was  
25           more that, having probably experienced the Achilles

1 service before, there would be a level of familiarity.

2 Q. If we go back to paragraph 3 in your first witness  
3 statement, you say there that you have multiple  
4 technology platforms, one of which is the Accelerate  
5 platform, which hosts a number of communities which you  
6 list out.

7 A. Yes.

8 Q. Where is Building Confidence in that part of your world?

9 A. Building Confidence is not hosted on that particular  
10 Achilles technology platform.

11 Q. In paragraph 52 of that witness statement you are  
12 talking about really the future, I think:

13 "Medium-term ... enhancements to ... TransQ Global  
14 ... include a major service upgrade (internally referred  
15 to as 'Project Titan') ..."

16 Various no doubt useful and nice-to-have  
17 improvements are listed there, including at (h) an  
18 "enhanced API gateway to support improved data exchange  
19 from one system to another"

20 So that is, as I understand it, something you are  
21 working on at the moment suggesting that data exchange  
22 from one system to another could do with some  
23 improvements and needs an enhanced API gateway.

24 A. In fact, we do already operate a number of APIs, and  
25 the Building Confidence community, which is a community

1 of buyers and suppliers to UK construction, are starting  
2 to benefit from an API that we have released fairly  
3 recently and is now -- into what we call "business as  
4 usual" or it is into live operation and delivery with  
5 Lendlease, and since the launch of that API we've  
6 subsequently had requests to consume, which is  
7 the phrase used -- to consume that API, so to pull  
8 supplier construction data from Achilles from a further  
9 four or five clients, including people like Mace and  
10 Sir Robert McAlpine and Kier.

11 So we do have an API. We have another API that is  
12 in operation with Naturgy in the utilities sector in  
13 Spain, where data is provided directly to their  
14 implementation of Jaggaer or Bravo, as it used to be  
15 called, so there is another API that is in existence.

16 The enhanced API gateway that I refer to there will,  
17 over the course of time, see the amount of data that is  
18 available in the open standard be expanded. So at the  
19 moment we provide data for our Spanish utilities company  
20 and to UK construction and the enhancement will be in  
21 terms of the breadth of information that is offered in  
22 response to market demand.

23 Q. Thank you.

24 Could Mr. Chamberlain please be given bundle I4.

25 Page 1198 in that. Well towards the back of the bundle,

1 Mr. Chamberlain.

2 Sir, I had passed Mr. Woolfe a note indicating that  
3 I was going to this document. He says it is a highly  
4 confidential document and I am not therefore going to  
5 read it out, but I will just point the witness to one or  
6 two paragraphs. The alternative is to go into a closed  
7 session for five minutes. That is in your hands.

8 THE CHAIRMAN: Well, I would rather not do that if we can --

9 MR. FLYNN: Shall we see how we get on?

10 THE CHAIRMAN: -- proceed without referring to the detailed  
11 contents of the document.

12 MR. FLYNN: It is really just a matter of pointing out  
13 a couple of things that are said in it and I can do that  
14 by indicating where they are said.

15 Mr. Chamberlain, do you have the document there  
16 at 1198?

17 A. Yes.

18 Q. Just so we see the title, "Executing the Titan strategy  
19 and programme business case".

20 If you go to page 1201, that's the summary of  
21 the document. You see the first paragraph there shows  
22 an issue that the Titan Project is intended to address.

23 A. Yes.

24 Q. I am not able to ask you much in the way of questions on  
25 it, but you see that there is an issue and Titan is

1           there to deal with it. The preferred approach --  
2           I think I can refer to that -- is set out in the third  
3           paragraph.

4           A. Yes.

5           Q. Then there are some financial implications which we do  
6           not need to go into.

7                     If we go to page 1204, under a heading, "Executing  
8           strategy", you will see what the plan is. I think some  
9           elements of this may actually have been mentioned  
10          already, but I do not need to go over it. But what it  
11          is saying is that the current plan will, if you look at  
12          the end of the second paragraph, move away from  
13          the current situation and you see what is said there.

14          A. I do.

15          MR. FLYNN: As it is a document regarded for the moment as  
16          a confidential one, I am not going to ask you to say  
17          anything more than you see what it says there and  
18          I cannot really ask you to comment further on it than  
19          that.

20                     That being so, sir, I have no further questions for  
21          Mr. Chamberlain. I have no further questions for  
22          Mr. Chamberlain in those circumstances, sir. Thank you.

23                                 Re-examination by MR. WOOLFE

24          MR. WOOLFE: Mr. Chamberlain, I just had a couple of  
25          questions for you. You were asked some questions about

1 paragraph 39 of your first witness statement and you  
2 were asked some questions about collaborating with  
3 possibly a number of different suppliers or providers  
4 regarding a specification or standard, and then you were  
5 asked whether, if the standard was set by Network Rail  
6 or the RSSB, would that not by definition be a standard  
7 which does not evolve with the benefit of feedback, and  
8 you spoke a bit about how you would engage over that.

9 In your answer, were you referring to engaging on a data  
10 standard or engaging on content of an audit standard?

11 A. In fact the answers that I gave I think could be  
12 applicable to both. My -- at the time, I was referring  
13 to the data standard, thinking about the questionnaire  
14 and the data that we collect, but I see no reason why  
15 that -- a standard could not also be set out for the  
16 audit protocol.

17 Q. Then, again, when you were being asked about comparisons  
18 that you drew with the education sector, you were  
19 talking about a standard applicable there. Was that  
20 a data specification or an audit standard?

21 A. That was a data specification.

22 MR. WOOLFE: That is everything I wanted to ask. Thank you,  
23 sir.

24 THE CHAIRMAN: Thank you.

25 Questions from THE TRIBUNAL

1 MEMBER 3: Just a couple of questions. In relation to  
2 the -- I think it is UVDB relationship or use by --  
3 is it Thames Water and UK Power Networks and  
4 National Grid, for those three buyers, is UVDB the only  
5 scheme that those buyers specified?

6 A. I don't actually know the answer to that question.

7 MEMBER 3: Okay.

8 So you were not involved in discussions about the  
9 solutions that Achilles was providing to those three  
10 buyers?

11 A. Not to those specific buyers -- no, I do attend the UVDB  
12 working group occasionally or the community, but not  
13 directly with those individual buyers.

14 MEMBER 3: Thanks.

15 MR. WOOLFE: In that case, we are all done. Thank you,  
16 Mr. Chamberlain.

17 (The witness withdrew)

18 I think Mr. Flynn is going to move into calling his  
19 next witness, but would that be a good moment take  
20 a break for the shorthand writers?

21 THE CHAIRMAN: Yes, it probably would be.

22 (11.35 am)

23 (A short break)

24 (11.50 am)

25 MR. FLYNN: Sir, our next witness is Mr. Cooke.

1 MR. BILL COOKE (sworn)

2 Examination-in-chief by MR. FLYNN

3 MR. FLYNN: Please could you give bundle D to Mr. Cooke.

4 A. Thank you.

5 Q. Turn to tab 5, Mr. Cooke, please. Do you see a document  
6 there, "Witness statement of Bill Cooke"?

7 A. I do, yes.

8 Q. If you turn to the back of the tab there is a signature.  
9 Is that your signature?

10 A. It is.

11 Q. So this is your witness statement. Is there anything  
12 you wish to clarify or correct in it?

13 A. No.

14 Q. Then I think Mr. Woolfe will have some questions for  
15 you.

16 Cross-examination by MR. WOOLFE

17 MR. WOOLFE: Thank you, Mr. Cooke. Could you turn in your  
18 statement to paragraph 19(a). You refer there to -- you  
19 say they must "... be subject to either of the following  
20 audits to become a primary sponsor ...", and in 19(a)  
21 you refer to a trackside sponsor. You say they:

22 "... must have audited and verified compliance to  
23 the RISQS IMR module, Sentinel and Safe Systems of Work  
24 Planning audits."

25 I just want to clarify. It is not right, is it --

1           you do not have to have the Safe System of Work Planning  
2           audit in order to be a Sentinel sponsor?

3           A. If you want to go trackside you do.

4           Q. My understanding was that a principal contractor needed  
5           to have safe systems of work --

6           A. Yeah.

7           Q. -- but that merely to be a Sentinel sponsor one does not  
8           have to have that.

9           A. Yeah, okay, I agree.

10          Q. Thank you.

11                 At paragraph 20 you say that:

12                 "All audits for the Sentinel scheme are carried out  
13                 by RISQS. Network Rail does not conduct any additional  
14                 audits."

15                 Can I just ask you to turn up -- if you could be  
16                 handed volume G1, please. I just wanted to confirm with  
17                 you what role Network Rail does have in relation to  
18                 the Sentinel scheme, but I am not going to disagree with  
19                 you that the audits are carried out by RISQS.

20                 If you look at the first page of that document at  
21                 44, first of all you will see the paragraph second from  
22                 bottom talking about the rules --

23           A. Can you say that number again for me, please?

24           Q. Sorry, it is tab 2 in bundle G, page 44. You will see  
25           the second paragraph from the bottom referring to

1           the rules associated with the delivery of track safety  
2           training.

3       A.   Yeah.

4       Q.   Are you familiar with the rail training accreditation  
5           scheme rules?

6       A.   Only -- not to a great degree.

7       Q.   Do you know who audits providers of track safety  
8           training?

9       A.   That's RTAS, under the RTAS scheme.

10      Q.   So that's not RISQS?

11      A.   No.

12      Q.   Then in terms of the role of Network Rail, if I could  
13           ask you to turn to, on page 58, a section on "Reporting  
14           alleged breach of the Sentinel scheme rules", am I right  
15           that a breach of the Sentinel scheme rules could be  
16           reported either in respect of an individual or in  
17           respect of a sponsor?  Is that right?

18      A.   Yes.

19      Q.   If you look at the third paragraph from the bottom,  
20           starting, "Where the infrastructure maintainer ..."

21      A.   Yeah.

22      Q.   If I could ask you to read that for a moment.  (Pause)

23           So even though RISQS carries out all the Sentinel  
24           sponsor audits, Network Rail still retains a role,  
25           does it not --

1 A. To investigate it.

2 Q. -- investigating the application of the Sentinel scheme  
3 rules?

4 A. Yes, absolutely.

5 Q. Thank you.

6 If I ask you to turn to page 60 and section 5.5 --  
7 let me just check if this is the right section -- that  
8 sets out, does it not, the procedure for a formal review  
9 of the primary sponsor?

10 A. Yeah.

11 Q. Then if I could ask you to turn to -- there is  
12 appendix C, which is on page -- I apologise for this --  
13 it starts on page 70, and you will see a table there  
14 saying "Breach outcome guidelines, individuals", and we  
15 can see, can we not, the things that can lead to an  
16 individual being suspended?

17 If you go over the page to 71, you should see  
18 appendix C, "Breach outcome guidelines, sponsors". Just  
19 looking at the table, it is right, is it not, that  
20 Network Rail can effectively suspend a sponsor for  
21 breach of the Sentinel scheme rules?

22 A. Yes.

23 Q. Thank you.

24 So in terms of understanding what that means,  
25 Mr. Cooke, where a buyer is looking in RISQS, if they

1 want to know that a supplier actually has approved  
2 Sentinel status, they are allowed onto track, they  
3 cannot simply rely upon the supplier having passed  
4 the RISQS module, can they? They also need to know that  
5 it has a current valid Sentinel authorisation?

6 A. Yeah.

7 Q. That information is held by Mitie, is it not?

8 A. Mitie, yes.

9 Q. Is that information provided by Mitie to RISQS, do you  
10 know?

11 A. I don't know.

12 Q. Within Network Rail, from a safety point of view, if you  
13 want to know a supplier's Sentinel status, do you look  
14 in RISQS or do you look in Mitie?

15 A. I would look in RISQS.

16 Q. You would look in RISQS. You would not go into  
17 the Sentinel system and log in --

18 A. I can do both. I can do both.

19 Q. At paragraph 21 of your statement you are discussing  
20 the benefits of having a central Sentinel system, and as  
21 I understand it this is the benefits of having a single  
22 system across multiple infrastructure providers; is that  
23 right?

24 A. Yeah.

25 Q. Just looking at the first one, essentially --

1 at 21(a) -- that is the central recording of shifts to  
2 prevent a worker from working on two bits of  
3 infrastructure and working too many hours?

4 A. Yeah.

5 Q. That is right.

6 Now, that is not what RISQS does, is it? RISQS does  
7 not do anything like that?

8 A. That's what Sentinel does.

9 Q. That is what Sentinel does, yes, exactly.

10 But also this is recording in a sense operational  
11 information about what an individual is actually doing  
12 in real-time. That is not what RISQS does, is it?

13 A. That's real-time. My understanding is the correlation  
14 between what RISQS would do is just part of their audit  
15 process. The question set they would have was to make  
16 sure there is a management process in place that  
17 captures the same issues that the Sentinel scheme rules  
18 would apply as well so that they would correlate.

19 Q. Then at 21(b), central recording of drug and alcohol  
20 tests.

21 A. Yes.

22 Q. But again, even if you had multiple providers of  
23 supplier assurance, this kind of information would still  
24 be centrally recorded within the Sentinel database,  
25 would it not?

- 1 A. Yes.
- 2 Q. Now if I can ask you to turn to paragraphs -- actually,  
3 one point first. Paragraphs 24 and 25 of your  
4 statement, you use the term "safety-critical" --
- 5 A. Yes.
- 6 Q. -- a number of times.
- 7 A. Yes.
- 8 Q. As I understand it, "safety-critical" has a technical  
9 definition, does it?
- 10 A. Well, for me "safety-critical" is the -- our business is  
11 safety-critical, that if we get safety wrong,  
12 the business is critically affected.
- 13 Q. Thank you, because another meaning I have seen  
14 attributed to it is that it is an activity which -- you  
15 are engaged in an activity which, if it goes wrong,  
16 could have safety implications.
- 17 A. Yeah, that's exactly -- isn't that what I just said?  
18 I'm sure I just said that. That's the part of  
19 the business we're in. If it goes wrong safety-wise,  
20 then critically we're affected by it, whether it be to  
21 persons or business.
- 22 Q. I am just -- because in the sentence you are using it in  
23 now it seems to refer to a business-run activity, but  
24 here you refer to --
- 25 A. It's both.

1 Q. -- safety-critical items at 24, a safety-critical nature  
2 of the audit and then a safety-critical scheme, and I am  
3 just checking --

4 A. Yeah.

5 Q. -- is that how you would normally use  
6 the term "safety-critical"?

7 A. Yeah.

8 Q. At paragraph 30 you start an explanation of the benefits  
9 of a single supplier assurance scheme and the section  
10 that then follows. You refer to the Sentinel scheme  
11 again at 31 and you talk about freezing the site access.  
12 Now, in terms of the audit failure notices, how do you  
13 receive the audit failure notices from Mitie?

14 A. I get an email.

15 Q. That is received from Mitie?

16 A. Yeah, from Mitie.

17 Q. From ...?

18 A. From Mitie, yes.

19 Q. I think, just back into paragraph 26, you refer to  
20 notices received from -- well, you say:

21 "... template audit failure notices that are issued  
22 when a RISQS supplier fails its audit."

23 Are those the same audit failure notices that you  
24 are talking about?

25 A. Yeah, yeah.

1 Q. And again, those failure notices are issued by Mitie?

2 A. I must just clarify that. The email address it comes  
3 I believe is RISQS orientated.

4 Q. Right.

5 A. Yes, I'll correct that statement.

6 Q. Okay.

7 Could the witness be handed bundle E5 and actually  
8 you can put away G1 for now. At page 1747 I think you  
9 say this is a template for an email that you receive, so  
10 where there are hashtags and then "Supplier ID, hashtag  
11 name", that presumably would be filled in. Do these  
12 look like the kind of emails --

13 A. That's it, yes.

14 Q. -- that you receive? And those are the kind of emails  
15 you say you receive about once a month?

16 A. Yeah, once a month -- probably the last seven or eight  
17 months I've had probably one a month, yeah.

18 Q. Thank you. You can put that file away now.

19 Then returning to paragraph 31 of your statement,  
20 you say:

21 "Receiving these notices from a single point is  
22 a considerable benefit to me because Mitie knows that  
23 all users of Sentinel rely on RISQS audits and it is  
24 therefore able to rely on the audit failure  
25 notifications ..."

- 1 A. Yes.
- 2 Q. So you receive these notices from a single point, that is  
3 RISQS, but then does Mitie receive them from that point  
4 as well?
- 5 A. Yeah, well, Mitie will be given the same information to  
6 take down the competence.
- 7 Q. So the point you are getting at is what is necessary is  
8 that Mitie receives the notices and knows how to action  
9 them?
- 10 A. Yeah, for me it is -- the reason that I've mentioned  
11 that there is it's a benefit to me to receive it from  
12 one single source.
- 13 Q. But in a sense what really matters, is it not, is that  
14 Mitie receives the information and then Mitie freezes  
15 access and that will stop somebody who is unsafe going  
16 on-track and that is the --
- 17 A. Yeah.
- 18 Q. As we were going on before, if you want to have a single  
19 source of saying who is entitled to be on-track, you can  
20 look at Sentinel, can you not?
- 21 A. Yeah.
- 22 Q. Then you say:
- 23 "There is no doubt about whether it is appropriate  
24 to freeze a supplier's Sentinel access upon receipt of  
25 a Sentinel audit failure notice ..."

1           I would suggest to you that even if there were  
2 multiple providers, there would not be any doubt, would  
3 there, if there's an audit failure notice, their access  
4 needs to be frozen?

5       A. That would still happen. If -- the process is that if  
6 it needs to be frozen, then it gets frozen, and I have  
7 to make sure that that happens and at the moment it does  
8 happen.

9       Q. Yes, at the moment, but in the situation where there was  
10 more than one provider of supplier assurance and  
11 somebody was -- there was more than one person auditing  
12 Sentinel -- the Sentinel module, when somebody fails  
13 a Sentinel audit module, information gets sent to Mitie,  
14 the appropriate action would be to switch off access,  
15 would it not?

16      A. That's the current process, yeah.

17      Q. I think you said -- so then at 32 you say:

18           "I receive at least one of these audit notices for  
19 Sentinel sponsors per month."

20           You say "at least", so how many would you say  
21 a year? 12? 15?

22      A. If I was to add them up, I'd probably say it's probably  
23 about 16 at the moment. I've had two this period, I had  
24 two last period, but then one per period before that, so  
25 it fluctuates a little.

- 1 Q. But a little bit more than one a month, you would say?
- 2 A. Yes.
- 3 Q. Even if you had more than one audit provider, you  
4 wouldn't expect the number of failures to increase  
5 substantially, would you?
- 6 A. I wouldn't -- I wouldn't expect it to increase  
7 substantially. If it was to start to increase, then  
8 I would instigate my own review to try and understand  
9 why the increase, as you would do with any trend  
10 analysis.
- 11 Q. You say you find their frequency and detail  
12 reassuring -- it gives you assurance. Is that because  
13 you have a sense that that is about the right number?
- 14 A. Yeah, it's because it's constant. I don't see any peaks  
15 and troughs that are in there that gives me a cause for  
16 concern at the moment.
- 17 Q. We are talking about annual audits, are we not, not  
18 spot-checks?
- 19 A. Yeah, but even with that -- I'm including spot-checks as  
20 well, should there be any increase. If I found in  
21 December I had 15 audit failures, I would then obviously  
22 worry that there could be a quality issue and then just  
23 double-check what the reasons were behind that spike.
- 24 Q. Do you think that many of that, say, 16 a year -- that  
25 many of those are false positives, people being failed

1           when they should not be?

2       A. No.

3       Q. If an organisation fails the audit, it either rectifies

4           the faults on a following --

5       A. Yeah.

6       Q. -- audit or it is thrown out of the system?

7       A. Or it's thrown out of the system, yeah.

8       Q. So if you have a supplier who was audited, say, by RISQS

9           and fails, then rectifies it and is passed by RISQS, if

10          six months later it is audited by another provider, say

11          Achilles, there is no reason to think it is more likely

12          to fail that one, is there?

13       A. No, if it's the same company that's audited by RISQS and

14          then six months later audited again -- did you say by

15          RISQS again or by --

16       Q. By another provider.

17       A. Oh, by another provider. I wouldn't necessarily expect

18          to see a different outcome there and then, so long as

19          they followed the same question set and protocols that

20          go with the audit.

21       Q. Okay. Then at page 78 of your statement, so the very

22          last page -- this is part of paragraph 34(c) -- you say

23          in the paragraph -- that is not the one that runs on

24          from the top of the previous page, but the one that

25          starts, "Should the number of audit failure notices

1 significantly increase ...", and you refer to a risk of  
2 developing apathy.

3 A. Yeah.

4 Q. If you are looking at, say, 16 a year, about one  
5 a month, the number of fails would have to increase very  
6 substantially to get to the level of causing apathy,  
7 would it not?

8 A. Well, I would say it would depend on how you determine  
9 the word -- the terminology of "apathy". It is that --  
10 you know, for me it's that if we see an increase,  
11 whether it be a double -- as an example, from 16 to 32,  
12 you would ask yourself what's the rationale behind it  
13 and I would do a detailed investigation myself to see  
14 what it was. If it's a case of the apathy in itself may  
15 be -- it's a recurring theme with someone that is saying  
16 they always fail this so therefore they'll fail again in  
17 my question set, the worry for me would be if it went  
18 the other way. If I was having several failures -- if  
19 I had several failures and then it started to tail off,  
20 then I would get worried.

21 Q. Okay. So that's a different concern to the one you have  
22 got here. So if there was a significant decrease in  
23 audit failure notices, you would --

24 A. Yeah, well, as -- and if there was an increase, it would  
25 tell me that perhaps the quality is either -- either

1           wasn't right previously and is now -- so I don't like to  
2           see the spikes. It generally tells me that something's  
3           not quite right.

4        Q. So as somebody within Network Rail with responsibility  
5           for safety and looking at this, if you had a situation  
6           with, you know, multiple auditors of the Sentinel module  
7           and one was failing quite a number of people and one was  
8           not failing anyone, you would look into that, would you  
9           not?

10       A. I would -- if I had cause for concern at the time, then  
11         yes, I would, yes.

12       Q. You would notice if all the audit failure notices came  
13         from one party and not from the other, would you not?

14       A. Yeah, or similarly if there was a trend in particular  
15         areas that were either failing or passing regularly, we  
16         would often use accident investigations to delve deeper  
17         into the root cause and as part of that analysis we  
18         would look to see when companies had had their previous  
19         audits, look at what the detail was of the audits, etc,  
20         etc, to see if we could build a picture up.

21       Q. If I could take you back to paragraph 33 of your  
22         statement, you refer there to the benefit of efficient  
23         interaction between the supplier assurance scheme and  
24         any relevant technical and on-site audits.

25       A. Mm-hm.

1 Q. I think you say, in the next sentence, what matters is  
2 that Network Rail knows what has been audited and to  
3 what standard. So in terms of what has been audited,  
4 you know what has been audited because it is set out in  
5 a document in the RISQS audit protocols?

6 A. Yes, absolutely.

7 Q. How do you know to what standard RISQS is auditing it?

8 A. There's the set -- the actual standard question set  
9 itself is defined as to which questions we asked or  
10 which questions we were required to ask, but the quality  
11 of the in depth questionnaire or questioning is the part  
12 for me that could be variable. So if I'm asked,  
13 you know, "Do you have a system to provide such and  
14 such?", and the answer is "Yes", show it to me and they  
15 show me a front page, "Yeah, very good"; whereas some  
16 auditors would say, "Very good, thank you", and go 1, 2,  
17 3, 4 and look at the quality of the data being  
18 presented. So it could be a difference in the auditing  
19 quality.

20 Q. So you are talking about the quality with which an audit  
21 of management standards is carried out?

22 A. Yeah, it could well be, but the point in principle that  
23 you mentioned earlier is that for the correlation  
24 between the Network Rail assurance check and  
25 the Sentinel's check is that I need to understand that

1 if we're undertaking a prime general inspection and  
2 the issues around PPE had come up within the inspection  
3 and then you link it back to, well, this company was  
4 RISQS audited only two or three months ago, let's go and  
5 see the relevant question set that related to how they  
6 provide and manage PPE to their staff and see if there's  
7 a -- how come this was so wrong and how come that was so  
8 right and then do some further investigations there.  
9 That's the reason why that's mentioned.

10 Q. As long as you -- you are saying the two requirements of  
11 that are you know what it is that the audit looks at and  
12 how well it looks at it essentially?

13 A. Yeah.

14 Q. Those are the two issues that you need to have  
15 guaranteed?

16 A. Yes.

17 Q. Thank you.

18 In terms of the standard that you expect RISQS  
19 audits to operate to, have you heard of a standard  
20 called ISO 17021?

21 A. No.

22 Q. You are not familiar with that.

23 Are you aware that it is included as a condition of  
24 the contract between RISQS and Capita that it audits to  
25 that standard?

- 1 A. No idea.
- 2 Q. Then if I could take you to -- could you just be given  
3 bundle B, please. If I could ask you to turn to tab 4  
4 of that. If I could ask you to -- it is the witness  
5 statement of Mr. Will Nelson. If I could ask you to  
6 turn to paragraph 46 which begins on page 62. He says  
7 at 46(a) -- he refers to a defined auditor competency  
8 management system being in place. Are you familiar with  
9 auditor competency management systems?
- 10 A. No.
- 11 Q. But is that the kind of thing that you would expect --
- 12 A. I would expect anyone providing an auditing service on  
13 our behalf to be competent to undertaking auditing and that  
14 they're governed by a professional body on  
15 accreditation, as we are with safety.
- 16 Q. What we can see, however, is in addition to being  
17 accredited -- that is at paragraphs (I) and (II) -- we  
18 can see over the page that auditors have to have signed  
19 a confidentiality and anti-canvassing agreement, briefed  
20 and accept an anti-bribery policy, and there is  
21 a process for licensing as well, for observing audits,  
22 a licensing event and a peer-observed audit. Are you  
23 familiar with any of these as a means of ensuring audit  
24 quality?
- 25 A. No.

- 1 Q. So if I was going to suggest to you that it could be  
2 guaranteed what is audited and to what standard by  
3 requiring an assurance provider to audit matters  
4 specified by Network Rail --
- 5 A. Yeah.
- 6 Q. -- And listing all the Sentinel scheme rules, and to an  
7 appropriate standard of auditing as set out in an  
8 appropriate --
- 9 A. Which is what I would expect.
- 10 Q. It is what you would expect. Thank you.
- 11 Then at paragraph 34(d) over the page --
- 12 A. Is this 34(d) of my statement?
- 13 Q. Yes, sorry, of your statement. I should have said ...
- 14 This is -- perhaps if you start at the top of  
15 paragraph 34. It is on the previous page, page 77. You  
16 say:
- 17 "If Network Rail were forced to recognise multiple  
18 assurance schemes, this would cause a considerable  
19 number of deficiencies."
- 20 A. Yeah.
- 21 Q. Perhaps if I turn over the page and begin with (d), you  
22 say:
- 23 "There would be little or no consistency between  
24 various providers of the schemes as the question sets or  
25 audit approach may be different across suppliers."

1 I can see that if there was no consistency as  
2 regards question sets or audit approach, that would be  
3 a problem. What I am going to suggest to you is that  
4 Network Rail could achieve consistency as to question  
5 sets or audit approach simply by specifying that as  
6 a condition of recognising an assurance scheme.

7 A. I would comment that we have many, many processes and  
8 standards and requirements for our suppliers to achieve  
9 and we expect full achievement. However, unfortunately  
10 I've got an accident book that tells me that we often  
11 get things wrong and there is -- there's a failure in  
12 the system, and with that failure, when you look at it,  
13 it's -- we have a set of rules, everyone should be  
14 following to a set of rules to a certain agreed standard  
15 and yet we don't always do it, we don't get full  
16 compliance. And assurance is just the same as accident  
17 investigation, as in product acceptance. It's -- we can  
18 have all the processes and systems in place with key  
19 requirements for everyone to follow and yet there is no  
20 mechanism for ensuring that that is constantly followed  
21 or applied.

22 Q. So I can take your comment, but your point here is one  
23 saying there would be no consistency between providers  
24 as to question sets or audit approach and, just on that  
25 narrow point, it is right, is it not, that Network Rail

1           could insist upon consistency of question set and audit  
2           approach?

3       A.   We often do insist on consistency, but we still don't  
4           receive it.

5       Q.   But even if you have consistency -- there can be  
6           accidents even if there is consistency, can there not?

7       A.   Yeah, I'm struggling a bit with your point.

8       Q.   If I can just go on within the same paragraph, you say:

9                       "Network Rail could not be assured of the audit  
10                      quality and assurance standards without having taken  
11                      some proactive steps to investigate."

12                     But at the moment Network Rail does not audit risks,  
13                     does it?

14      A.   No -- or not to my knowledge.

15      Q.   So you do not, in fact, undertake checks that they are  
16           applying these audit standards consistently?

17      A.   Not in my team.

18      Q.   Not in your team?

19      A.   No.

20      Q.   You are head of corporate workforce --

21      A.   Safety.

22      Q.   -- safety, technical and engineering, so it is not  
23           likely to be carried out -- that kind of safety audit,  
24           making sure that what they do is good for safety, is not  
25           likely to be carried out by somebody else, is it?

1 A. I would imagine that if someone's undertaking an audit  
2 for a safety requirement as part of one of our  
3 processes, then that will be quite clearly defined as to  
4 who does it and when they do it.

5 Q. But you are not aware of somebody from Network Rail  
6 going and auditing? You are not aware of somebody going  
7 and doing that?

8 A. Not on the quality of the current RISQS auditors and  
9 auditing their skills.

10 Q. So at the moment Network Rail relies upon the fact that  
11 the providers of audit are contractually required to  
12 follow certain standards, do they not?

13 A. I would believe so, yes.

14 MR. WOOLFE: Those are all the questions I had, sir.

15 Thank you very much, Mr. Cooke.

16 A. Thank you.

17 MR. FLYNN: I have no further questions for Mr. Cooke. I do  
18 not know if the Tribunal has.

19 THE CHAIRMAN: No. Thank you, Mr. Cooke.

20 A. Thank you.

21 (The witness withdrew)

22 MR. FLYNN: Our next witness is Mr. Blackley, sir.

23 MR. KENNETH BLACKLEY (sworn)

24 Examination-in-chief by MR. FLYNN

25 MR. FLYNN: There is some water in front of you,

1           Mr. Blackley.

2           A. I am a little bit hoarse.

3           Q. Could he please have bundle D. In that bundle, could  
4           you turn to tab 2, please, Mr. Blackley. Do you see  
5           there a witness statement of Kenneth Blackley?

6           A. Yes.

7           Q. At the end of the tab, page 30, is that your signature,  
8           Mr Blackley?

9           A. It is.

10          Q. That is your first witness statement in these  
11          proceedings?

12          A. It is.

13          Q. You have told me you have a couple of small corrections  
14          or clarifications to make in relation to that --

15          A. Yes.

16          Q. -- witness statement.

17          A. Yes. Throughout this witness statement I use  
18          the terms "RISQS board", "RISQS committee" and "RISQS  
19          Advisory Council", depending on the evidence I was  
20          looking at at the time. These terms are  
21          interchangeable, as far as I'm concerned.

22          Q. There is one other I think on this witness statement.

23          A. Yeah, within -- I don't know the number, but within  
24          the witness statement I use the term "BravoNR" as  
25          Network Rail's end-to-end procurement system.

- 1 Q. It is paragraph 18.
- 2 A. A better description is "Network Rail's end-to-end  
3 contract management system", which is more embracing,  
4 but it incorporates procurement.
- 5 Q. The Tribunal will have that point.
- 6 If you then turn to tab 10 within this bundle,  
7 please, do you see there a document, "Second witness  
8 statement of Kenneth Blackley"?
- 9 A. Yes.
- 10 Q. And again on the last page a signature; again your  
11 signature?
- 12 A. That's my signature.
- 13 Q. Again, you wanted to make a small correction to this  
14 witness statement?
- 15 A. Yes. In paragraph 25(c) on page 110 I've said:  
16 "... Ms. Cooklin who is not responsible for  
17 procurement ..."
- 18 I think that should say "... Ms. Cooklin who is not  
19 directly responsible for procurement ..."
- 20 Q. Perhaps you could just explain the point so the Tribunal  
21 understands it.
- 22 A. Susan Cooklin is the managing director of route  
23 services. Within her directorate the responsibility for  
24 procurement falls to the contracts and procurement  
25 director, who's Clive Berrington, who are referenced in

1 paragraph 1 of my first witness statement.

2 Q. Very good.

3 A. Susan Cooklin also -- because it is an RSSB tender --  
4 had nothing to do with the RSSB tender.

5 Q. Thank you. Subject to those corrections, those two  
6 witness statements stand as your evidence --

7 A. That's correct.

8 MR. FLYNN: -- in these proceedings, Mr. Blackley.

9 Thank you. Then Mr. Woolfe will have some questions  
10 for you.

11 Cross-examination by MR. WOOLFE

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

13 A. Good morning.

14 Q. If you could just have your first witness statement  
15 open, so the one at tab 2. You say you are head of  
16 commercial process and governance. So is my  
17 understanding right, that you are basically most, in  
18 your day-to-day job, interested in the use of RISQS for  
19 the purposes of procurement? Is that why you are  
20 interested in it?

21 A. I'm interested in the continuity of having a supplier  
22 qualification system for Network Rail to use.

23 Q. Sorry, the continuity of ...?

24 A. A supplier qualification system.

25 Q. Okay.

1       A. So I don't have direct day-to-day usage of RISQS, but  
2       I am interested in RISQS in terms of the way it's set up  
3       and the fact that Network Rail utilise RISQS both from  
4       a procurement point of view and a safety point of view.

5       Q. Again, just in terms of the uses to which you see RISQS  
6       being put, you pick that up at paragraph 6 of your  
7       witness statement on page 23. You there say that:

8               "Network Rail uses RISQS in two ways."

9       At 6(a) you refer to it being used, "... to ensure  
10      that high standards of supplier assurance are maintained  
11      across tier 1 contractors as well as those indirect  
12      tier 2 and tier 3 contractors who are deploying staff  
13      onto its network".

14      Just to check, from a procurement point of view you  
15      are not interested in people who are not part of  
16      Network Rail's supply chain, are you? So for instance  
17      people who may need Sentinel authorisation to get onto  
18      the track to deliver services to a train operating  
19      company, for example, you are not concerned with that --

20      A. When I referred to "tier 1 suppliers", I'm talking about  
21      those suppliers whom Network Rail directly contract  
22      with, and in addition to that, there are those suppliers  
23      who bring people onto the network, working trackside,  
24      hence Sentinel rules, and also bring plant onto  
25      the network, hence the POS rules.

1 Q. That is right, but there are those people who you  
2 contract with, so construction firms and the like, who  
3 carry out maintenance works and they might be your  
4 tier 1 contractors, but I just want to check this is  
5 right, that people may also require Sentinel  
6 authorisation to supply services to people who do not  
7 supply you at all, for instance a train-operating  
8 company?

9 A. Yeah, we don't use RISQS for that purpose. So any  
10 tier 1 supplier or any other supplier, for example  
11 the train-operating companies or the free operating  
12 companies, they would make their own supplier assurance  
13 arrangements.

14 Q. In 6.1(a) you are referring to what is necessary to get  
15 Sentinel authorisation in particular.

16 Then you turn at 6(b) to talk about from  
17 a procurement perspective and the use of RISQS as  
18 a qualification system. I just want to explore with you  
19 a bit how that is distinct from what you say at 6(a).

20 Now, in terms of what you say at 6(a) about ensuring  
21 high standards of assurance, can you be passed bundle  
22 G1, please, and can you go to tab 2 of that bundle,  
23 the Sentinel scheme rules. You will see on the first  
24 page a heading saying "Purpose and scope". Let's see  
25 what this says. The second paragraph there:

1           "Network Rail's safety, technical and engineering  
2           are the custodians of the Sentinel scheme rules and are  
3           responsible for keeping them up to date."

4           So it is not your team who has responsibility for --

5           A. No.

6           Q. Okay.

7           A. When I refer to -- or when this refers to "safety,  
8           technical and engineering", they are effectively  
9           a customer of contracts and procurement.

10          Q. In the next paragraph it says:

11                 "The rules outlined in this document are mandatory  
12                 for all parties involved in putting people to work  
13                 safely on Network Rail or Transport for London's managed  
14                 infrastructure."

15                 So the purpose of this document, is it not, is to  
16                 make sure that the companies who put people to work  
17                 on-track have the relevant systems in place to make sure  
18                 that is done safely?

19          A. Yes.

20          Q. This document does not -- you have to have passed this  
21                 scheme in order to be someone who supplies Network Rail  
22                 with trackside services, do you not?

23          A. Yes.

24          Q. But in itself this document does not determine who  
25                 Network Rail procures from, does it? It is merely

1 a qualification that they have to have?

2 A. That's correct.

3 Q. It's about giving authorisation.

4 Now, if you can go to page 61 at rule 6.1, you will  
5 see in the second paragraph the requirement to be  
6 registered with RISQS in order to be a sponsor. Then  
7 the effect of that, as I understand it, is that  
8 the sponsor issues cards to their employees that can be  
9 used.

10 If you look at paragraph 6(a) of your statement for  
11 a moment, I suggest to you that what you say at  
12 the start of 6(a) is correct but it is not complete,  
13 is it, because this is not just about assurance for  
14 Network Rail's tier 1, tier 2 and tier 3 contractors;  
15 this is about authorisation for anybody who wants access  
16 to either Network Rail's infrastructure for any purpose,  
17 whether or not to supply Network Rail, and it is also  
18 about having access to TfL's infrastructure, which is  
19 nothing to do with supplying Network Rail at all.

20 That's right?

21 A. Yeah, TfL are entirely separate.

22 Q. But they rely on the Sentinel rules, do they not?

23 A. I believe so, yes, and from a Network Rail point of view  
24 I thought I covered that in paragraph 6(a), where I say,  
25 "... as well as those indirect tier 2 and tier 3

1 contractors who would employ staff onto this network".

2 Q. I am just trying to explore two points: first of all,  
3 the Sentinel scheme rules do not just apply to tier 1,  
4 tier 2 and tier 3 contractors, they also apply to  
5 anybody who is not contracting with you for the supply  
6 of services directly or indirectly, but simply needs  
7 access to your network to supply other people; that is  
8 right, is it not?

9 A. Anybody needing access to -- any personnel needing  
10 access to our network trackside must be covered by  
11 the Sentinel scheme rules.

12 Q. So, for example, if you had somebody who needed  
13 trackside access to do some work at a station that was  
14 operated by one of the train-operating companies, for  
15 example, they would need to have Sentinel authorisation  
16 if they needed to go trackside?

17 A. If they were being -- if Network Rail were carrying out  
18 the work via one of our tier 1s, we would require them  
19 to be Sentinel approved.

20 Q. Yes, but if in this case they might need access to your  
21 network to supply somebody else other than you, that is  
22 right, is it not? That happens sometimes?

23 A. If they're working on our network, they would be covered  
24 by Sentinel. If they are working on, let's say, someone  
25 else's infrastructure, that wouldn't be through

1 Network Rail. In TfL's case, they do get specifically  
2 mentioned and they are specifically referenced within  
3 the Sentinel rules.

4 Q. Okay. Finally, just because somebody is  
5 Sentinel-assured, it does not necessarily mean that  
6 Network Rail will contract with them for anything,  
7 does it?

8 A. No --

9 Q. If I have got Sentinel assurance, it does not guarantee  
10 --

11 A. -- Sentinel is a layer in the supplier qualification  
12 process.

13 Q. Then can you go to tab 6 of that same bundle. There you  
14 have the on-track plant operation scheme. If I could  
15 just ask you, on that first page, 144, there is  
16 a standard number in the top right-hand corner. It  
17 says "NR". That stands for "Network Rail", does it not?  
18 Then "L2", which I think means it is a level 2 standard.  
19 Then you have a four-letter code, "RMVP". That stands  
20 for "rail-mounted vehicle and plant"; is that right?

21 A. I believe so.

22 Q. So does that designate which group within Network Rail  
23 owns or controls that standard?

24 A. I believe this is -- this is owned by the safety,  
25 technical and engineering group, which is not covered in

- 1           that reference number.
- 2       Q.   Again, this infrastructure plant manual, of which this  
3           forms part, this is explicitly about the control of  
4           safety risks, is it not?
- 5       A.   Yes, concerning plant, whether that plant's owned by  
6           Network Rail or owned by our suppliers.
- 7       Q.   It is not as such about procurement strategy?
- 8       A.   No it's more to do with managing safety risk.
- 9       Q.   If I could take you to page 149, using the numbering at  
10           the bottom right-hand corner, you can see at 1 that  
11           the purpose is to control certain risks. Then the scope  
12           is set out at point 2. The second paragraph  
13           under "Scope" says:
- 14                    "This document applies to organisations carrying out  
15                    OTP operations on NRMI and Network Rail projects."
- 16           So it applies to people carrying out on-track plant  
17           operations on Network-Rail-managed infrastructure even  
18           if they are not contracting with Network Rail, does it  
19           not?
- 20      A.   It says "Network Rail projects", so it could be that  
21           they are contracting with a supplier on a Network Rail  
22           project.
- 23      Q.   They could, but it also says if they are carrying out  
24           on-track plant operations "... on Network Rail managed  
25           infrastructure". So if for any reason someone needs to

1           put plant -- I think the definition is within  
2           3 metres of the track. Is that the definition that is  
3           used for ...?

4       A. That's not one I've come across recently.

5       Q. Okay.

6           But if for some reason you need to put plant onto  
7           infrastructure, you need to be authorised through this  
8           irrespective of who it is who is actually employing you?

9       A. Correct.

10      Q. For example --

11      A. Can I go back to your previous question, when you said  
12      3 metres? Normally it's within the line-side  
13      boundaries. If someone's within the line-side  
14      boundaries, then it's classified as being on the  
15      infrastructure in terms of track safety.

16      Q. So, for example, if somebody needed to get within those  
17      boundaries to repair a platform on a station or  
18      something like that, they would need this kind of  
19      authorisation? They need to be safe on the track.

20      A. If they were planning to use on-track plant to do that,  
21      to lift (unclear), for example, they would.

22      Q. Thank you.

23           Then at page 150, under the second sentence -- well,  
24      the first sentence says that it needs to be carried out  
25      by an approved provider. Then it says:

1           "POS providers are approved by the POS review  
2 panel."

3           Where does the POS review panel sit? Who are they?

4       A. I don't know personally, but I would imagine it's  
5       somewhere within the safety, technical and engineering  
6       part of the business.

7       Q. So what this on-track plant standard is about again is  
8       the terms on which approval is granted by Network Rail;  
9       that is right, is it not?

10      A. It's setting a requirement for approval to take place  
11      before we allow people to put the plant on the  
12      infrastructure.

13      Q. Merely having passed the on-track plant module within  
14      RISQS does not in itself guarantee you any work from  
15      Network Rail, does it?

16      A. It doesn't guarantee any work, no. It's only a sign  
17      that the supplier is competent to be able to undertake  
18      that activity and put plant on our infrastructure.

19      Q. But I am right, am I not, that somebody who wants to  
20      provide on-track plant needs to both pass the -- I think  
21      the "POS module" is what it is called within RISQS --

22      A. Yes.

23      Q. -- but then separately needs to be approved by  
24      the Network Rail POS review panel; that is a separate  
25      step. That is right, is it not?

1 A. I wasn't aware of it until you read it out there.

2 Q. Well, I think if you look at the points on that page,  
3 there are a series of requirements set out. Point 8 is  
4 that they are Network-Rail-approved through RISQS. Then  
5 if you look on page 152, at 5.1 there is a requirement  
6 to apply a certain requirement and have passed assurance  
7 requirements of POS qualification.

8 Then can I ask you to jump to page 162. You will  
9 see, under 7, "Scheme assurance arrangements", there is  
10 a requirement for management system audits, which  
11 I think is what RISQS checks. But then there is,  
12 at 2 -- under 7.1, so 2, "Minimum requirements for  
13 technical audits", that refers to:

14 "The technical audit protocol shall be determined by  
15 Network Rail's head of plant and T&RS."

16 A. Mm-hm.

17 Q. Then there are some provision for on-site audits, are  
18 there not?

19 So there is a separate -- merely being RISQS --  
20 having passed the RISQS module for on-track plant does  
21 not of itself qualify you even to apply on-track plant  
22 to Network Rail you have to go through a further step of  
23 technical auditing, do you not?

24 A. POS provide the management systems part of that audit to  
25 make sure the system and a supplier who perhaps owns

1 the plant has all the management systems in place to  
2 maintain it, operate it, etc.

3 Q. Finally, if I ask you to turn back to tab 5, we have  
4 the principal contractor licensing scheme. If I could  
5 ask you to turn to page 121, this sets out the purpose  
6 of the standard, which is about verifying  
7 capability to discharge certain duties. At scope,  
8 "this standard ..." -- it sets out various things.  
9 I would just like you to note (c):

10 "... describes how PCs will maintain the validity of  
11 their licence, certificate or letter of compliance."

12 Then over the page on page 122, the definition of  
13 a "Principal contractor licence", which is the second  
14 one up from the bottom. We have the full and  
15 the provisional licence. It says that that is a formal  
16 document issued to indicate that the supplier has  
17 the management systems required to discharge the duties  
18 of a principal contractor and that these have been  
19 verified via a site audit. It goes on to say:

20 "The status of these documents is held within the  
21 RISQS-nominated audit platform."

22 I just want to check with you, a principal  
23 contractor licence is a separate document issued by  
24 Network Rail --

25 A. I believe so.

1 Q. -- and it is not sufficient merely to have passed  
2 the RISQS safe system of work planning module in order  
3 to get --

4 A. The RISQS module is almost like -- it's big building  
5 blocks. So the RISQS module is the base building block,  
6 to which you then have other layers on top, such as a  
7 planned operations scheme, central planned delivery of  
8 safe work, etc.

9 Q. Then it says:

10 "The status of these documents [the principal  
11 contractor licence] is held within the RISQS nominated  
12 audit platform."

13 So once it has been internally licensed within  
14 Network Rail, that information gets placed by  
15 Network Rail into the RISQS platform; is that right?

16 A. These questions are a level of detail which probably don't  
17 fall with the contracts and procurement department.  
18 There is a principal contractor licensing department  
19 which fell under my previous colleague Gillian Scott's  
20 remit.

21 Q. So I am going to ask you in a few moments how one goes  
22 about checking that on a day-to-day basis, but just to  
23 check where we are on each of those schemes -- we looked  
24 at the Sentinel scheme, the on-track plant and  
25 the principal contractor scheme, and I just want to

1 confirm with you that in each case we have a requirement  
2 to have a RISQS module, but then a separate layer of  
3 authorisation from Network Rail or Sentinel. So in  
4 the case of the on-track plant scheme and the principal  
5 contractor scheme, there were additional checks of  
6 technical audits and site checks that have to be done by  
7 Network Rail and then an authorisation or a licence is  
8 issued. In respect of the Sentinel scheme, having done  
9 the RISQS module is enough to get started, but then  
10 there is a layer of investigation, if necessary. So in  
11 each case you have a -- it is a separate question  
12 whether or not you are authorised under each of those  
13 schemes and whether or not you have passed the RISQS  
14 module; that is right, is it not?

15 A. Again, you're asking a level of detail which was  
16 actually undertaken by an entirely different department  
17 to contracts and procurement.

18 Q. Okay, but in terms of -- when you are doing procurement,  
19 you need to know that somebody has been authorised to  
20 the relevant standard, do you not?

21 A. I do.

22 Q. So if you want to check that somebody can do work  
23 trackside, it is not enough merely to check they have  
24 passed the Sentinel audit; you need to make sure they  
25 actually have current and valid Sentinel status, do you

- 1 not?
- 2 A. The first step is making sure they've actually passed  
3 the RISQS, you know, industry minimum requirements  
4 audit, followed by the relative questions asked by RISQS  
5 relative to the scheme in question.
- 6 Q. You know, you are trying to get some people together to  
7 do some work and you need the person who does the work  
8 to be Sentinel-authorized at the end of it, what I was  
9 going to say to you is it is not enough, is it, merely  
10 that this person has passed the Sentinel audit? You  
11 also need to know they currently have a live, valid  
12 authorisation in the Sentinel system, do you not?
- 13 A. I believe so, but the question would have been better  
14 asked of the person who is in charge of that scheme.
- 15 Q. Okay. Similarly, if you want to have somebody do some  
16 work with plant, you need to know they have a valid  
17 authorisation for plant, not merely that they have  
18 passed the on-track plant module?
- 19 A. Again, it's a question of the level of detail which is  
20 relative to the department who wants to put plant on  
21 that. My interest is we make sure we have the relative  
22 question sets for -- within (unclear) RISQS so that  
23 they're actually establishing those questions at  
24 the outset based on management systems in place by our  
25 suppliers who wish to put people on-track or plant

- 1 on-track or plan work on our infrastructure.
- 2 Q. I just want to understand. You are concerned with  
3 procurement generally, are you not --
- 4 A. Yeah.
- 5 Q. -- in your job?
- 6 So, I mean, the first stage of procurement is  
7 qualification -- it might not be the first stage, but  
8 the first stage at which you start to contact with  
9 suppliers, you are trying to make sure that you have  
10 people who can do the work?
- 11 A. Who are competent to carry out the work.
- 12 Q. But what I am suggesting to you is that if you want  
13 somebody to carry out on-track plant work, it is not  
14 enough to have checked they have passed the RISQS  
15 module; you need to check they have a current  
16 authorisation from the team --
- 17 A. Yes, they're qualified -- yes, they're qualified under  
18 the POS scheme.
- 19 Q. Yes, exactly. That is what you would need to check, is  
20 it not?
- 21 A. That check has to be carried out, yes.
- 22 Q. Similarly you need to check that somebody has a valid  
23 principal contractor licence as well?
- 24 A. Yeah.
- 25 Q. That would be verifying information which is actually

- 1 produced by Network Rail, is it not?
- 2 A. There is a Network Rail department that actually  
3 administers the POS scheme, but I don't know what  
4 detailed questions they ask in addition to RISQS.
- 5 Q. When you are starting the sort of procurement process,  
6 the qualified suppliers, you get a list of them, you --  
7 where do you compile your list of qualified suppliers?  
8 Would you do that within Bravo?
- 9 A. No, the -- effectively the qualified suppliers is part  
10 of the RISQS scheme, so if Network Rail type in a RICCL  
11 code, then there would be -- a list of suppliers for  
12 that particular RICCL code would appear on the screen  
13 and that would be the starting point for the  
14 procurement.
- 15 Q. Within that it would indicate if they had a full valid  
16 Network Rail on-track plant authorisation?
- 17 A. It would be indicated where they have -- whether they  
18 are qualified to undertake that work.
- 19 Q. Similarly, if they were qualified as a principal  
20 contractor with a full principal contractor licence?
- 21 A. I believe so.
- 22 Q. Okay. That licensing information is information that  
23 would come from Network Rail to RISQS, is it not?
- 24 A. I believe so.
- 25 Q. Certainly when Achilles were running RISQS, what

1           happened was they received an email from Network Rail  
2           giving that information and they would record it in  
3           the RISQS database, and that is the kind of thing that  
4           would happen, is it not?

5       A.   I can't say that was exactly what happened, but I guess  
6           it was communicated in some shape or form into the  
7           system.

8       Q.   So turning back to your statement at paragraph 6(a),  
9           what we have been exploring -- and I am sorry this is at  
10          quite some length, but I just need to make sure this is  
11          right.  So at 6(a) we had this -- you need to check that  
12          people are -- have certainly capabilities and they are  
13          authorised and that RISQS is part of that.  That is  
14          essentially it.  But ultimately it is Network Rail,  
15          certainly in the case of on-track plant and the  
16          principal contractor scheme, who ultimately decide  
17          whether somebody is authorised and in the case of  
18          Sentinel they can investigate afterwards if they need  
19          to?

20      A.   Yeah.

21      Q.   Now, in terms of paragraph 6(b), the use of Network Rail  
22          as a qualification system, you say:

23                 "It is an efficient way for Network Rail to approach  
24                 the market to establish a supplier's expression of  
25                 interest against a specified product code structure."

1           So Network Rail would -- it would publish a call for  
2           expressions of interest; is that how it would work?

3       A.   So the qualification system (unclear) works is that, to  
4           avoid Network Rail having to publish notices in  
5           the European journal for every single procurement,  
6           the RISQS administrator would publish a qualification  
7           system notice against a general list of codes and that  
8           alerts the marketplace to the general opportunities that  
9           would be coming up, therefore allowing the contractors  
10          or suppliers to express their interest and be considered  
11          for works against the codes which they select.

12       Q.   Okay.  So that is therefore in respect of specific  
13          projects?

14       A.   No, that's very general -- very high level and very  
15          general.

16       Q.   What I am trying to get to is, as I understand it, what  
17          Network Rail would have to do is publish a qualification  
18          systems notice in the Official Journal, saying that it  
19          is going to use RISQS for this purpose.  Is that how it  
20          works?

21       A.   Well, that's already established that -- one of  
22          the avenues open to infrastructure managers like  
23          Network Rail is we are able to use a qualification  
24          scheme to publish the qualification system notices on  
25          behalf of -- whether it's Network Rail or the buyers,

1           which actually makes the procurement more efficient.  If  
2           we didn't do that, we would have to -- as I say later on  
3           in my witness statement, we would have to place far more  
4           OJEU notices, and once you're into placing individual  
5           OJEU notices for projects, that can then take a time  
6           period between 15 and 30 days to actually get to  
7           the point where you've established expressions of  
8           interest.  By using the qualification systems notice,  
9           effectively that work's already been done once, which  
10          then gets you off to -- your expression of interest  
11          already established.

12         Q.  What I would like to do is actually just look at what  
13           I think is a qualifications systems notice with you, one  
14           that is published in the Official Journal.  (Handed)

15                 It says:

16                 "Qualification system utilities.

17                 "This notice is a call for competition."

18           Then it has the RSSB details set out there.  I think  
19           if you jump to page 3 of 6 -- you are familiar with  
20           these kind of documents, I take it?  You are used to  
21           seeing OJEU notices?

22         A.  Yeah.

23         Q.  So under section (vi), "Complementary information",  
24           "Additional information", it says:

25                 "The organisations that subscribe to RISQS as

1 clients and therefore have the ability to source  
2 suppliers using the information within are ..."

3 Then we have a long list --

4 A. Yes.

5 Q. -- of people who are presumably buyers within --

6 A. That effectively is listing the buyers who may procure  
7 under this qualification system notice.

8 Q. Network Rail is listed as one of them.

9 Is that an example of the kind of notice that gets  
10 placed by RISQS on your behalf? This is the kind of  
11 thing you are talking about?

12 A. It is. This one seems quite short, but nevertheless,  
13 it's still an example.

14 Q. If we can look at, on the second page, II.2.4, it says:

15 "This notice announces the existence of  
16 a qualification system for the railway industry pursuant  
17 to which the utilities, and other buyers, listed in  
18 Section VI.3 below ..."

19 The ones we saw:

20 "... can purchase services falling within  
21 the CPV codes listed in ... Section II ..."

22 Just to help the Tribunal, can you explain what  
23 CPV codes are?

24 A. Whereabouts are you in that paragraph?

25 Q. Sorry --

- 1 A. So "CPV" stands for "common procurement vocabulary".
- 2 Q. Because it is a set of codes maintained by the EU,  
3 I think, is it not --
- 4 A. Yes.
- 5 Q. -- to designate services?
- 6 It says who the qualification system is operated by  
7 and what it includes, what the coding structure is and  
8 so forth. It is right, is it not, that any contractor  
9 who was monitoring the official journal for procurement  
10 opportunities who knew what CPV codes they could  
11 offer -- it might be many -- all sorts of things --
- 12 A. Mm-hm.
- 13 Q. -- running all sorts of maintenance services, or  
14 whatever it may be -- they would note that those  
15 CPV codes were being used and they would know that this  
16 is a qualification system to which they can contract, or  
17 apply if they want certain kind of work. That is  
18 basically what this does, is it not?
- 19 A. That's correct. In addition, it's also common for  
20 a scheme such as RISQS to notify the suppliers that such  
21 a notice has been published, thereby bringing it to  
22 their attention so they don't -- they don't miss  
23 the opportunity.
- 24 Q. But this notice is published, I think we saw on  
25 the first page, without knowing what all these CPV codes

1           relate to. This relates to repair and maintenance  
2           services in London, at the very top of the page.

3           A. Yes.

4           Q. So that is the kind of level at which these  
5           qualification notices would be issued?

6           A. This one's maybe slightly more unusual than the more  
7           common type.

8           Q. Okay.

9           A. The more common type is even more general than this and  
10          would publish a whole list of codes with the titles and  
11          the codes against them and thereby be at a much  
12          higher -- more high level than this. So it could be  
13          stating the code that would be the last for the next  
14          financial year, so that any work being done under these  
15          codes, they would be alerted to reply, go through  
16          the RISQS process, thereby alert Network Rail and other  
17          buyers that they are available for -- for selection.

18          Q. But still the situation is that having received this  
19          notice, any service provider or works provider, whatever  
20          it may be, would be quite clear that this is  
21          the qualification system to be used for supplying these  
22          listed people with --

23          A. Yes.

24          Q. -- these kind of services.

25                 Now, if you go to paragraph 15 and 16 in your

1 statement --

2 THE CHAIRMAN: Shall we put this somewhere?

3 MR. WOOLFE: That is a good point, sir. Is there still room  
4 at the end of bundle G4?

5 THE CHAIRMAN: Yes.

6 MR. WOOLFE: It is only a slim document, so that would be  
7 ...

8 At paragraphs 15 and 16 of your statement you refer  
9 to the publication by RISQS of qualification systems  
10 notices in the OJEU which allow Network Rail to compile  
11 tender lists for over-threshold contracts, so ones that  
12 are big enough --

13 A. It allows any buyer listed in that notice effectively to  
14 use the benefits of that notice.

15 Q. Exactly, and they can do it without issuing any further  
16 calls for competition?

17 A. Correct.

18 Q. We see what you say at paragraph 16 as well.

19 Last point before lunch. If you go to  
20 paragraphs 112 and 113 of your statement, so right at  
21 the end -- not right at the end, it starts on page 44.  
22 I think what you are trying to say in paragraph 112 --  
23 actually at 113. You say:

24 "If Network Rail were to recognise multiple supplier  
25 assurance schemes, there is also risk that it might lead

1 to an inadvertent breach of the UCRs."

2 That would be "utility contract regulations".

3 Then there is a sentence which I am personally  
4 struggling with, which is:

5 "In a multi-scheme environment, I envisage multiple  
6 scheme providers each having to publish QSNs in order to  
7 attract suppliers to register on their scheme."

8 But fundamentally it is Network Rail who decides  
9 whether to issue itself a qualification system notice or  
10 whether somebody is entitled to issue a qualification  
11 system notice on its behalf. That is right, is it not?

12 A. We ask the RISQS scheme provider to issue qualification  
13 system notices on our behalf.

14 Q. But some other scheme provider who was not -- could not  
15 go off and issue a qualification scheme notice without  
16 your permission, could they?

17 A. I think when I was writing this what I was interested in  
18 is how other schemes would actually get supplier -- or  
19 notify suppliers that their scheme existed and hence  
20 they could apply to that other scheme.

21 Q. What we have been exploring earlier, there is  
22 a difference, is there not, between on the one hand  
23 somebody auditing a supplier of services against  
24 the Sentinel scheme rules so that we know they have met  
25 that required standard and being authorised by

1 Network Rail to carry out that kind of audit. That is  
2 one thing. It is an entirely different thing, is it  
3 not, whether or not a scheme provider is authorised to  
4 publish a qualification system notice on behalf of  
5 Network Rail?

6 A. They are different things, yes. But my concern, to be  
7 compliant with the utilities contract regulations,  
8 you know, we've got an obligation to be -- to comply  
9 with the EU treaty principles, so therefore we've got to  
10 establish a way of actually creating the fair treatment  
11 and being able to alert suppliers to the --  
12 the procurement opportunities on offer.

13 MR. WOOLFE: Okay. I think that point that Mr. Blackley has  
14 just raised will take quite a while to do, so that might  
15 be a convenient moment to break for lunch.

16 (1.01 pm)

17 (Luncheon adjournment)

18 (2.04 pm)

19 MR. WOOLFE: Now, Mr. Blackley, before lunch we covered  
20 the difference that you were drawing at paragraph 6 of  
21 your witness statement between assurance for the purpose  
22 of authorisation and use of RISQS as a qualification  
23 system.

24 Then I had taken you to paragraph 113, and I think  
25 what I had just put to you was that it was Network Rail

1           who decides whether or not to authorise a system as  
2           a qualification system and it would not have to  
3           authorise anybody it did not want to. I think you  
4           referred to the issue about discrimination that in fact  
5           you raised -- you raised it in fact at paragraph 112 of  
6           your witness statement. You refer to Network Rail's  
7           duties under its network licence. If I can just take  
8           you to that. It is in bundle E3, if you could be handed  
9           bundle E3, please.

10           The network licence starts, for everybody's note, at  
11           page 1099. So if you notice, there are some big numbers  
12           in the bottom right-hand of each page and some smaller  
13           numbers. The smaller numbers are the bundle numbers and  
14           those are the ones I am going off. You will see the  
15           network licence granted to Network Rail Infrastructure  
16           Limited. Do you spend a lot of your time looking at  
17           Network Rail's licence?

18           A. No.

19           Q. So it is not something you sort of essentially concern  
20           yourself with on a day-to-day basis?

21           A. Absolutely not.

22           Q. Then at page 1139, that is the provision -- it is the  
23           non-discrimination provision:

24           "Except insofar as ORR may otherwise consent,  
25           the licence-holder shall not, in its licensed activities

1 or in carrying out any other function contemplated by  
2 this licence, unduly discriminate between particular  
3 persons or between any classes or descriptions of  
4 persons."

5 So do I understand you to be saying your concern  
6 would be that in a situation where there are multiple  
7 scheme providers who can audit that somebody has passed  
8 the Sentinel module or can audit that somebody has  
9 passed the POS module, that by choosing one of those  
10 scheme providers to be its qualification system,  
11 Network Rail might be unduly discriminating between  
12 the scheme providers?

13 A. No, (inaudible) that paragraph, what I had in mind was  
14 that Network Rail would have to treat all scheme  
15 providers equally, so therefore all scheme providers may  
16 be entitled to operate the scheme in the same way as  
17 the adjacent scheme provider, ie be in a position to  
18 publish the qualification system notices to attract  
19 suppliers to join their scheme because, without that,  
20 how else would suppliers know a scheme was in operation  
21 and that they could respond to a particular scheme  
22 provider?

23 Q. I am going to suggest to you that in a sense -- we  
24 covered the difference between Achilles being allowed to  
25 audit suppliers against, for example, the Sentinel

1 module, so they have passed the module --

2 A. When I prepared the witness statement, I was looking at  
3 the basis of Achilles' requests for their scheme --  
4 you know, not just the audit part of the scheme, but the  
5 provision of the IT part of the scheme as well.

6 Q. Right. Well, what Achilles is challenging in these  
7 proceedings are the provisions in the Sentinel scheme  
8 rules that requires the audit to be provided by RISQS  
9 and the provisions in the plant operation scheme rules  
10 to require it to be provided by RISQS.

11 So what I am suggesting to you is that if you have  
12 a situation in which Achilles, as well as RISQS, is  
13 authorised to audit people against the Sentinel scheme  
14 rules for the purposes of determining whether or not  
15 they are Sentinel-authorised, that would not require  
16 Network Rail to authorise Achilles as its qualification  
17 system, would it?

18 A. Not specifically, but I'm still wondering how  
19 the supplier gets onto the Achilles scheme versus how  
20 the supplier gets onto the RISQS scheme. So how would  
21 Achilles be alerted to the fact that it would be them  
22 carrying out the audit versus someone else?

23 Q. Well, Achilles would be able to recruit suppliers on  
24 the basis that it is authorised to carry out necessary  
25 audits, so it gets them to be Sentinel-authorised --

- 1       A. Yeah, but --
- 2       Q. Sorry -- and that supplier might come and use Achilles,  
3       but that is a separate question, is it not, from whether  
4       or not Achilles would be authorised as a qualification  
5       system for Network Rail? But as we have seen,  
6       a qualification system is something that is published in  
7       respect of a particular category of works or services,  
8       and Network Rail would publish a qualification system  
9       notice in respect of whatever category of works or  
10      services it wanted to let out that would specify RISQS  
11      or, indeed, if it wanted, Achilles -- but it would  
12      specify RISQS as its qualification system, and then it  
13      would be perfectly clear to contractors, would it not,  
14      which one they --
- 15      A. So where I am coming from in this paragraph is, because  
16      Network Rail is obliged to comply with the utilities  
17      contract regulations, that requires us to publish in an  
18      open and transparent way, via the EU procurement rules,  
19      the opportunity that exists for procurement. If we  
20      don't do that via an OJEU notice and we do that via  
21      a qualification system, if our qualification system  
22      notice currently points to RISQS, then all suppliers who  
23      would be responding to the qualification system notice  
24      would respond to RISQS.
- 25      Q. Yes.

1       A. How else would a supplier know to go to another or  
2       alternative scheme unless that alternative scheme also  
3       was able to publish a qualification system notice? So  
4       that's where I was coming from with those paragraphs.

5       Q. Certainly I think we are operating from a shared  
6       understanding that a supplier, in responding to  
7       a qualification system notice, wants to know where  
8       the qualification system is and they will go to that.

9       Now, Achilles could also operate as an assurance  
10      system for other buyers in the industry, could it not,  
11      not just for Network Rail?

12     A. Yes.

13     Q. On that basis, Achilles might approach other buyers, not  
14      Network Rail, and these other buyers may say, "We  
15      want -- we are happy to accept Achilles' assurance  
16      because we can see that Achilles can assure people as  
17      being authorised under Sentinel", and they could sign up  
18      suppliers and buyers on that basis, could they not?

19     A. Yes, but I'm only concerned on answering on behalf of  
20      Network Rail.

21     Q. So if we turn to paragraph 112 of your statement --  
22      I think we will deal with the utilities product point  
23      separately -- you were saying there, I think, as  
24      I understood it, that Network Rail might be in  
25      a situation where you have multiple scheme providers,

1 all of whom could do the necessary auditing, and  
2 Network Rail might be unduly discriminating if it only  
3 chose one of them to be its qualification system. Is  
4 that what you were saying?

5 A. Yes, insofar as it would have to treat each scheme  
6 provider equally.

7 Q. So it would be discriminating against them for  
8 Network Rail to allow them to carry out a Sentinel audit  
9 but not to allow them to act as a qualification system?  
10 That is what you are thinking?

11 A. I don't believe we're discriminating because, for  
12 example, the RSSB tender makes it kind of equal  
13 treatment of suppliers, proportionality, transparency  
14 and non-discriminatory, insofar as Network Rail have  
15 published the entirety of their requirements via that  
16 tender document and therefore we are not -- we are not  
17 suggesting that this scheme should be treated any  
18 differently depending on who the provider is.

19 Q. But at the moment, the way Network Rail is running  
20 things, alternative scheme providers like Achilles are  
21 not allowed to carry out Sentinel audits or act as  
22 a qualification system, so how is that -- how would it  
23 be discriminatory --

24 A. But Achilles had the ability to respond to the tender  
25 issue of the RSSB and tender competitively against any

1 other provider in the marketplace. So, for example,  
2 when you talk about RISQS, the rail industry supplier  
3 qualification scheme, whether it's Achilles using their  
4 Link-Up product or Link-Up TransQ or any other product  
5 they've got or whether it's Altius using their Exigo  
6 product, those providers are using platforms and product  
7 which they have in order to provide the RISQS service.

8 Now, what I'm saying is that Network Rail are laying  
9 all their requirements on the table via our  
10 specification requirements to allow any supplier that  
11 provides any system or has the ability to undertake  
12 audits to respond to that one entity, to use their  
13 products to provide the RISQS system.

14 Q. Okay, so I think your point is two things: one is equal  
15 treatment, if you like, between the underlying providers  
16 of services, being construction services or whatever it  
17 might be; yes?

18 A. Equal treatment whether it's the actual provision of  
19 the system or provision of the audits.

20 Q. Okay, but I think at 112 you seem to be making a point  
21 about undue discrimination between providers.

22 I understood that to mean providers of supplier  
23 assurance services; is that right?

24 A. That's correct.

25 Q. Okay.

1           But if you had two -- no, maybe more -- but say you  
2           have two scheme providers in the market, say you have  
3           RISQS and TransQ and say both are authorised as being  
4           able to do audits, in terms of deciding which one you  
5           wanted to use as a qualification system, you would have  
6           a choice, would you not? You could procure the service  
7           of being a qualification system either from RISQS or  
8           from TransQ; that is right, is it not?

9           A. I don't -- I don't view it that way at all. I see they  
10          would have to give both those providers the equal  
11          opportunity to go out to the marketplace via  
12          qualification system notices so that the suppliers would  
13          have a choice as to who they want to respond to.

14          Q. But, generally speaking, when you procure services for  
15          your business, you do not see your non-discrimination  
16          requirement under the licence as requiring you to  
17          procure services from all service providers who are  
18          available in the market, do you?

19          A. No. No, what we need to do in the marketplace is  
20          actually publish the opportunity so that that  
21          opportunity is available to all to respond to and  
22          competitively tender against.

23          Q. What I am suggesting to you is, if you were looking to  
24          procure the service of being a qualification system, you  
25          could go out to a tender and you could do it

1 competitively as between TransQ and RISQS, but at the  
2 end of it you would pick one of them, would you not?

3 A. Correct I would pick one of them, and I explain that in  
4 a lot more detail because I believe that's what the RSSB  
5 tender actually did. It provided the specification  
6 requirements to the marketplace so that they got  
7 competitive bids so we could pick one. The reason we  
8 picked one -- it actually goes back to custom and  
9 practice, going back to the start of the scheme in,  
10 you know, 1997 through to 2018, where, if I look  
11 backwards in terms of Network Rail's requirements, those  
12 requirements were satisfied by Achilles providing  
13 the system and Achilles providing the audit  
14 requirements. When I look forward as to whether  
15 Network Rail's requirements were going to change in any  
16 way, I don't see any need to change from a single  
17 system, which is what we've had for 20 years, and I also  
18 don't see the need to change away from one provider of  
19 audit services, which is what we've had for the first  
20 20 years as well.

21 If, for example, I saw that the demand requirements  
22 for audit services was going to increase in some  
23 significant way, then that might justify looking at an  
24 option where we pick more than one provider of audit  
25 services, but that's not what the data's been telling

1 us, leading to the decision to publish the RSSB tender  
2 to look for one provider of the system or one provider  
3 of audit services. Indeed -- correct me if I'm wrong --  
4 but I do believe that when Achilles did (unclear) lot 1  
5 system and lot 2 two audit services, that when they bid  
6 for the audit services, they were bidding for the audit  
7 services on the basis of them being the sole provider of  
8 the audit services, not that they were going to have  
9 multiple providers.

10 Q. A few points you have made and we will take them  
11 separately.

12 A. Yeah.

13 Q. Firstly, I think you said you believe that tendering for  
14 the provision of these services, what RISQS had already  
15 done by going to ... -- there is a difference, is there  
16 not, between two situations, one of which is  
17 Network Rail tendering for the provision of supplier  
18 assurance services. That is one situation; the other is  
19 RISQS, as a provider of supplier assurance, tendering  
20 for the provision to it of IT services and audit  
21 services. Those are two different scenarios, are they  
22 not?

23 A. They are in terms of the way you describe it, but  
24 the RSSB is almost like an intermediary. The RSSB are  
25 facilitating the tender on behalf of Network Rail and

1 the other buyers. You know, there's no game in it for  
2 the RSSB. The RSSB are doing this for the benefit of  
3 the rail industry as an entirety.

4 Q. But Network Rail never ran a tender for the provision to  
5 it of RISQS services, did it?

6 A. That's correct. Had it still been the way it was set up  
7 pre-2013, then Network Rail would have been the entity  
8 undertaking the competitive tender. Because of the  
9 changes made in 2013/2014 and the responsibility for  
10 the provision of RISQS transferring from Network Rail to  
11 the RSSB, that's why it was the RSSB that undertook  
12 the tender.

13 Q. So in your mind, your view of it is that the  
14 responsibility for providing supplier assurance services  
15 has somehow -- for procuring supplier assurance services  
16 has somehow gone from Network Rail into the RSSB and  
17 the RSSB is doing that job?

18 A. The RSSB are doing that job on behalf of Network Rail  
19 and approximately 104 other buyer organisations, and  
20 therefore the RSSB, when compiling the tender  
21 documentation, sought to -- sought the opinions of  
22 Network Rail and other buyers in the marketplace in  
23 order to compile their tender documentation.

24 Q. Before 2018 you used to pay Achilles for the provision  
25 of supplier assurance, did you not?

- 1 A. That's correct.
- 2 Q. Now you pay the RSSB, do you not?
- 3 A. That's correct.
- 4 Q. So your contract for the provision of supplier assurance  
5 is with the RSSB?
- 6 A. Correct.
- 7 Q. The RSSB provides that to Network Rail; yes?
- 8 A. Yes.
- 9 Q. So you procure supplier assurance services from  
10 the RSSB, do you not?
- 11 A. We have an agreement with the RSSB to take supplier  
12 assurance services from them, yes, for the sum of  
13 £50,000 per annum.
- 14 Q. What I was going to -- I think I had already put  
15 the point to you, but I am not entirely sure, with  
16 respect, that you -- you then made a series of points.  
17 I just want to check what your answer to the question  
18 is. I put to you, I think, that if there were more than  
19 one provider of supplier assurance in the market, you  
20 could choose which of those providers you wanted to use  
21 to publish qualification system notices on your behalf  
22 and you would not be unduly discriminating between them  
23 by choosing one rather than the other.
- 24 A. At the moment I believe I would be if I didn't allow  
25 both of those providers to actually be able to issue

1 the qualification system notice because I would be  
2 treating them differently.

3 Q. I was saying to you that in fact there is no difference  
4 between procuring supplier assurance services and  
5 procuring other services in that you can invite all  
6 the different providers to tender and then you pick one  
7 and use that one. That is right, is it not?

8 A. Are you suggesting that Network Rail could almost  
9 duplicate what the RSSB have done and issue their own  
10 competitive tender for services?

11 Q. No, what I am suggesting is that if there were a RISQS  
12 and TransQ in the market offering supplier assurance  
13 services, as regards using one of them as  
14 a qualification system to publish notices in the OJEU,  
15 then Network Rail would have a choice as to which it  
16 would use.

17 A. Yes, that's correct.

18 Q. Thank you. Then at paragraph --

19 A. But can I also add that that is what effectively we have  
20 done via the RSSB tender. I think we have -- we have  
21 procured supplier qualification services via lot 2 to  
22 which Achilles had the opportunity to tender and did  
23 tender.

24 Q. Can I just check one thing? (Pause)

25 I think we have (unclear) covered this, but just to

1 make sure this is absolutely clear what our position is  
2 so you can understand. We say that in fact you have  
3 procured supplier assurance services from RISQS and  
4 RISQS has gone out and procured the necessary inputs  
5 from that from Capita and Altius respectively; would you  
6 recognise that characterisation?

7 A. Yeah, but I do think it's important to draw  
8 a distinction. Achilles are not competing with the  
9 RSSB. You know, the RSSB have facilitated a tender. In  
10 order to get a better deal for the rail industry  
11 collectively, Achilles are competing with the likes of  
12 the Altius and various other -- various -- I think it  
13 was 17 tenderers responded to the RSSB. I think it's  
14 wrong to -- for Achilles to believe that they're  
15 actually in competition with the RSSB, and that's quite  
16 an important distinction.

17 Q. Prior to 2018, Achilles provided the end-to-end supplier  
18 assurance service, did it not, both audit and IT?

19 A. That's correct.

20 Q. But it provided that as one unified service to  
21 Network Rail?

22 A. Up until 2013/2014 they provided that directly to  
23 Network Rail. Once we got beyond 2013, the RSSB were  
24 then, in terms of the -- they were actually the  
25 administrator of the scheme. You're correct insofar as

- 1 Achilles continued to bill Network Rail directly  
2 the £50,000 for the provision of the scheme, but  
3 the actual (unclear) went through RSSB at that point.
- 4 Q. To put it correctly, from 2013/2014 onwards it was  
5 a concession contract --
- 6 A. Yes.
- 7 Q. -- where RSSB granted the concession to Achilles to  
8 operate --
- 9 A. That's correct.
- 10 Q. That is right -- but then Achilles then contracted for  
11 the provision of the service with whoever wanted to take  
12 the service, did it not?
- 13 A. Yes, which was the £50,000 we paid them to be a buyer to  
14 the scheme.
- 15 Q. So you were procuring, up to 2018, a supplier assurance  
16 service from Achilles; yes?
- 17 A. Yes.
- 18 Q. So Achilles is capable of providing the end-to-end  
19 supplier assurance service, is it not?
- 20 A. I have no doubt about that at all. That's never been in  
21 question.
- 22 Q. So Achilles could now provide an end-to-end supplier  
23 assurance service to you, could it not?
- 24 A. Technically, yes.
- 25 Q. If you did not choose to use RISQS instead, you could

1 choose to use Achilles, could you not?

2 A. But we have chosen to use RISQS.

3 Q. But the choice would be there. You could use Achilles,  
4 you could use RISQS, but you have chosen to use RISQS?

5 A. Correct.

6 Q. Other buyers in the industry would face the same choice,  
7 would they not? They could use Achilles or they could  
8 use RISQS; correct?

9 A. That's correct.

10 Q. I think we have covered that.

11 Can you go back to paragraph 113? At 112, as  
12 I understand it, you are concerned about your duty of  
13 non-discrimination between scheme providers and I have  
14 covered that --

15 A. Yeah.

16 Q. -- and I have put to you that Network Rail could pick  
17 which one it wanted.

18 At paragraph 113 I think you raise different point.  
19 You refer to, I think, a commercial need you seem to see  
20 for scheme providers to publish QSNs in order to attract  
21 suppliers; is that what you --

22 A. That's correct.

23 Q. I think, as we have covered, I put to you that  
24 Network Rail can decide who publishes QSNs on its  
25 behalf, can it not?

1 A. Notwithstanding the answer I gave before about being  
2 equal to the providers of the scheme, technically, yes.

3 Q. You say:

4 "This could result in Network Rail receiving legal  
5 challenges under the EU procurement regulations where  
6 suppliers ..."

7 You have what seems to be a quote.

8 "... 'were not considered for a procurement  
9 opportunity' due to Network Rail not being aware of  
10 their suitability due to the complexity of multiple  
11 scheme providers using different and potentially  
12 confusing coding structures ..."

13 Now, I must say I found this a little confusing  
14 because there seemed to be a number of different points  
15 in there. I was hoping we could separate them out.

16 A. Yeah.

17 Q. You suggest that -- it seems, does it not -- you are  
18 starting off by suggesting that if you were in  
19 a situation of having multiple people publishing  
20 qualification systems notices, there might be -- if  
21 Network Rail did not consider all of those suppliers in  
22 all of the schemes equally, there might be a problem;  
23 yes?

24 A. Correct.

25 Q. Okay. So that depends upon being in a world where lots

1 of scheme providers are publishing qualification systems  
2 notices on your behalf. That concern would arise in  
3 that --

4 A. That was my -- that was my presumption.

5 Q. So if you're in a world where you get to pick what your  
6 qualification system is, that concern would not arise?

7 A. Um ...

8 Q. Can we leave aside the coding structure thing because  
9 I think that is possibly a separate point.

10 Your concern is that suppliers who were not  
11 considered for a procurement opportunity might challenge  
12 Network Rail, and do I understand that that concern of  
13 confusion only arises if in fact multiple scheme  
14 providers are --

15 A. So if there was a single qualification system notice,  
16 that would negate suppliers being incorrectly not  
17 considered, yes.

18 Q. Because, as we saw in the qualification system notice  
19 that we looked at earlier, if there is one qualification  
20 system and it is published, everybody knows where they  
21 stand and it is transparent?

22 A. That's correct.

23 Q. Then your sentence goes on to refer to Network Rail not  
24 being aware of their suitability. It does not say this  
25 here, but I am assuming that is because of there being

1 multiple schemes. You also say:

2 "... due to the complexity of multiple scheme  
3 providers using different and potentially confusing  
4 coding structures."

5 Is that a separate concern or is that part of  
6 the same --

7 A. No, that's a separate but linked concern in my mind.

8 So the issue here is, if you have the RICCL coding  
9 structure, for example, used by RISQS and you have  
10 a different product code structure used by Achilles and  
11 you have a third provider using their formulation of  
12 the product coding structure and so on and so forth,  
13 then they could end up having to look at -- this is a  
14 Network Rail practitioner point of view -- look at  
15 multiple schemes or provision of schemes all based on  
16 a different coding structure and therefore there is  
17 scope for error when procurement practitioners are  
18 selecting suppliers off of different lists to compile --  
19 I'll call it an "expressions of interest" list, which  
20 would then lead onto a pre-qualification questionnaire,  
21 which would then lead onto a tender scenario.

22 Q. So in the situation where you have multiple QSNs each  
23 using different coding structures, you could end up with  
24 confusion in that scenario?

25 A. Yes, it's very important to have a single coding

1 structure such as the RICCL coding structure to be  
2 common across all schemes.

3 Q. But that concern would not arise if either you just have  
4 a single qualification system notice for a given set of  
5 work or if, in fact, everybody is using the same coding  
6 structure?

7 A. Or a single system because I do suggest at the end of  
8 witness statement number 1 that I couldn't really see  
9 a practical solution to this, other than perhaps having  
10 a single scheme such as RISQS and having multiple  
11 assurance providers.

12 Q. We will come on to that sort of -- the wrapping up of  
13 everything, we will come on to that in due course.

14 So I understand what you are saying at  
15 paragraph 112/113. In paragraph 114 you say:

16 "It is therefore necessary to consider the impact on  
17 Network Rail dealing with competing supplier assurance  
18 schemes and what this would mean to Network Rail."

19 The fact that you say "therefore", do I understand  
20 that everything that then follows is all based upon  
21 having to use multiple qualification schemes?

22 A. From 115 onwards, all the calculations are based or  
23 under an assumption that to be an equivalent scheme  
24 there would be a similar scheme to RISQS and have  
25 the same functionality that RISQS would currently have,

1           yes.

2           Q. But, are there not two things? One is the same  
3           functionality -- because what I am trying to put to you  
4           is the possibility that if Achilles could be -- if it is  
5           allowed to carry out Sentinel audits for the  
6           purpose of the Sentinel schemes, it could then operate  
7           in the market offering itself as a supplier assurance  
8           scheme to other buyers other than Network Rail. In that  
9           scenario Network Rail would not have to use it as  
10          a qualification scheme if it did not want to -- it could  
11          if it wanted to, but if it did not -- but in that  
12          scenario it might have exactly the same functionality as  
13          RISQS, but Network Rail would not be using it as  
14          a qualification system. In that eventuality, do  
15          I understand that all of what follows from 116 onwards  
16          is based upon the assumption that Network Rail would be  
17          required to use it as a qualification system?

18          A. When I prepared this, it was on the basis of what  
19          I believed Achilles' request to be, which was, because  
20          Achilles could comply with RIS 2750, they used the term  
21          it wanted to be regarded as an "equivalent scheme".  
22          Because they said they wanted to be regarded an  
23          equivalent scheme, I've then made the assessment based  
24          on Achilles' proposal being treated the same way as  
25          RISQS in all respects and that's what the remaining

- 1 paragraphs go on to --
- 2 Q. So your evidence is given on the basis that Achilles  
3 would be treated as equivalent to RISQS and used in  
4 the same way as RISQS --
- 5 A. An equivalent --
- 6 Q. -- right across --
- 7 A. An equivalent scheme --
- 8 Q. Can I finish the question -- right across Network Rail's  
9 business; is that how you were working this out?
- 10 A. I think -- I come back to my point of equal treatment.  
11 If I was treating the Achilles equivalent scheme  
12 equally, I would treat it in the same way as RISQS. So  
13 therefore I'm envisaging, when I did my calculations  
14 over the initial cost, that if we had multiple schemes,  
15 then a procurement practitioner would have to look at  
16 RISQS and then come out of RISQS and look at Achilles  
17 TransQ, come out of that and then look at scheme 3,  
18 scheme 4, scheme 5, if indeed we had multiple schemes.  
19 So I am treating each scheme as if it has the same  
20 functionality and capability as the other.
- 21 Q. But reading your evidence, you are not just treating it  
22 as though it has the same functionality; you are  
23 treating it as though Network Rail has to use it as  
24 a qualification system.
- 25 A. Indeed, because again I'm treating it equally to the

1 scheme that it is competing against.

2 Q. Okay. What I was going to do -- what I am going to do,  
3 if it is all right, Mr. Blackley, is I am going to come  
4 back to the implications which we are going to look at  
5 a little bit later on. If I could take you back to  
6 earlier on in your statement, at paragraph 25 you refer  
7 to the RSSB being a non-profit-making entity and you  
8 say:

9 "The RISQS scheme is therefore under the stewardship  
10 of the RISQS board with the RSSB having ultimate  
11 ownership and responsibility."

12 So it is the RSSB that actually operates RISQS  
13 fundamentally, is it not?

14 A. Yes, because it's economical for Network Rail and other  
15 buyers.

16 Q. Then you go on to say:

17 "I explain later in this witness statement why the  
18 fact that RISQS is operated on a not-for-profit basis as  
19 an industry scheme produces a number of important  
20 benefits ..."

21 Then I think the later -- you have heard it later  
22 on -- I think it is paragraph 47, and you set out some  
23 benefits you say that arise from RISQS being  
24 a not-for-profit industry scheme.

25 What I just want to suggest to you, Mr. Blackley, is

1           RSSB is a not-for-profit body, but there is nothing that  
2           determines that RISQS is a not-for-profit scheme, is  
3           there?

4           A. I don't believe so.

5           Q. In fact, if we --

6           A. But could I just qualify that? Although we see a  
7           lot(?) -- I don't believe that's the case -- when we  
8           were going through discussions to establish the current  
9           tender scenario and RSSB then taking on the  
10          responsibility for the provision of the RISQS schemes,  
11          it was clearly stated that they were doing that in order  
12          to get a much better understanding of the costs of  
13          operating the RISQS scheme and that -- I think RSSB  
14          agreed to keep the -- you know, the rates and charges to  
15          buyers and suppliers the same as it was in previous  
16          years when Achilles operated it. The importance of that  
17          point is that on the anniversary of the scheme, ie when  
18          we come up to 1 May 2019, it is RSSB's intention that if  
19          the scheme is in a net positive position where they've  
20          managed to reduce the costs of the scheme, then any  
21          benefit ensuing from the first year of scheme operation  
22          will be passed back to the buyers and suppliers in terms  
23          of reduced fees going forward.

24          Q. Okay.

25          A. So although it's not a stated not-for-profit RISQS

1           scheme, the intention is unequivocally that  
2           the beneficiaries of any improvements to the RISQS  
3           scheme by operating this method will flow back to the  
4           participants of the scheme.

5       Q.   Now, you say at -- I am going to explore this a little  
6           bit further.  You say at paragraph 47(b):

7                   "The RSSB intend to undertake a review with a view  
8                   to reducing prices after the first year."

9           Just before we get there, can I take you to tab 8 of  
10          the witness statement bundle in front of you.  If you  
11          could perhaps try to -- are you looking at your -- in  
12          the witness statement bundle, Mr. Blackley, so in  
13          the same bundle you were in before.

14       A.   Okay.

15       Q.   If I could encourage you perhaps to keep a hand in your  
16           statement because we are going to be coming back to your  
17           statement in a moment.  Thank you.

18                   If you go to tab 8 and page 92, this is a witness  
19                   statement of Ms. Pearson.  At paragraph 34 she says --  
20                   and she was the procurement manager who dealt with  
21                   tendering for the new RISQS services:

22                           "RSSB has given a guarantee to the industry that it  
23                           would not increase the fees in the first year following  
24                           Altius and Capita's contract."

25                   That is quite different, is it not, from what you

1 say at 47(b), which is RSSB giving an undertaking to  
2 reduce these --

3 A. No, I think we are actually talking about two different  
4 years. So the first year being the year we're currently  
5 in -- so the year that started 1 May 2018, you know, for  
6 12 months, that is the first year of the scheme, and  
7 then that year, as stated there, that RSSB made no  
8 changes to the fees and charges. The point I'm making  
9 is that, having operated that first year, that the  
10 expectation of RSSB and indeed RISQS committee members  
11 is that there will be a net surplus of funds and that  
12 that net surplus of funds will mean that the RSSB will  
13 reduce the fees in the subsequent year.

14 Q. But fees for this year have been held the same as what  
15 they were when Achilles --

16 A. At the end of Achilles, yeah.

17 Q. Sorry?

18 A. There's -- the fees that Achilles used up until  
19 30 April 2018 are being kept the same from  
20 1 May 2018 onwards.

21 Q. Just perhaps a little reminder, more for the benefit of  
22 shorthand writers. If you wait for me to finish  
23 the question and then answer it, it will help them.

24 A. Okay.

25 Q. Thank you.

1           But the fees that Achilles were charging were fees  
2           that included an element of profit, were they not?  
3           Achilles is a profit-making body.

4           A. Undoubtedly. It's my understanding that Achilles'  
5           turnover was something in the order of just under  
6           £9 million per annum, which I understand also was  
7           predominantly audit services. So the large slice of  
8           the money and the instant profit is in the audit  
9           services.

10          Q. Capita and Altius both are profit-making  
11          organisations --

12          A. That's correct.

13          Q. -- so on their activities they will be making a profit,  
14          will they not?

15          A. That's correct.

16          Q. Also the RSSB -- how many members has the RSSB got, do  
17          you know?

18          A. In terms of suppliers?

19          Q. No, not RISQS -- at the RSSB. How many members does  
20          the RSSB have, do you know?

21          A. Sorry, I don't know.

22          Q. In that case I might explore that further with another  
23          witness.

24                 If I could take you to paragraph 38 of your  
25                 statement. You refer to a 2011 publication called

- 1 "Supplier assurance" published by the RSSB in 2011.  
2 Were you involved in any way with the publication of  
3 that?
- 4 A. I wasn't involved at all, but at the time I do recall  
5 there was an Arthur D Little report which went into  
6 the details of the financing of supplier assurance in  
7 the UK, and they concluded -- I don't know if I say it  
8 there, but they had a £35 million saving across  
9 the industry. I think that figure originated from  
10 the Arthur D Little report of which I am aware.
- 11 Q. Just to check what you mean there, as I understand it  
12 the £35 million saving was a saving calculated by  
13 reference to all buyers undertaking a lot of assurance  
14 in-house. That is right, is it not?
- 15 A. Whether it was in-house or not I couldn't comment, but  
16 certainly it was all a duplication of effort across  
17 a lot of buyers where we're all doing repeated supplier  
18 assurance -- I guess there will be an element of  
19 in-house with that calculation, but the point they were  
20 making was that if they have a single industry scheme,  
21 then we can make a significant saving for the market --  
22 for the rail industry.
- 23 Q. But is a saving calculated by reference to an  
24 alternative, and the alternative that it was being  
25 calculated by reference to was, as you say here, buyers

1 individually verifying their own suppliers one by one;  
2 that's where the 35 million came from?

3 A. Again I am not party to the calculation, but the  
4 principle you're talking about is correct, that they  
5 would have obviously made the 35 million figure against  
6 a calculation of some sort.

7 Q. So that 35 million figure is just what you read in  
8 the comparison in that document and you just took it  
9 and --

10 A. The Arthur D Little report you're referring to in  
11 particular and at the same time there were of  
12 publications in the newspapers and magazines, including  
13 by Achilles, who were supportive of the approach to go  
14 down to a single supplier qualification scheme for  
15 the benefit of the industry.

16 Q. If I could take you to section D, where you move into  
17 key benefits to Network Rail of having a single supplier  
18 assurance scheme.

19 A. Yeah.

20 Q. I want to look with you at paragraphs 44 and 45. At 44  
21 you talk about the efficiency benefits to Network Rail  
22 and at 45, "the efficiency benefits for our suppliers".

23 I think it is -- as we have been exploring, you were  
24 writing this statement on the assumption that you are  
25 faced with a choice -- not faced with a choice -- that

1 if Achilles were to succeed in this claim, that you  
2 would have to be using multiple supplier qualification  
3 systems. Is that the basis on which you prepared --

4 A. The methodology I deployed as I carried out the  
5 calculations was I kept coming back to the -- the phrase  
6 used in the initial claim documents submitted by  
7 Achilles, which was that they wanted to be treated as an  
8 equivalent scheme, and by "equivalent scheme", I took  
9 that to mean the full scope of what RISQS currently  
10 provides. So therefore I would treat Achilles and  
11 I would treat any other supplier who wanted to be  
12 regarded as an equivalent scheme the same way, and as  
13 you said earlier on, that included provision of the IT  
14 portal, issue of qualification system notices and  
15 provision of audit services -- so, yes, the full gambit  
16 of services.

17 Q. Perhaps you will look at paragraph 44. You say:

18 "The efficiency benefits for Network Rail include  
19 ..."

20 You set out why it is important that Network Rail is  
21 a publicly funded -- partly publicly funded body.

22 "Reduce registration costs: Network Rail currently  
23 pays £50,000 per annum for RISQS membership and does not  
24 have to pay to access other supplier assurance scheme  
25 systems."

1           So that is a benefit -- you are comparing there only  
2           having to pay one fee against having to pay more than  
3           one fee.

4       A. That's correct. I mean, I've had to make an assumption  
5       because, without any other information to base it on,  
6       I've no idea what different scheme providers would  
7       charge. So I've made the assumption that each scheme  
8       provider could charge 50K.

9       Q. If, in fact, other scheme providers did not charge you  
10       at all, that would not count as a benefit, would it?

11      A. Clearly not, but I don't believe it's healthy practice  
12      for Network Rail to be receiving a service from someone  
13      that it's not prepared to pay for on the basis of how  
14      can it hold that supplier who has given me something for  
15      nothing to account when they're giving it to me for  
16      nothing; and, equally, how can I monitor the quality  
17      service of a product a supplier is giving me for  
18      nothing, because whether or not I've got a contract in  
19      place with them, how would I hold them to account and  
20      how do I get them to maintain their quality standards  
21      because they've given it to me for nothing so I've no  
22      leverage over them.

23      Q. You can have a contract with someone without paying them  
24      for it, can you not?

25      A. It's more the principle --

1 Q. So in principle you want to pay for things even though  
2 you do not have to?

3 A. If I'm taking a service from somebody, I don't expect  
4 someone to provide that service for nothing because if  
5 that service is costing them money, then they've got to  
6 recover their costs somewhere, and if I'm not paying  
7 directly for it in terms of a buyer contribution,  
8 there's every likelihood that the suppliers have been  
9 charged more for the service and therefore I'm actually  
10 paying the money out anyway because the suppliers will  
11 put their charges up when they're tendering back to  
12 Network Rail for works. So somewhere this has got to be  
13 paid for and I would rather it was identified upfront  
14 than buried in some calculation somewhere via the supply  
15 market.

16 Q. Again, this is based on the assumption of being  
17 a qualification system. So if, instead, all Achilles  
18 was getting was the right to audit people against  
19 the Sentinel module and the on-track plant module for  
20 the purposes of the sort of authorisation and licensing  
21 function --

22 A. Okay --

23 Q. -- and then Achilles could charge fees to other buyers  
24 to operate as a qualification system for them, that  
25 wouldn't involve you paying them any more, would it?

1       A. Okay, I'll take you back to the RSSB tender, and  
2       the RSSB tender has built into it some of the lessons we  
3       learned from the RISQS contract between 2013 and 2018,  
4       and where, for example, audits aren't being carried out  
5       quickly enough or to the right timescale, there is --  
6       there's no teeth in that contract in order for the  
7       supplier to be held to account. So therefore we take  
8       some of those lessons learned that happened previously  
9       and built them into the new contract. So therefore,  
10      when Altius are providing audit services, if they are  
11      not fulfilling their contractual obligations, then there  
12      is -- you know, there is consequences that can then  
13      happen through the contract because we're measuring them  
14      against KPIs.

15             If I have a situation where Achilles joined this  
16      arrangement via a kind of side-door, and therefore how  
17      can I be certain that I'm actually comparing what Altius  
18      are providing and what Achilles are providing on an  
19      equal basis? Because I can't, because they're providing  
20      something for nothing and I've no idea of whether I'm  
21      going to get the right quality or not. Therefore, if  
22      they fall behind in their audit plan and there's  
23      a consequence on Network Rail, I have absolutely no  
24      clue. So, yes, I would actually far rather have it  
25      clearly contractually documented and actually be seen to

1           be paying for the service I'm getting if that brings  
2           the price down elsewhere in the marketplace.

3       Q.    Would it not be a spur to -- you are saying the example  
4           of service levels were not so good, things were not --

5       A.    That's just one example.

6       Q.    So imagine for a moment another buyer -- not  
7           Network Rail, but another buyer in the industry,  
8           somebody else who operates in the supply chain and wants  
9           to procure services -- if they had a choice between  
10          using RISQS or using TransQ, that would encourage both  
11          Achilles and RISQS to be rather good about service  
12          provision, would it not?

13      A.    I think the other buyer can make up their own mind in  
14          terms of who they want to buy from and the service level  
15          they're prepared to accept.  The RSSB, on behalf of  
16          Network Rail and all the buyers, has clearly laid out  
17          the service level requirements within their tender, and  
18          therefore, if another buyer who happens to be one of  
19          their suppliers thinks that the RSSB scheme isn't  
20          sufficient, then they're clearly entitled to operate  
21          their own supplier assurance arrangements and change  
22          scheme.  They're not forced to subscribe to the RSSB  
23          scheme unless they're a direct supplier of Network Rail.

24      Q.    What I want to come back to, Mr. Blackley, is what we  
25          are fundamentally talking about in this case is whether

1 or not Achilles would be recognised under the Sentinel  
2 rules, the on-track plant rules and the principal  
3 contractor licensing scheme rules. Now --

4 A. Is this -- could I just clarify that? Is it not that  
5 you're asking to be treated as an equivalent scheme?

6 Q. I think there may be a certain amount of  
7 misunderstanding. A statement was made earlier in these  
8 proceedings which I think we would stand by, which is  
9 asserting that Achilles would be an equivalent scheme  
10 for the purposes of the RIS 2750 standard, but we are  
11 not saying in this case that Network Rail has to  
12 recognise -- we are not saying that Network Rail has to  
13 use Achilles TransQ as a qualification system. That is  
14 not what we are saying.

15 A. Mm-hm. I'm okay with that.

16 Q. Does that help?

17 A. Yes.

18 Q. Thank you.

19 If we go to 44(b), you refer to reduced staff time  
20 and overheads relating to interaction with multiple  
21 supplier assurance schemes. Can I just check -- you set  
22 out I think at paragraph 116(e) of your statement -- you  
23 use that same phrase at the start of that paragraph. So  
24 do I understand that that benefit at 44(b) is the one  
25 that is then quantified at paragraph 116(e)? Is that

- 1 right?
- 2 A. The several -- the several paragraphs are actually  
3 covered once you get to 116 onwards, so there's various  
4 aspects to the calculation.
- 5 Q. There are. What I was trying to do is to avoid asking  
6 the same questions over and over again. So what I want  
7 to check is: is 44(b) the same point that comes up at  
8 116(e)?
- 9 A. It's definitely covered by aspects of it.
- 10 Q. In that case I am going to ask you about it in a minute.  
11 At 44(c) you refer to administrative efficiencies  
12 from using a "... single system for supplier  
13 registration and qualification, underpinned by a single  
14 audit system". So there again you are talking about  
15 using a single qualification scheme, are you not?
- 16 A. We desire to have a single qualification system, yes.
- 17 Q. If I could just pick up one point at 44(c) while we are  
18 on it. You say:  
19 "It is Network Rail's intention that the RISQS  
20 system will at a future date be configured to link or  
21 interface with our BravoNR portal (or its successor  
22 platform) ..."
- 23 A. Yes.
- 24 Q. So I understand it, there is not a link there at the  
25 moment?

- 1 A. No.
- 2 Q. So in terms of -- if you are looking at a particular  
3 contract that you want to let out, you may indicate it  
4 through RISQS -- is that right? -- so that people who  
5 are on RISQS know about it? When a qualification system  
6 notice is issued --
- 7 A. Yeah.
- 8 Q. -- you use RISQS, and then you search and get a list of  
9 suppliers who are qualified out of RISQS?
- 10 A. Yes, at that stage the phrase I would use is "Suppliers  
11 at that point have expressed an interest in the  
12 particular product or service".
- 13 Q. Right. So the suppliers have expressed an interest and  
14 you have seen in RISQS that they have passed certain  
15 modules and so on --
- 16 A. Yes.
- 17 Q. -- the modules that you would require as a minimum  
18 prerequisite?
- 19 A. They've qualified against the RICCL code that they  
20 have -- that we've identified as the thing we're  
21 procuring.
- 22 Q. They are only qualified in the sense that they have  
23 passed the RISQS modules that are required for that  
24 code; yes?
- 25 A. It depends -- again, it depends on the RICCL code you

1 pick. If you pick a RICCL code that requires the  
2 supplier to have passed the industry minimum  
3 requirements and the subsequent modules associated with  
4 POS or Sentinel or safe work planning, then when we look  
5 at our RICCL code we will see suppliers who are  
6 qualified in the system to provide that service,  
7 including the extra bits.

8 Q. But they are qualified in the sense that they have had  
9 the relevant management systems audits and that box has  
10 been ticked?

11 A. And the relative module against RISQS -- against  
12 POS/Sentinel safe work planning.

13 Q. But you may have some further requirements that you need  
14 to be met in order to -- for the particular contract you  
15 are looking at, might you not, that are going beyond  
16 those management system requirements?

17 A. Yes, insofar as whatever the principal contractor  
18 licensing, or for the (unclear) team do beyond what  
19 RISQS covers, but also we may have other technical  
20 requirements which we then -- once we take the list  
21 that's in RISQS, we might then decide to run  
22 a pre-qualification questionnaire in advance of an  
23 invitation to tender to further refine the list of  
24 suppliers we get who have expressed an interest.

25 Q. So you would have, in a sense, the RISQS modules as one

1 layer of pre-qualification and then another  
2 pre-qualification questionnaire operating on top of that  
3 that takes the RISQS as read, but asks some further  
4 questions?

5 A. Yes, without duplicating what's in RISQS.

6 Q. Then from that you would create a list of qualified  
7 contractors?

8 A. A list of potential tenderers, once we get beyond  
9 the PQQ stage.

10 Q. The PQQ you would do through Bravo, would you not?

11 A. A very large proportion of the time we would look to  
12 stop at the RISQS stage, at the expression of interest  
13 stage, and at that point move on to the Bravo system.  
14 There is functionality within RISQS to ask what are  
15 called "additional questions" and for -- I'll probably  
16 describe it as "some below-threshold procurements".  
17 Some parts of the company will choose to use additional  
18 questions to -- almost instead of a PQQ -- to further  
19 refine the requirements. But for over-EU threshold, we  
20 recommend to Network Rail practitioners that we move on  
21 to Bravo because at that point we then capture the whole  
22 history of the contract in a single system for  
23 procurement and contract management.

24 Q. How do you get the list of suppliers out of RISQS into  
25 Bravo?

1 A. Effectively it's a kind of cut and paste or a retype in.  
2 At the moment there's no -- there's no linkage, which is  
3 what we're proposing to do via an API.

4 Do you want me to say anything about APIs at this  
5 stage or do you want to come to that later on?

6 Q. I was going to come to that later on.

7 At 44(d) you refer to reduced costs relating to  
8 Network Rail's in-house technical audits and you say  
9 that if it were not for RISQS, Network Rail would need  
10 to undertake a more comprehensive PQQ on each tender.  
11 So essentially you are saying that if it was not for  
12 RISQS -- I just want to check, if we are comparing here  
13 a world in which there are two scheme providers and one  
14 in which there is only one scheme provider, as long as  
15 both scheme providers were using the same set of  
16 questions to do the RISQS -- what I'll call the "RISQS  
17 modules" -- you wouldn't need any more comprehensive  
18 PQQ, would you? You would take the same set of  
19 information as given and have the same PQQ you use now?

20 A. Can you just say that again, just to ...

21 Q. You start off by saying, "Were it not for RISQS ..."

22 A. So the first -- the first sentence corresponds with some  
23 evidence from my previous colleague, Gillian Scott,  
24 where -- when I talk about in-house technical audits,  
25 that's referring to the -- once we go beyond the RISQS

1 module audit, whatever that team does, and then in  
2 addition to that I then make a point of undertaking  
3 a more comprehensive PQQ. So if it was a -- if it was  
4 the same questions from two or more parties, then as  
5 long as it was consistent, then there would perhaps be  
6 little need for a more comprehensive PQQ.

7 Q. Okay, thank you.

8 Then you go on at paragraph 45 -- because having  
9 talked about efficiency benefits for you, you then go on  
10 to talk about efficiency benefits "for our suppliers",  
11 and you say:

12 "Reduced duplication of costs and administrative  
13 workload: there are currently over 100 buyer  
14 organisations within ... RISQS ..."

15 I think what you are -- is it right that what you  
16 are suggesting here is that, because all the buyers use  
17 RISQS, that reduces administrative workload for  
18 suppliers?

19 A. Correct.

20 Q. So it is for suppliers who would want to supply not only  
21 Network Rail but also you -- not only Network Rail but  
22 also other buyers not having to duplicate; yes?

23 A. When you saw the supplier qualification system notice  
24 and you saw those companies listed, that's who I'm  
25 talking about here. All those companies benefit from

1           RISQS asking questions once. That prevents them having  
2           to ask similar questions.

3           Q. So that is to do with what other buyers do, but as  
4           I understood it, are you saying that there is a --

5           A. Can I say that --

6           Q. -- Network Rail is imposing a requirement that all  
7           buyers use RISQS? Is that what you are suggesting?

8           A. No, buyers can choose whether or not to use RISQS if  
9           they see a benefit in doing so.

10          Q. So what I do not understand then is how it is a -- how  
11          you can say -- because at paragraph 30 you say that  
12          buyers are free to say what supplier assurance scheme  
13          they want to use, but at the same time you say at  
14          paragraph 45 that it is somehow an efficiency benefit of  
15          what Network Rail is doing that there is not  
16          duplication. I mean, if other buyers are free to  
17          choose, where is the reduction in duplication?

18          A. It's not so much what Network Rail are doing, it's what  
19          the buying community decided to do, because if it is  
20          suggested that prior to 2013, when I would say  
21          Network Rail had more sway over the questions that were  
22          asked via the system that operated prior to RISQS, then  
23          that would be a true statement because kind of whatever  
24          Network Rail wanted, they got. However, Network Rail  
25          kind of transferred the operation or the administration

1 of this scheme onto the RSSB, and at that point we  
2 developed a much more collaborative approach in terms of  
3 question sets. Now, I don't mean the question set in  
4 terms of Sentinel because very much that's driven by  
5 Network Rail. But in terms of the other questions  
6 associated with the RISQS scheme, typically Network Rail  
7 would have a view as to what questions it would like to  
8 be asked, but, equally, so would other members of  
9 the RISQS committee and other supplier organisations.  
10 So there would be much more of a collaborative  
11 discussion about the most appropriate questions.

12 So from 2013 onwards, it wasn't a case of  
13 Network Rail dictating the questions; it was a case of  
14 via a form of collaboration we would agree a question  
15 set for the benefit of all those -- all those buying  
16 entities.

17 Q. But if there was more than one provider of assurance  
18 services in the market, more than one who was allowed to  
19 do Sentinel audits, for example, buyers would have  
20 a free choice as to which one they used, would they not?

21 A. Buyers would, but what would happen would be all of  
22 those supplier assurance providers are all sending  
23 questionnaires to the same supply base and you're  
24 having -- you know, I'll take an example of a small or  
25 medium-sized enterprise somewhere. So they are having

1 to enter information onto numerous different systems,  
2 whereas with the RISQS scheme they could enter it once  
3 and the (unclear) will see large number of buyer  
4 organisations. So this is really to save particularly  
5 the smaller companies from lots of bureaucracy because  
6 it saves them both time and money.

7 Q. But you are making an assumption, are you not, that  
8 buyers would specify different schemes and also that  
9 they would specify one scheme and not accept the others?

10 A. Buyers would be free to choose whatever scheme they  
11 wanted, but those different schemes would naturally  
12 evolve over time and have different question sets.

13 Q. But you seem to be assuming -- before, earlier on, you  
14 were assuming that Network Rail would have to use all  
15 different providers as a qualification scheme, whereas  
16 here you seem to be assuming that every buyer -- all  
17 buyers would use different qualification systems and  
18 would not accept others.

19 A. I'm not (unclear) that. I'm just saying it's  
20 a possibility that buyers could choose whatever scheme  
21 they wanted. So, therefore, if they see there's  
22 a benefit in choosing RISQS, they choose RISQS because  
23 there's a business benefit to them. If they choose not  
24 to use RISQS, they could choose to do their assurance  
25 in-house with their own resources or they could choose

1 to use an alternative scheme.

2 Q. If Network Rail, in terms of running the authorisation  
3 schemes we are talking about, the Sentinel on-track  
4 plant and principal contractor scheme, if Network Rail  
5 allowed more than one provider to provide audits for  
6 Sentinel, that would not mean that suppliers would have  
7 to complete multiple audits, would it? They would just  
8 have one audit and it would be sufficient. They could  
9 choose TransQ or they could choose Achilles and they  
10 would only get audited once, would they not?

11 A. I think it depends how many schemes the suppliers  
12 actually subscribe to. Through discussions with some  
13 suppliers, some suppliers have said to me that they  
14 feel -- or they may feel obligated to join multiple  
15 schemes depending on who the buyers of those schemes  
16 are. So, therefore, if Network Rail are subscribing to  
17 RISQS, in order to do business with Network Rail,  
18 the suppliers would subscribe to RISQS and pay their fee  
19 and fill in the question set for RISQS. If another --  
20 if TfL then chose a different scheme, the suppliers  
21 would then fill in the question set for that particular  
22 scheme provider to supply TfL and their suppliers and so  
23 on and so forth. The same would happen with major  
24 buyers, you know, such as, you know, some of the major  
25 construction companies.

- 1 Q. But a supplier would only need to complete one audit to  
2 be Sentinel-registered, would it not, because they do an  
3 audit with an audit provider, Achilles or Trans-Q --
- 4 A. For Network Rail --
- 5 Q. If we can focus on the question, if we may. They do one  
6 audit. That would note -- the audit-provider would  
7 notify Mitie that the audit had been completed and then  
8 that supplier would be registered with Mitie as  
9 a Sentinel sponsor and that would be sufficient, would  
10 it not?
- 11 A. That would be one option.
- 12 Q. Yes, okay. However many schemes there may be in  
13 the market, a supplier -- they are either  
14 Sentinel-registered or they are not, and it would be  
15 known as a fact that they were Sentinel-registered; yes?
- 16 A. Yes, but, again, you've got different schemes and  
17 different quality and different timescales with which  
18 people actually turn those audits round.
- 19 Q. Yes, but a supplier would have a choice, would they not?  
20 They could choose who to get their audit done by?
- 21 A. They would have a choice, but --
- 22 Q. They might go to the one who does it on time or at most  
23 at their convenience, might they not?
- 24 A. If you take the current example, because clearly this  
25 has been tendered as part of the RSSB scheme -- and as

1 I explained earlier on, when I said if I'm looking  
2 backwards from 1997 to 2018, there has been one provider  
3 of the system, Achilles, and one provider of the audit  
4 services, Achilles, accepting that they were bolted  
5 together in the same scheme -- and as I look forward to  
6 the demand for assurance services, from a Network Rail  
7 point of view I do not see that demand significantly  
8 changing, therefore I would naturally conclude that it's  
9 capable of undertaking the assurance services via one  
10 supplier. That's my assumption.

11 I then put those requirements into a tender that  
12 the RSSB run and the suppliers for lot -- or  
13 the tenderers for lot 2 can see the volume of supplier  
14 assurances required in the rail industry and price  
15 for it once in the knowledge that they are pricing for  
16 a known quantum of service. So I still think from an  
17 RSSB point of view we've taken our requirements to  
18 the marketplace to enable suppliers to compete for that  
19 level of service, and, as I say, had it been the case  
20 that the quantum of assurance services -- if somebody  
21 was going to double or treble or quadruple, there may  
22 well be an argument at that point for having multiple  
23 providers of lot 2, but that's not the way the tender  
24 was published.

25 When the tender was published by RSSB, it was

1 published to have a single supplier for the lot 2  
2 assurance services and Achilles, I believe, knew that  
3 when they tendered. Also, as I said earlier on,  
4 Achilles also tendered lot 2 in the full knowledge that  
5 by winning lot 2 they would be the sole provider of  
6 audit services.

7 Q. That is a separate point. We can come back and test  
8 that in a moment -- actually, no, we can take it now.  
9 Are you saying that it was part of the tender that  
10 whoever won it would have exclusivity over providing  
11 audit services to the whole industry?

12 A. No.

13 Q. No.

14 A. I'm saying that whoever won the audit services for lot 2  
15 knew that that included the modules -- the additional  
16 modules in addition to the industry minimum requirements  
17 under -- defined in the RISQS tender documentation.

18 Q. I think that is a different point.

19 So paragraph 45(a), turning to what you said, you  
20 said:

21 "If buyers were to specify different auditors, there  
22 is the potential for suppliers to need to complete  
23 multiple audits under different schemes in relation to  
24 the core subject matter of the RISQS audit."

25 What I suggest to you is that that is not right

1           because what those modules do is they ensure  
2           authorisation for the purpose of the Network Rail  
3           schemes, Sentinel, on-track plant and principal  
4           contractor licensing, and you would only need to  
5           complete them once. That is right, is it not?

6           A. For Sentinel?

7           Q. Yes.

8           A. Again, you know my view on Sentinel. Sentinel have  
9           already built into one tender. If we're looking at what  
10          happens with other suppliers in the marketplace,  
11          although we mandate RISQS on the arrangement with those  
12          contracts with whom Network Rail contract with directly,  
13          I do not mandate the use of any scheme on any -- other  
14          than the Network Rail POS, Sentinel, etc, I do not  
15          mandate any of those requirements on our tier 1s who are  
16          free to do -- subscribe to whatever scheme they want,  
17          you know, downstream.

18          Q. At 45(b) you go on to say:

19                 "By having a single scheme, new suppliers to  
20                 the rail industry wishing to provide safety-critical  
21                 works or services have clarity as to what they need to  
22                 do to be accredited to supply Network Rail."

23                 I suggest that if Network Rail is running a single  
24                 qualification system, then suppliers would know what  
25                 they need to do; they need to apply to that

1 qualification system.

2 A. Correct.

3 Q. Thank you.

4 Now, at 47(b), we have already covered  
5 the not-for-profit point and there is the point you make  
6 about competitive tendering. I think we have already  
7 covered that.

8 At 47(c) you refer to:

9 "Economies of scale in the provision of supplier  
10 assurance services such that the costs associated with  
11 providing a given unit of service (such as an audit) is  
12 lower in a single scheme environment."

13 That is essentially one that if you have got fixed  
14 costs, if you only have to incur the fixed costs once,  
15 you say there are economies of scale; yes?

16 A. There's an economy of scale.

17 Q. But you haven't conducted any analysis, have you, of  
18 what the balance between fixed costs and variable costs  
19 in auditing is?

20 A. Not specifically, but I've taken it from the experience  
21 of having, for the last 20 years, used the same volume  
22 of demand for assurance services and audit services as  
23 being no different. So, therefore, by competitively  
24 tendering it, I'm actually -- I'm actually establishing  
25 a unit rate at that point.

1 Q. With respect, that is not right, is it, because if all  
2 you know is you have used one provider for a number of  
3 years, you know that that provider had capacity to  
4 provide your services --

5 A. But during the tender they're committing to a price, so  
6 they have the opportunity to assess the risk at that  
7 point and price accordingly.

8 Q. With respect, Mr. Blackley, you are jumping around  
9 a bit. You said a moment ago you used the same provider  
10 for a number of years --

11 A. Correct.

12 Q. -- and you said that gave you some sort of assurance  
13 regarding economies of scale, and I was suggesting to  
14 you that it does not do anything of the sort. All it  
15 tells you is you have used one provider for a number of  
16 years.

17 A. But in terms of when you use one provider, that one  
18 provider can size their resource accordingly to carry  
19 out the audit services, so therefore they would -- they  
20 would have a number of people they would recruit based  
21 on the volume and therefore they could fill that  
22 resource for work. If you then went to different audit  
23 providers, there was more risk that you would then have  
24 a sub-optimal position where -- you know, particularly  
25 if the volume moved around.

1 Q. Mr. Blackley, there are many construction companies in  
2 the country, are there not? Indeed, there are many  
3 construction companies who supply Network Rail, are  
4 there not? Yes?

5 A. There are, yes.

6 Q. It is a good thing there are lots of construction  
7 companies that supply Network Rail because they can  
8 compete; that is right, is it not?

9 A. That is correct.

10 Q. You do not simply say, "Well, if we only have one  
11 provider, that one provider of construction services  
12 could spread their fixed costs over all the work they  
13 give us, therefore we should have one provider". That  
14 is not what you do, is it, Mr. Blackley, in procurement?

15 A. Generally not. However, where you have some forms of  
16 management contract or project management or  
17 construction management or something of that theme --  
18 when you have that -- when you have a level of resource  
19 that can undertake a large volume of work under  
20 a framework agreement, then if you fill that supplier  
21 full of work depending on the management resources and  
22 the overheads you paid for, then you actually get  
23 a better unit rate.

24 Q. If in the case of supplier assurance services you have  
25 some fixed costs and some variable costs, variable costs



1 A. Which page is that on?

2 Q. That is page 45, paragraph 116 of your witness  
3 statement.

4 A. You said the second witness statement?

5 Q. No, of your first witness statement.

6 A. First, oh.

7 Q. Now, you set out there some comments in a sense of costs  
8 or inefficiencies which you say would occur if  
9 Network Rail were required to recognise multiple  
10 supplier assurance schemes. That is what you are doing  
11 in paragraph 116, is it not? Yes?

12 A. Yes.

13 Q. Certain of those costs you then quantify again a bit  
14 more at paragraphs 121 and 122 and indeed 123 on  
15 pages 48 and 49. That is right, is it not?

16 A. They're not a duplication. You don't add them together.  
17 Once you go to the second bundle of paragraphs, that's  
18 then the detail supporting the first.

19 Q. That is great. Thank you.

20 So in paragraph 116(a) you refer to coding  
21 structures and you refer to the possibility of it being  
22 confusing for buyers and suppliers. You say there you  
23 believe that using different coding structures would  
24 introduce a safety risk. Now, safety is not your job,  
25 is it? That is not your main function?

1 A. No.

2 Q. You would not put yourself forward as an expert on what  
3 safety requires?

4 A. No.

5 Q. Thank you.

6 Are you saying that there would be any sort of  
7 procurement problems arising out of using different  
8 product codes?

9 A. Earlier on, when I talked about if there were multiple  
10 schemes, multiple equivalent schemes each fulfilling  
11 the function of (inaudible) in the same way at RISQS and  
12 they each operated different coding structures,  
13 I believe it would introduce an element of confusion  
14 which may cause a risk to arise where, if a procurement  
15 practitioner is looking at different schemes,  
16 different -- different coding structures and different  
17 risks, there may be an opportunity where a supplier has  
18 legitimately applied via a qualification system notice  
19 onto someone's scheme and we miss it because we have not  
20 properly mapped the coding. There are frequent changes  
21 to even the coding structure we've got today.

22 Q. But it is right, is it not, that Network Rail, if it  
23 wanted to let out a given contract or sort of area of  
24 work, it would know for that contract whether or not  
25 suppliers were required to be Sentinel-assured or

1 on-track-plant-authorized --

2 A. It would, but I think I'm suggesting there that if you  
3 had a single coding structure across the schemes, it  
4 would make the life of the procurement practitioner  
5 significantly easier to make sure we get the right  
6 suppliers on the right codes when we select the tender  
7 list.

8 Q. There would be a benefit from having a common  
9 standard --

10 A. Correct.

11 Q. -- as regard the codes? Thank you.

12 As regards the next paragraph, 116(b), you refer to  
13 a problem regarding time periods and you refer to being  
14 able to produce a valid accreditation notwithstanding  
15 having been suspended under one scheme. Now, in respect  
16 of this, if a contract requires a contractor to be  
17 Sentinel-authorized, the definitive record of that is  
18 the Sentinel record held by Mitie, is it not?

19 A. Yeah, but from a procurement practitioner's point of  
20 view, they would look at the single RISQS scheme to make  
21 sure that if they were selecting suppliers for a tender  
22 that involved suppliers going into a trackside  
23 situation, they would look to take that information  
24 (inaudible) the scheme.

25 Q. I think we heard earlier on that Sentinel -- if, for

- 1           some reason, somebody sent an authorisation and is  
2           suspended, Sentinel inform RISQS; yes?
- 3       A.   Correct, but if you had a situation where Sentinel was  
4           informing multiple schemes and those multiple schemes  
5           offer different coding structures, then you can see where  
6           the risk could come in if something was inadvertently  
7           wrongly coded.
- 8       Q.   Mr Blackley, we are not talking about coding here. We  
9           are talking about the different time periods, somebody  
10          having accreditation notwithstanding having been  
11          suspended. What I am saying to you is, to take the  
12          Sentinel as an example, if for some reason Sentinel  
13          scheme/Mitie suspend somebody, then Mitie can notify --
- 14      A.   They'd notify the scheme.
- 15      Q.   -- RISQS and it would be clear, would it not, that the  
16          person had been suspended?
- 17      A.   As long as the scheme was updated timeously, then it  
18          would be clear.
- 19      Q.   Well, that would be a matter between Sentinel and RISQS,  
20          would it not?
- 21      A.   It would be a matter if the -- Mitie, you know, provided  
22          the communication to the scheme provider. The scheme  
23          provider would have to make sure their scheme reflected  
24          the notice timeously.
- 25      Q.   Then at 116(c) you refer to -- it says "Additional

1 costs", but what seems to start off the paragraph is  
2 a point about making investments. You say:

3 "Improving systems and protocols requires that  
4 assurance scheme providers make investments in embedding  
5 a culture of continuous improvement, investing in staff  
6 training ...", and so forth.

7 So is what you are saying there essentially just an  
8 economies of scale point, that because you have more  
9 than one scheme provider investing in these things,  
10 somehow that will be wasted costs? Is that the point  
11 you are trying to make?

12 A. Yeah, what I've said is multiple schemes will likely  
13 increase industry assurance costs and lead to loss of  
14 economies of scale.

15 Q. We explored the economies of scale point earlier on, so  
16 I will not go back to that. On 116(d) you refer to  
17 the loss of the industry feedback loop. Are you saying  
18 there could be no scope for feedback and improvement in  
19 an environment with multiple schemes?

20 A. No, it's possible, but I think it would be more  
21 difficult than the arrangement we have today with  
22 a single scheme. The issue would be getting those  
23 schemes to align timeously.

24 Q. Are you talking about feedback here for the improvement  
25 of the supplier assurance scheme? Is that the kind of

1 feedback you are talking about?

2 A. It could be either.

3 Q. So either that or ...?

4 A. Or the actual portal part of the scheme.

5 Q. Okay, but you are talking about feedback to the supplier  
6 assurance service as a whole, about how the supplier  
7 assurance service is operating; you are not talking  
8 about feedback to the suppliers, the underlying service  
9 suppliers?

10 A. I think it covers the -- both those points in terms of  
11 the RISQS scheme manager monitors the performance of  
12 the scheme.

13 Q. But would it not be a very direct form of feedback to  
14 the scheme if there was competition in the market, as in  
15 if you are not performing so well as a supplier  
16 assurance scheme, you start to lose custom?

17 A. I think it depends how you're evaluating the performance  
18 of the scheme. If I'm a supplier and I think that if  
19 I go to, let's say, auditor A and auditor A I find  
20 passes me nine times out of ten, but if I go to  
21 auditor B they pass me seven times out of ten, I'm going  
22 to pick the auditor that is going to pass me with  
23 the most frequency. I'm not saying it's right, but I'm  
24 saying that's a risk that could happen. I think, as  
25 Gillian Scott testified, that we have seen -- even with

1 the introduction of Altius compared with Achilles, we  
2 are seeing more audit failures in the first year of the  
3 scheme for whatever reason.

4 Q. Now, turning on to 116(e), you refer there to increasing  
5 staff time and overhead costs associated with managing  
6 Network Rail's interaction. Just to summarise, you are  
7 essentially talking about Network Rail's staff and  
8 overhead costs; that's right, is it not?

9 A. Yeah.

10 Q. These are the points I think you are picking up at  
11 paragraphs 121 through to 123; is that --

12 A. Yeah.

13 Q. -- right? Thank you.

14 So to take the first one, which is -- as  
15 I understand it, this starts at paragraph 116(e)(i):

16 "Regarding procurement, in a multi-scheme  
17 environment, Network Rail would not be able to discharge  
18 its obligations under the utilities contracts  
19 regulations by publishing QSNs through RISQS only."

20 So, again, this is starting on the assumption that  
21 you would have to be publishing multiple qualification  
22 system notices?

23 A. Yeah.

24 Q. You come up with a figure of £150,000 to  
25 £300,000 per annum, and you quantify that at

1 paragraph 121. This is on the basis that there are  
2 389 RISQS users within Network Rail, you assume an  
3 average salary and you estimate that around 2% of their  
4 time is spent at the expression of interest stage.

5 Just to test that for a moment, this 389, where did  
6 you get that figure from?

7 A. I think that's the number of the active procurement  
8 practitioners registered currently in RISQS.

9 Q. So it is the procurement practitioners, that is; yes?

10 A. Yeah, the people who would interact with the system.

11 Q. You estimate around 2% of their time is at expression of  
12 interest stage. Is that just the sort of gut-feel  
13 figure?

14 A. No, I canvassed opinion from colleagues and it ranged  
15 between 1% and 3%. So basically what I was trying to do  
16 here was create an order of magnitude of cost as opposed  
17 to a detailed estimate.

18 Q. But that 2% of their time that is spent at expression of  
19 interest stage, that is not necessarily 2% of their  
20 time -- at expression of interest stage you do not spend  
21 your entire time sat on the RISQS system, do you, as  
22 a RISQS user? You might be doing other things, like  
23 having internal meetings about what to do about  
24 expressions of interest and so forth?

25 A. There's an element of that, but equally there I then

1 multiplied it by 80%, taking into account paragraph 120,  
2 because we estimated that approximately four-fifths of  
3 the time is in relation to RISQS, as opposed to placing  
4 (inaudible), so we factored it down for actually dealing  
5 with RISQS suppliers versus the entirety of expression  
6 of interest that they may be involved in.

7 Q. What I am putting to you is the work in terms of  
8 inviting expressions of interest, some of it might be  
9 working out what kind of services you want to put out to  
10 tender, would it not? That is part of what you do at  
11 expression of interest stage?

12 A. It would be, but the question I was addressing here was  
13 in connection with actually getting to the expression of  
14 interest stage to which RISQS plays a significant part.  
15 So you may well be right that it's slightly higher, but  
16 I'm trying to make sure I capture the essence of the bit  
17 of the process.

18 Q. What I am suggesting to you is that the time spent on  
19 expression of interest stage is not the same as time  
20 spent using RISQS.

21 A. That's correct.

22 Q. Then at 116(e)(ii) you have some estimates of  
23 co-ordination activities between Network Rail and  
24 supplier assurance schemes, and these are estimates for  
25 each additional scheme. So we have systems training for

1 each RISQS user and the estimate you have there of  
2 £40,000 to £50,000. Again, if we look at  
3 paragraph 122(a), you have estimated that on the basis  
4 of 389 Network Rail users of RISQS. So you have assumed  
5 that it would be the procurement staff who would be  
6 having to deal with, for example, TransQ as well, and  
7 you have assumed that all of them would have to undergo  
8 the systems training; yes?

9 A. That's correct.

10 Q. And then --

11 A. I think there are some two hours in the first year and  
12 then that would reduce thereafter.

13 Q. Then you assume an amount at 116(e)(ii)(2), "Mapping  
14 codes". You say that all the category codes would need  
15 to be mapped. Again, this is on the assumption that  
16 different sets of codes have been used, is it not?

17 A. It is, yeah.

18 Q. You estimate the cost to be £5,000 to £10,000. I think  
19 at paragraph 122(b) you come up actually with an  
20 estimate of £5,400. That is your more precise figure,  
21 but there we are.

22 A. That's correct.

23 Q. £5,400 is not itself a huge amount of money, is it,  
24 Mr. Blackley?

25 A. No, it was a case of methodically going through

1 the various constituent parts and putting a figure on  
2 it. I didn't have any idea when I started this  
3 calculation whether it was going to come out at £5,000  
4 or £10,000 or £15,000. But it was a process of going  
5 through and putting a realistic order of magnitude  
6 against it.

7 Q. Sorry, I should have said perhaps there is one  
8 previous -- going back to the previous paragraph,  
9 the systems training and additional time, those -- as  
10 well as assuming multiple qualification schemes, you are  
11 also assuming no integration with Bravo, are you not, as  
12 well?

13 A. At this point, yes.

14 Q. Indeed ... yes.

15 Then if I can take you to paragraphs 122(c), (d) and  
16 (e), you have some costs of attending scheme board  
17 meetings. Is that from a procurement point of view?

18 A. No, that's from our Network Rail representative point of  
19 view, attending quarterly board meetings.

20 Q. Then liaison meetings, similarly a relatively small sum.

21 Then at 122(e), £2,592 for ongoing reconciliation  
22 activities between the schemes and Network Rail's  
23 category supplier list. So, again, that assumes no  
24 integration between information provided by a scheme and  
25 Network Rail's -- the system, whatever it is, where

- 1 Network Rail's category list is maintained?
- 2 A. That means do it as the way we do it just now.
- 3 Q. Right. So do I understand at the moment what you do is  
4 each month somebody spends four hours maintaining a list  
5 that is held internally within Network Rail that is its  
6 category supplier list and that is kept updated with  
7 information from RISQS?
- 8 A. Approximately. What we've done is we've taken a sample  
9 over a period of time and we've averaged it, and what  
10 Network Rail does is they have a -- they have a bunch of  
11 categories and against those categories we have  
12 a category supplier list, so the suppliers who are able  
13 to do work in the certain categories are -- as it says  
14 there, they're mapped and they're tracked and their  
15 spend is tracked in terms of Network Rail's accounting  
16 system.
- 17 Q. So you map RISQS product codes to your internal  
18 categories --
- 19 A. We do.
- 20 Q. -- and you maintain within each category list  
21 the suppliers who are authorised?
- 22 A. A category supplier list.
- 23 Q. Presumably for each category you would know whether each  
24 supplier needs to be Sentinel-authorised,  
25 principal-contractor licensed or on-track-plant assured?

1 A. Well that's held elsewhere, but once you get to the kind  
2 of RICCL code level, you can see that level of  
3 information.

4 Q. At 123 --

5 A. I should also add that quite often you'll get suppliers  
6 that are mapped against multiple category codes. So  
7 it's not -- they're not like a one-for-one mapping.  
8 It's very much kind of a matrix.

9 Q. So some suppliers do many things?

10 A. Correct.

11 Q. Then there is a point which I think is the same at  
12 116(e) (iii) on page 47, the costs of auditing  
13 the auditor, which you estimate at £200,000 to £250,000  
14 per year, and you set out your reasons for that at  
15 paragraph 123.

16 "If there was one additional supplier assurance  
17 scheme, I estimate that the cost relating to  
18 Network Rail needing to assure itself that the scheme  
19 met Network Rail's requirements and managing the  
20 contract with the additional scheme provider, including  
21 in effect auditing the auditor, would be around £200,000  
22 to £250,000 per year."

23 You estimate this on the basis of three full-time  
24 equivalent employees plus some external support.

25 A. Correct.

1 Q. We heard earlier on from Mr. Cooke that Network Rail  
2 does not audit RSSB in its delivery of the contract --

3 A. That's correct.

4 Q. -- and it does not from a procurement point of view.

5 A. So this is based on a similar principle to the RSSB  
6 having a scheme manager organisation to audit  
7 the provider and the assurance -- or the audit provider  
8 under their RSSB contracts.

9 Q. So back at 116(e) (iii) on page 47, you say:

10 "Currently this cost is avoided through  
11 Network Rail's membership of RISQS, a single scheme in  
12 which Network Rail can have confidence that its  
13 assurance requirements are met on an ongoing basis."

14 So effectively Network Rail is happy to trust  
15 RISQS -- trust the RSSB?

16 A. We do trust RSSB, but equally their attendance at  
17 the RISQS committee meetings, we get feedback as to how  
18 the scheme's performing and therefore we get visibility  
19 over what the scheme managers actually are doing on  
20 behalf of the buyers to properly administer the scheme.

21 Q. Okay. So we are looking through the cost estimates here  
22 and you have already set out relatively small costs of  
23 £3,600 for attending board meetings, £1,296 for  
24 attending liaison meetings, but here you are putting in  
25 a very large chunk of about a £250,000 a year for having

1 a layer of audit supervision at Network Rail over  
2 alternative scheme providers, but you are saying at the  
3 moment Network Rail just trust the RSSB implicitly.

4 A. It's a bit like we're all on the same side and there's  
5 no man-for-man marking currently, so therefore  
6 Network Rail doesn't have to employ staff to do the role  
7 which the RSSB scheme manager's team currently does. So  
8 therefore we do rely upon them, but we ... as I say, we  
9 monitor the performance at the RISQS committee meetings.

10 Q. In fact Network Rail never audited Achilles' delivery of  
11 these services either, did it?

12 A. I don't actually know the answer to that. It was before  
13 my time in the department. But I do recall there was  
14 a team of Network Rail resources, there was a head of  
15 supplier assurance and there was a small team. I don't  
16 know precisely what their remit was in terms of  
17 auditing.

18 Q. But this reflects your view that in effect the RSSB is  
19 just doing it on behalf of Network Rail. This whole  
20 paragraph here:

21 "It is currently undertaken [you say] by a team of  
22 five FTEs by the RSSB."

23 So the way you are seeing it is the RSSB is doing  
24 Network Rail's --

25 A. The RSSB currently isn't doing it just on behalf of

1 Network Rail. The RSSB scheme manager team are doing it  
2 on behalf of the 105 buying organisations that take part  
3 in it. I am suggesting in this paragraph that where  
4 Network Rail are forced to take a licence of Achilles as  
5 an equivalent scheme, then we would have to in some way  
6 almost replicate what the RSSB are doing in order to  
7 fulfill a very similar function with Achilles.

8 Q. Network Rail could -- instead of doing an audit job  
9 itself, it could require alternative scheme providers to  
10 be certified by an accreditation service like UKAS,  
11 could it not?

12 A. I think it's more than just the auditing part of it.  
13 There's quite a lot of interaction between the RSSB  
14 scheme manager and the portal itself as well.

15 Q. But you refer here to assuring itself that the scheme  
16 met Network Rail's requirement. This is in a scenario --  
17 I think only in the scenario where Network Rail is  
18 itself using this as a qualification scheme, yes?

19 A. Well, there's a qualification scheme aspect and there's  
20 the auditor aspect.

21 Q. Sorry, can you say that again?

22 A. There's the two parts to it. There's the qualification  
23 scheme itself and there's the auditing role where, as  
24 we've heard in the evidence previously, the scheme  
25 manager's role in that team looks at the quality of

1 the audit provisions under the contract.

2 Q. What I was suggesting, in terms of ensuring that audit  
3 of, say, the Sentinel module was done to a sufficient  
4 standard, Network Rail could insist that all scheme  
5 providers are certified against an ISO standard,  
6 could it not?

7 A. That may well be an option, but currently we've assumed  
8 that we're going to do the same as the RSSB scheme  
9 manager organisation does.

10 Q. Okay, I think we have covered that.

11 Then at 124 you cover increased scheme registration  
12 costs. I think that is an assumption that you would  
13 have to pay the additional £50,000 per year and we  
14 discussed that earlier.

15 A. We did, yeah, and I've assumed that same 50,000 for each  
16 occurrence.

17 Q. Thank you.

18 Now, just, I think, a relatively small number of  
19 points. If I can take you back to paragraph 48 of your  
20 statement. You refer there to other industries  
21 specifying which supplier assurance scheme their  
22 contractors should use when compiling the list of  
23 potential suppliers and you refer to National Grid. Do  
24 you have any familiarity with what National Grid do  
25 other than what you have found on their website?

1 A. No, generally it's based on investigation of  
2 the website.

3 Q. What this refers to, the bit from the website you have  
4 chosen, it simply relates to -- and we see in the second  
5 paragraph:

6 "We use the Achilles Utilities Vendor Database  
7 (UVDB) when compiling lists of potential suppliers for  
8 our goods and services requirements."

9 So this is about a qualification system essentially,  
10 like you use RISQS for?

11 A. Yeah, it seemed very similar to the Network Rail  
12 requirements.

13 Q. So this is not the case, is it, where National Grid is  
14 mandating the use of a single scheme for the purpose of  
15 running a scheme like Sentinel, so authorisation of  
16 other people to have access to its infrastructure;  
17 that's not what this is?

18 A. I don't believe so, no.

19 Q. Okay, thank you.

20 If I can jump back again now to the very end of  
21 the statement, "Practical implications of dealing with  
22 multiple schemes", 125 onwards. I think this is  
23 the point you made earlier on, that you could not see  
24 how a procurement practitioner could select suppliers  
25 from multiple schemes whilst running a competitive

1 procurement, and I think what we have established is  
2 that you are talking about using multiple qualification  
3 schemes there, yes?

4 A. Yes, based on the term "an equivalent scheme" I was  
5 looking at that as being the platform and the auditing  
6 service.

7 Q. You say:

8 "If we were obliged to recognise the Achilles  
9 scheme, it would not merely be a matter of recognising a  
10 competing assurance scheme ..."

11 So essentially not a matter of recognising its  
12 auditing.

13 "... but also agreeing contractual terms, modifying  
14 reporting systems, meeting, auditing, undertaking  
15 activity to map codes."

16 Etc. You say:

17 "The only part of the solution I could envisage  
18 would be a 'common RISQS scheme' where multiple system  
19 administrators could operate within a single supplier  
20 assurance scheme but this would be a contractual  
21 decision for the RSSB."

22 I think it is clear now that, again, you are talking  
23 about qualification systems, and the model you are  
24 working with is effectively that the RSSB has taken over  
25 this job on Network Rail's behalf and thus you are

1           seeing it as a matter between RSSB and Altius and  
2           Capita?

3       A.   And has tendered on Network Rail's behalf.  And I think  
4           the point I was making earlier is that Achilles  
5           shouldn't be viewing that they're in competition with  
6           the RSSB.  There is no competition element there.

7       Q.   Well, in a sense, that is what this case is  
8           about: Achilles want to compete with the RSSB and we say  
9           that Network Rail is not letting us doing it.  That is  
10          right, is it not?

11      A.   The reality is -- my belief is Achilles should be  
12          competing with the Altiuses of the world.  When we talk  
13          about RISQS, the Rail Industry Supplier Qualification  
14          Scheme, that is an umbrella brand which the RSSB has  
15          constructed so that suppliers -- suppliers such as  
16          Achilles and Altius who have platforms and audit  
17          services can compete to provide the services under that  
18          brand.  And as I said earlier, Altius have a platform  
19          called Exigo, I believe, and that's the platform they  
20          chose to put forward in their tender when submitting  
21          the tender for the RSSB -- your tender, just as Achilles  
22          could pick Link-Up, Link-Up TransQ or any one of their  
23          other products, to put that forward to provide the RISQS  
24          service.  So I believe the competition is between  
25          the actual players in the marketplace not with the RSSB.

- 1 Q. So your view is that Achilles should be allowed to  
2 compete in that tender with Altius --
- 3 A. Absolutely, because --
- 4 Q. -- and Capita?
- 5 A. Because it doesn't also come down to RIS2750. That's  
6 a little bit of a loss-leader(?), because that just gets  
7 -- that just tells you someone's competent to allow them  
8 to become one of the tenderers? The actual tendering  
9 activity itself is between the players that you would  
10 normally find in a normal competition for any supplier  
11 qualification scheme or auditing scheme.
- 12 Q. But your view is that Achilles should not be allowed to  
13 compete in the market with the RSSB, to --
- 14 A. I don't believe that is the true competition. And  
15 the RSSB is a facilitator; the competition is between  
16 the normal providers of the platform. RSSB doesn't add  
17 any platform to that. They are -- they are putting this  
18 together in a way that benefits not just one party like  
19 Network Rail but benefits multiple buyers and multiple  
20 suppliers, because by doing things once, it benefits  
21 a large volume of customers.
- 22 MR. WOOLFE: If I could just have a moment, sir, to consider  
23 something.
- 24 (Pause)
- 25 Can I take you to your second statement, please, at

1           tab 10. At paragraph 6 you come to the API issue, and  
2           as you will have heard from Mr. Chamberlain's evidence  
3           this morning, he says that an API essentially is  
4           a software element that can link one software system to  
5           another, and you say that:

6                     "It is not possible to use APIs to enable multiple  
7                     schemes to inter-operate with Network Rail's systems in  
8                     a manner which would safeguard the safety benefits and  
9                     economic efficiencies."

10                    Now, just to take your first point, you say there  
11                    are no such APIs in place at present, but there is an  
12                    API which is supposed to be on the way, so it is  
13                    a possible thing to do, is it not?

14           A. Technically, I've got to say yes, because for years now  
15           people have been telling me that this is technically  
16           possible. Bravo was first conceived in 2015, and  
17           between January 2016 and June 2016, BravoNR was being  
18           constructed, and in the first six months of 2016  
19           I convened a meeting involving the current RISQS  
20           provider, Achilles, the supplier whom we had selected to  
21           develop Bravo, and Network Rail, as we are developing  
22           what Bravo NR was going to become, and the purpose of  
23           that meeting was to have a conversation that would allow  
24           Network Rail to move on with the development of  
25           BravoNR in a way where we didn't make a decision at

1 the early stages of the build such that we could not use  
2 some form of technology to link RISQS with BravoNR at  
3 some point in time, and the conclusion that that meeting  
4 came to, and largely the conversation was taking place  
5 between Bravo Solutions at the time, who we now refer to  
6 as Jaggaer because they bought them over, and Achilles,  
7 and they were talking in that meeting about the solution  
8 being some form of API, which they both concluded would  
9 be possible.

10 So I have no reason to believe from an early stage  
11 that -- it was described as something that was  
12 relatively straightforward and that was back in  
13 the first six months of January '16.

14 Since the contract was awarded to Altius and Capita,  
15 and in particular Altius, for provision of the system,  
16 discussions have taken place between Altius and Jaggaer,  
17 and to this day we still do not have a plan to put in  
18 place an API that satisfies Network Rail requirements.  
19 Probably as recently as the first week in February,  
20 the latest progress on it was that whilst the API could  
21 be created to process suppliers on a -- almost a single  
22 supplier basis, there was no -- well, the two parties  
23 hadn't got to a point where they could agree how to  
24 construct a -- an API such that there could be a mass  
25 transfer of information of the scale that Network Rail

1 required to allow the two systems to talk to each other.

2 So I'm sure it's technically possible, but so far  
3 there's been insufficient progress on it.

4 Q. But Achilles' own evidence is that it has used APIs in  
5 the past to link to Bravo systems elsewhere. That is  
6 right, is it not?

7 A. That is correct. I have asked Bravo about that and  
8 Bravo's response to me was unfortunately they weren't  
9 allowed to talk to me about the example which I read in  
10 the witness statement --

11 Q. Right.

12 A. -- due to some form of non-disclosure agreement between  
13 Achilles and Bravo. So they said they couldn't answer  
14 my questions.

15 Q. Somewhat inconvenient.

16 A. I can only report back to you what the company's told  
17 me.

18 Q. Sorry, I was not meaning --

19 A. To be honest, I would love to know the answer, because  
20 I am -- because I am -- it's always been our aspiration  
21 to link RISQS with BravoNR, because it makes life far  
22 easier for the small and medium sized enterprises  
23 throughout who could insert information once and have  
24 that information flow from RISQS into the supplier  
25 profile in Bravo, which would then automatically feed

1 pre-qualification questionnaires, and that is our  
2 aspiration as Network Rail, to not -- basically not  
3 cause bureaucracy to suppliers filling in forms.

4 Q. Just for the transcriber, I was saying that was  
5 inconvenient not convenient, just to be clear.

6 Now, at the second sentence of paragraph 6(a), you  
7 say:

8 "Achilles would therefore be seeking to piggyback  
9 off the investment which the new service providers are  
10 making to integrate the RISQS system with the BravoNR  
11 portal."

12 As I understand, an API, it would need to pull data  
13 from one system, so TransQ, and would need to push it  
14 into another system, so Bravo. Configuring an API to  
15 pull the wide information out of say TransQ, that would  
16 not be piggybacking off anybody else's investment, would  
17 it?

18 A. The discussions I have had with Jaggaer, they've  
19 explained to me that APIs can take different forms. As  
20 a company, they choose to invest in a web services type  
21 of approach to developing their APIs such that they put  
22 quite a lot of effort in upfront to make their APIs what  
23 they called as being "open", and I think they were  
24 referring to the architecture of their IT systems in  
25 terms of what an open API could achieve versus what they

1           said a custom API was able to achieve. The suggestion  
2           was that when you have custom APIs, ie very specific,  
3           between, let's say, a customer and a supplier, those  
4           custom APIs are good as long as you do not make changes  
5           to the system. As soon as you start making changes,  
6           you're then into hard coding and more time and expense  
7           every time you do it.

8           I think the other point to note is --

9        Q. Can I just ask you one question about that? So you are  
10       saying Bravo would want to develop an open API; is that  
11       right?

12       A. Bravo have suggested that open APIs are attractive,  
13       however they qualified that by saying that open APIs are  
14       difficult when you enter the business scenario because  
15       of -- I guess because of the complexities and the fact  
16       that different businesses have perhaps different fields,  
17       different field lengths, different characterisation,  
18       different formatting, and therefore, a bit like we  
19       discussed earlier on, there is a lot of discussion and  
20       collaboration upfront in order get something that would  
21       work for multiple parties.

22           I think the other thing I would like to kind of add  
23           at this stage --

24       Q. Just ... so on this point about the API, I mean either  
25       the API is open, in which case other people can use it,

1 or it is not open, in which case other people would have  
2 to invest in developing their own API; that is right, is  
3 it not?

4 A. I'm not an expert on APIs so I can't comment on how one  
5 design benefits another, but I was going to come on to  
6 say that I think it's kind of quite important that when  
7 I talk -- in fact all the way through the evidence, when  
8 I talk about the way that Network Rail have always  
9 assumed we were going to continue with our single portal  
10 for the supplier qualification system, we did that -- we  
11 didn't design Bravo so that Bravo could then be  
12 a repository for information for our supplier  
13 qualification system. We actually designed Bravo based  
14 on the choice that we were going to continue with  
15 the RISQS scheme as was developed. So the idea was we  
16 were going to -- we weren't going to redesign Bravo to  
17 sort of do what RISQS can do. The idea would be -- it  
18 was quite important to us that these two systems  
19 ultimately talk to each other.

20 Q. Just going to the next thing, at 6(b) you say:

21 "Even if such integration were possible ..."

22 Integration being TransQ and Bravo.

23 "... it would not address the safety concerns and  
24 loss of efficiency associated with the move away from  
25 a single scheme structure."

1           Just taking those separately, safety concerns with  
2           respect -- integration between TransQ and a procurement  
3           system would not in itself be about safety, would it?

4           It is about using it as a qualification system?

5       A. I think that was best summarised for me when  
6           Allan Spence described it as avoiding fragmentation.  
7           You know, if you could avoid fragmentation, that would  
8           be a good thing.

9       Q. From a safety perspective what matters is if somebody  
10          gets audited against the Sentinel scheme module by  
11          TransQ, that information can be reported to Sentinel,  
12          you have a single repository of that information, and if  
13          they are not on Sentinel, they do not get access to  
14          Network Rail's infrastructure. That is what matters  
15          from a safety point of view, is it not?

16       A. That's one aspect.

17       Q. As regards on-track plant, that information would go to  
18          the team within Network Rail who deals with  
19          authorisation of on-track plant providers, and they  
20          either authorise a provider, having done their further  
21          checks, or they do not, but that would be -- this  
22          information would not be going through Bravo at all,  
23          would it, in that scenario?

24       A. If you had multiple scheme providers -- I know you said  
25          earlier on that that's not necessarily the case --

1 I think the information that's obtained from whichever  
2 scheme provider we've got has got to reside in a system  
3 somewhere.

4 Q. As regards the loss of efficiencies, that depends again  
5 on using these schemes as a qualification system,  
6 does it not, because you are looking at using them as  
7 a qualification system and loading information into your  
8 Bravo procurement portal, and so that is what you are  
9 talking about, is it not?

10 A. Could you just repeat that?

11 Q. When you refer to loss of efficiencies here --

12 A. Can you just clarify which paragraph you're on?

13 Q. Oh, sorry, 6(b) --

14 A. 6(b), yeah.

15 Q. -- talking about integration between Achilles and  
16 BravoNR.

17 A. That's actually addressing both the safety concern  
18 points made by Allan Spence and also the efficiency  
19 points which we referred to earlier, which did include  
20 assuming it was an equivalent scheme.

21 Q. But the efficiencies you are talking about are what we  
22 have covered at --

23 A. It is, yeah.

24 Q. Okay.

25 Then you refer to the need to incur further expense,

- 1           how to explore APIs might integrate into their systems.
- 2       A. Can I just come back on that point? What -- there's an  
3       underlying theme behind this paragraph which possibly  
4       isn't brought through in the paragraph. So when we have  
5       contracted with Jaggaer for the BravonR system, that  
6       system is for a duration of five years, so by not  
7       putting in a linkage at the beginning means that for  
8       them to introduce things like KPIs let's say in year 3  
9       of the contract, it's then sub-optimal at that point  
10      because we're investing in something which is going to  
11      come into an end within five years of the contract, at  
12      which point we will re-tender Network Rail's end-to-end  
13      contract management system and we'll have to do  
14      the whole thing again with the -- perhaps a supplier  
15      other than Jaggaer, which is probably two years away.
- 16      Q. So take the plant operator scheme team, they must have  
17      a list of authorisation-holders, must they not, a list  
18      of people who are authorised to --
- 19      A. I don't know what form they keep it in, other than  
20      looking at the RISQS scheme to see whether someone's  
21      got --
- 22      Q. And they report that information to RISQS, do they not?  
23      They say who in there is authorised?
- 24      A. It finds its way into this, so I imagine someone does.
- 25      Q. So that information is in a sense collated without

- 1 the need for an API anyway, is it not?
- 2 A. I guess it depends whether you want to make it seamless  
3 or not.
- 4 Q. Then we have KPIs. I think we have covered that already  
5 in terms of I have put to you that Network Rail could  
6 have the benefit of competition between TransQ and RISQS  
7 and you have said that you prefer it to be managed in  
8 the way that it is at the moment. Is that a fair  
9 summary of your evidence?
- 10 A. I heard your point that Network Rail could have a  
11 inaudible), but I assumed you meant a further  
12 competition. But I don't think(?) my answer was that  
13 we've already had a competition via RSSB and we  
14 undertook that competition on Network Rail's behalf.  
15 But when you read your opening statement, you seemed to  
16 kind of suggest that this was about -- more about audit  
17 services rather than the kind of -- the whole scheme,  
18 and it struck me that had Achilles not withdrawn from  
19 lot 2 of the tender, then at least their offering would  
20 have been on the table to be compared on an apples for  
21 apples basis with other tenderers, so therefore we would  
22 have had a clearer picture as to whether Achilles'  
23 offering was compelling or not.
- 24 Q. Without the risk of repeating myself, what we say is  
25 that this case is about Achilles wanting to offer an

1 end-to-end supplier assurance scheme service in  
2 the market in competition with RISQS and it withdrew  
3 from the tender because not being able to provide both  
4 elements together, it was not providing an end-to-end  
5 scheme in the market.

6 A. Yes, but Network Rail's requirements was for --  
7 effectively it was reflected in the RSSB tender for  
8 RISQS. So this feels a little bit like Achilles telling  
9 us what they were going to give us, rather than  
10 Network Rail setting our specification requirements in  
11 conjunction with the RSSB, to which Achilles would then  
12 respond as a supplier and put their best foot forward  
13 and make their best offer in competition with the others  
14 in the same market.

15 That's where you bring out the points about the  
16 like-for-like comparison because we've got an offer  
17 currently from Achilles which does not have KPIs in it,  
18 doesn't have rates in it, and I just wonder where this  
19 is going to end because, should Achilles be successful,  
20 how are they actually going to attract suppliers back in  
21 to use Achilles because we've got another supplier out  
22 there in the market with their rates known by  
23 the supplier market, and I hate to think that Achilles  
24 are going to come back in the side-door where -- without  
25 having to competitively tender and then pick up work by

1           approaching suppliers and undercutting the rates of  
2           the winning provider.

3       Q.   Would not undercutting rates be a rather good thing?

4       A.   That's extremely poor behaviour from an EU procurement  
5           point of view.

6       Q.   Okay --

7       A.   Again, Network Rail treat all suppliers equally and all  
8           suppliers had a fair crack of the whip to submit  
9           a tender for these services.

10      Q.   I have put to you repeatedly that we are not talking  
11          about Network Rail having to use TransQ as  
12          a qualification system, so, remember, I would not have  
13          to pick Achilles to use it as a qualification system.  
14          This is about Achilles being able to supply other  
15          people, other buyers in the market.

16      A.   So notwithstanding that, I hate the idea of a supplier  
17          undercutting another supplier for a contract that is not  
18          on a like-for-like basis. That is -- that is far from  
19          complying with the EU Treaty principles.

20      MR. WOOLFE: Thank you.

21            That is all the questions I wanted to ask, sir,  
22            thank you.

23                            Re-examination by MR FLYNN

24      MR. FLYNN: Mr. Blackley, could you look at paragraph 49 of  
25          your first witness statement, please. You were taken to

1           this a short while ago and you and Mr. Woolfe debated  
2           the middle paragraph:

3                     "We use the Achilles user vendor database when  
4           compiling lists of suppliers."

5                     I think you agreed that that was -- sorry, are you  
6           on the right paragraph?

7           A.   Paragraph 49?

8           Q.   49, yes, and there is a quotation from I think  
9           the National Grid website. I think you are not in  
10          the right place. Tab 2.

11          A.   Yeah, I'm there now.

12          Q.   Tab 2. You are with me now. So you see in the middle  
13          there was a paragraph you discussed with Mr. Woolfe. He  
14          asked you some questions about it.

15          A.   Yes.

16          Q.   I think you agreed that that paragraph related to using  
17          the UVDB as a qualification system.

18                     If you read on to the next paragraph, for certain  
19          high-risk categories, is that about a qualification  
20          system?

21          A.   That's about the -- use of the Verify audit process.

22          Q.   Is that about a qualification system?

23          A.   That's about the auditing of the suppliers.

24          Q.   So that is not about a qualification system, I think is  
25          what you are saying.

1 A. Yes.

2 Q. It is about something different?

3 A. It's the auditing itself.

4 MR. FLYNN: No further questions, sir.

5 Questions from THE TRIBUNAL

6 MEMBER 3: I just have a couple of questions. I am slightly  
7 embarrassed about one because the answer might be in  
8 the papers and you can point me to them.

9 Network Rail, having chosen to go down the RISQS  
10 route via the RSSB tender, is that -- what's the  
11 duration of the relationship whereby Network Rail will  
12 use the RSSB relationship?

13 A. I don't believe there is an actual end date. Following  
14 the industry piece of work to actually look at how best  
15 to take supplier qualification forward, it was  
16 identified that RSSB, from a Rail Safety and Standards  
17 Board point of view, were best placed to be able to lead  
18 the industry for that, as when it comes to the current  
19 relationship, the current contract that's been awarded  
20 recently is a contract for three years plus two years.

21 MEMBER 3: Sorry, those are the contracts for the IT  
22 platform --

23 A. Yeah.

24 MEMBER 3: -- and the audit?

25 A. Yes, so there are --

1 MEMBER 3: But there are components, so those are not  
2 a whole scheme contract, are they? The scheme that you  
3 have chosen is the RISQS scheme --

4 A. The RISQS scheme is made up of those parts.

5 MEMBER 3: And only those parts?

6 A. I believe so, yes.

7 MEMBER 3: So, so far as Network Rail is concerned, yours is  
8 an open-ended commitment to the RISQS scheme on  
9 the assumption that the component parts of the RISQS  
10 scheme get tendered?

11 A. Competitively tendered. It was one of Network Rail's  
12 requirements that it be competitively tendered on  
13 a regular basis, and the term we initially discussed  
14 with RSSB was five years and then that became a three  
15 plus two, so up to three years we monitor it. If it's  
16 working well, we're able to extend for a further two  
17 years without going back to the market. If it wasn't  
18 working well, we would be able to go back out to  
19 the market so that the duration of the contract was  
20 three years.

21 MEMBER 3: That is contractualised somewhere, is it, that it  
22 is --

23 A. Yes.

24 MEMBER 3: In your evidence I think you said that 17 people  
25 attended.

1 A. Yeah, I've not been party to the tender process itself,  
2 but I believe it was something in that order of  
3 magnitude.

4 MEMBER 3: But that is combining the number --

5 A. That's combining people --

6 MEMBER 3: -- who went to the platform and the number who  
7 went --

8 A. That's combining people in both lots.

9 MEMBER 3: Do you know how many tendered on a whole system  
10 basis or for both lots A and B, as it would be?

11 A. I don't, actually, but Gemma Pearson should be able to  
12 clarify that.

13 But leading on from your question, there was  
14 a marketing engagement exercise undertaken by RSSB,  
15 I think it was in December 2015, and part of that market  
16 engagement exercise which the Government encourages in  
17 order to understand what the market can and can't  
18 provide, that was all about making sure we generate  
19 suitable levels of competition.

20 So, therefore, I think the feeling was, if we just  
21 went out to suppliers who could undertake both lot 1 and  
22 lot 2 combined, we were limiting our choice, and  
23 therefore by actually structuring the document so that  
24 a supplier could bid for lot 1 and lot 2 separately --  
25 but, clearly, if Achilles had bid and won both lots 1

1           and lots 2, effectively they would be doing the same  
2           thing as they had been doing for the last 20 years. So  
3           we weren't excluding that option for the same supplier  
4           to win both, but it was opening up the competition  
5           to us.

6           MEMBER 3: Thanks.

7           THE CHAIRMAN: I will put a question to you that I put to  
8           Ms. Ferrier: do you have any sense -- if Network Rail  
9           was required to recognise other supplier assurance  
10          schemes that came up to an adequate standard, do you  
11          have any idea how many other organisations would be  
12          likely to come into the frame?

13          A. I've made an assumption that it could be those who  
14          competitively tendered to the RSSB. So it could be  
15          the 17, if that indeed is confirmed as the number, but  
16          there could be others as well.

17          THE CHAIRMAN: Sorry, this is a point that I could probably  
18          work out for myself as well, but I am going to ask you.  
19          In your first witness statement you were taken to  
20          paragraph 113 and the reference to confusing codes that  
21          might be used by different scheme providers. Do you  
22          remember that?

23          A. Yes.

24          THE CHAIRMAN: In the notice that you were taken to, there  
25          were various CPV codes --

1 A. Yeah, common procurement vocabulary.

2 THE CHAIRMAN: Are they codes that could be used by  
3 different scheme providers or are they only codes that  
4 could be used by the RISQS scheme?

5 A. They have tended -- actually, they're currently not  
6 codes that are just used by the RISQS scheme; these  
7 codes are universal across European procurement. What  
8 we do is we map the -- or we align the RISQS codes to  
9 the CPV codes so that those in Europe can actually  
10 relate it to something much more universal.

11 THE CHAIRMAN: Are these product codes or not? These are  
12 something else, these CPV codes?

13 A. I wouldn't describe them as "product codes". They're  
14 based on a slightly different philosophy and I don't  
15 know whether it would be possible to actually use  
16 something like that as the kind of (unclear) coding  
17 going forward to make it universal. I think the RSSB  
18 looked into this because Achilles, when they ran  
19 the previous scheme, they used product codes which were  
20 derived from the industry. There was a choice then made  
21 to improve on that position and move to the RICCL codes,  
22 the real industry common classification listing. That  
23 was seen as an improvement. Whether a further  
24 improvement could be somehow moving closer to the common  
25 procurement vocabulary I don't know the answer to.

1 THE CHAIRMAN: Thank you.

2 MR. FLYNN: Sir, might I just point out in answer to

3 Mr. Cutting's question -- and we all had to scabble

4 around -- but in G2/29 -- we maybe do not need to go to

5 it, but there is a document headed "Terms and conditions

6 for buyer membership of RISQS", a short document, and

7 that sets out the terms on which a buyer member

8 contracts with the RSSB for RISQS services. It is

9 basically annually on payment of your membership and you

10 can withdraw by telling them a month in advance that you

11 do not intend to renew, and there are other provisions,

12 termination for cause, but it rolls on year to year

13 basically.

14 MEMBER 3: I'm amazed I missed it.

15 MR. WOOLFE: Just to admit, the supplier membership terms

16 are in the previous tab at tab 28.

17 MEMBER 3: I missed that too.

18 MR. FLYNN: Sir, given the time of day and the fact that no

19 other witness is present, might we finish a minute

20 early?

21 THE CHAIRMAN: Yes.

22 (4.29 pm)

23 (Court adjourned until 10.30 am on Tuesday,

24 26 February 2019)

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