

1 not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the
2 Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be
3 relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive
4 record.

5 **IN THE COMPETITION**
6 **APPEAL TRIBUNAL**

Case No. : 1298/5/7/18

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

10 26 February 2019

11 Before:

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

13 (Sitting as a Tribunal in England and Wales)

14 BETWEEN:

15 **Achilles Information Limited**

16 **v**

17 **Network Rail Infrastructure Limited**

18 _____
19 *Transcribed by Opus 2 International Ltd.*

20 *(Incorporating Beverley F. Nunnery & Co.)*

21 *Official Court Reporters and Audio Transcribers*

22 *5 New Street Square, London EC4A 3BF*

23 *Tel: 020 7831 5627 Fax: 020 7831 7737*

24 *civil@opus2.digital*

25 _____
26
27 **HEARING - Day 5**
28

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

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

1 Tuesday, 26th February 2019

2 (10.30 am)

3 MR FLYNN: Good morning, sir. I do not know if the Tribunal
4 has seen, but overnight we served a third witness
5 statement of Ms. Scott, dealing with a few discrete
6 points that have arisen in discussion before you.

7 I do not know if you have received it. I have
8 copies here and tabs, if we would put it in our
9 evidence, so D11. If anyone would like those, I can
10 hand them up. (Handed)

11 THE CHAIRMAN: This is not contentious?

12 MR. FLYNN: I do not think it is contentious -- well,
13 the points may be. Ms. Scott is available if my friend
14 wishes to put questions later today or indeed tomorrow,
15 and the same for the Tribunal of course.

16 MR. WOOLFE: We are not disputing this going in or Ms. Scott
17 swearing it into evidence. I am not in a position to
18 deal with it this morning in terms of cross-examination,
19 so we will have to fit it in as best we can later on.

20 MR. FLYNN: Subject to that, sir, then our next witness is
21 Ms. Pearson.

22 MS. GEMMA PEARSON (sworn)

23 Examination-in-chief by MR. FLYNN

24 MR. FLYNN: Thank you, Ms. Pearson. Could Ms. Pearson
25 please be given bundle D. If you turn to tab 8 in that

1 bundle, Ms. Pearson, you will see a witness statement of
2 Gemma Pearson, and if you turn to the last page of it,
3 you see a signature. Is that your signature?

4 A. Yes.

5 Q. It is.

6 Are there any points you wish to correct or clarify
7 in this evidence?

8 A. Yes, there's a date that's incorrect in paragraph 18.

9 So the date that the contract notice was issued should
10 be "9 December 2016", not "2018".

11 Q. Thank you --

12 MEMBER 2: Which paragraph was that?

13 A. 18.

14 MR. FLYNN: 18 of the witness statement, "2016" rather than
15 "2018" for the date.

16 Subject to that, Ms. Pearson, is that your evidence
17 in these proceedings?

18 A. Yes.

19 MR. FLYNN: Then Mr. Woolfe will have some questions for
20 you.

21 Cross-examination by MR. WOOLFE

22 MR. WOOLFE: Good morning, Ms. Pearson. First of all, just
23 one point to assist the Tribunal. There are a number of
24 emails in the exhibits to your statement and in
25 the disclosure to and from Gemma Cuthbert; that is you,

1 is it not?

2 A. Yes, it is.

3 Q. That is fine.

4 The first point I want to explore with you is
5 clarifying the structure under which the RSSB has
6 procured services and is providing services. So at
7 paragraph 9 of your statement you say that you led
8 the tender of the provision of audit and IT services for
9 RISQS when RSSB's contract with Achilles was coming to
10 an end, and at paragraph 10 you refer to the concession
11 agreement with Achilles through which RISQS was
12 introduced to the market, which took effect in 2014.

13 So a concession agreement is one where Achilles was
14 contracting with the suppliers and buyers for
15 the provision of the service, was it not?

16 A. Yes, on behalf of RSSB. We let them run the business as
17 they see fit.

18 Q. You gave them the right as a concession -- they paid you
19 a concession fee --

20 A. Yes.

21 Q. -- but they supplied the service directly to suppliers
22 and buyers.

23 Then there was a change of commercial model,
24 was there not, in 2018; is that right?

25 A. Yes.

1 Q. Under the new commercial model, RISQS is being provided
2 as a service by the RSSB to suppliers and buyers.

3 A. Yes, that's correct.

4 Q. So it was procuring in the audit and the IT services
5 that it needed in order to provide that onward service.

6 Can I take you to bundle G2, please. You will be
7 passed bundles from time to time. If you can turn to
8 tab 28 and then it will be to tab 29 after that. So do
9 you recognise these documents, the ones at 28 and 29?

10 A. Not really. I mean, these were developed through
11 the implementation of the services.

12 Q. Okay.

13 A. My involvement pretty much stopped after the tender.

14 Q. Okay.

15 In which case I will not examine you on the detail
16 of them, but is your understanding that these are
17 contracts between the RSSB and individual suppliers and
18 buyers respectively?

19 A. Yeah, it certainly appears that way.

20 Q. If we look, for instance, at paragraph 3.11 of
21 the supplier document at page 572, we can see, for
22 example, it says there "Audit cancellation":

23 "RSSB will make every reasonable effort to carry out
24 audits as booked."

25 So there is an obligation on the RSSB to carry out

1 audits, is there not?

2 A. Sorry, which ...?

3 Q. Sorry, under 3.11, "Audit cancellation".

4 A. Yeah.

5 Q. Thank you.

6 Then, if you go back to 3.2, "Payment of audit
7 fees", is it your understanding that suppliers pay
8 the RSSB for ...?

9 A. Yeah.

10 Q. Keep bundle G2. I may take you to one more element in
11 there.

12 At paragraph 15 of your statement, you say there
13 that the RSSB considered dividing into lots, one lot
14 for IT and one lot for auditing services. In respect of
15 auditing, in terms of specifying what it was to be
16 audited, was the RSSB subcontracting that function,
17 the function of deciding what it was should be audited?

18 A. I'm sorry, could you rephrase that?

19 Q. If you look in bundle G2, if you go back to tab 15, you
20 will see the industry minimum requirements --

21 A. Okay.

22 Q. -- audit protocol. Is that something you are familiar
23 with?

24 A. I know of it, yes.

25 Q. You know of it.

1 Was the RSSB intending to subcontract the function
2 of deciding what should go into that document?

3 A. No, I mean, the scheme rules and the -- you know, what
4 we kind of audit to is developed by the RISQS board, by
5 the industry, as far as I understand.

6 Q. Thank you.

7 Now, you can put bundle G2 away or hand it back and
8 if you can be given bundle C1, please. At tab 1 of that
9 bundle, starting on page 2, there is what looks like
10 a spreadsheet with lots of words in it.

11 A. Yeah.

12 Q. Do you recognise this document?

13 A. Yes, it's one of the versions of the specification that
14 was issued with the tender.

15 Q. Sorry, can you say that a little bit more loudly?

16 A. It was one of the versions of the specification that was
17 issued with the tender.

18 Q. Okay. Thank you. So that is something that you are
19 more familiar with?

20 A. Yes.

21 Q. If you can look down within item RFP and go down to
22 item 108, please, which I think is on page 7 of
23 the bundle, about a third of the way down the page,
24 the RFP00108, "Auditor provider requirements":

25 "The audit provider must follow the principles laid

- 1 out in ISO/IEC 17021 Conformity Assessment --
2 Requirements for bodies providing audit and
3 certification of management systems."
- 4 A. Mm-hm.
- 5 Q. Just to check, the RSSB, in procuring audit services,
6 was not requiring that its audit provider be certified
7 against that standard; it was simply requiring that they
8 follow the principles?
- 9 A. It says, "... principles laid out in ..."
- 10 Q. So that is the standard which the RSSB was adopting to
11 ensure quality in the audit that was provided; yes?
- 12 A. It would certainly be one of them. I don't know if
13 there's more within this document.
- 14 Q. So were you involved in the formulation of these
15 requirements?
- 16 A. To a degree. Procurement should never own the
17 requirements. We can help shape and structure them so
18 that the suppliers will best understand them. You never
19 own the actual requirements themselves.
- 20 Q. I see. So those requirements come from the business and
21 you are told to procure against those requirements?
- 22 A. Absolutely, yeah.
- 23 Q. So do you know where this requirement came from?
- 24 A. Well, I think you had best ask the requirements manager.
25 I know that this was drafted in consultation with

1 the industry and there were many, many meetings held
2 with various buyers and suppliers as to what they needed
3 from this service.

4 Q. Do you recall any discussion around this being the
5 required standard?

6 A. I wouldn't have been involved in something like that.

7 Q. Then simply at 109, "Auditor provider requirements",
8 there is a -- you can see that in the box we have four
9 bullet points:

10 "Auditors delivering RISQS audit must be in receipt
11 of the following qualification and experience ..."

12 Again there is a reference to ISO 17021.

13 Then there is:

14 "... IRCA accredited lead auditor course ...

15 "... NEBOSH general certificate or equivalent.

16 "Have relevant ... experience ..."

17 Were you involved in the formulation of those
18 requirements at all?

19 A. No, those would have been done by the requirements
20 manager and requests from industry and various experts
21 within RSSB who have experience in auditing.

22 Q. But these became the contractual requirements for what
23 auditors had to --

24 A. Yes.

25 Q. -- how they had to be qualified?

1 A. Yes.

2 Q. Thank you.

3 If we go down to RFP00115, "Protocol management",
4 similarly:

5 "The audit process must follow the principles of
6 the standard of ISO 19011 current version."

7 Again, were you involved in the formulation of that
8 requirement?

9 A. No.

10 Q. But that is the contractual standard which --

11 A. Yes, the specification forms part of the contract.

12 Q. Thank you.

13 Can I take you to RFP00116, "Protocol management":

14 "The service provider must have/create/develop,
15 implement, use and maintain audit protocols based on
16 the standards and requirements and include guidance as
17 to what an auditor will assess to ensure compliance."

18 A. Mm-hm.

19 Q. I think you said -- and I am not disputing
20 the correctness of this -- that the IMR that we
21 looked at a moment ago was developed by the RISQS board.
22 In that context, do you know what the requirement on
23 the service provider to create or develop audit
24 protocols means?

25 A. Well, my understanding -- and I'm not a technical expert

1 on auditing -- is that there is kind of -- standards are
2 kind of like an output spec in a way. It's where you
3 end up. What's different in each and every kind of
4 tender response or supplier, the way they meet that
5 standard is the process or the protocol or what they
6 consider, how they go about ensuring they meet that
7 standard.

8 Q. But as far as you understand, the official RISQS
9 IMR Sentinel protocols, that is what people are actually
10 being audited against; that is right?

11 A. That is the standard that they meet. The protocol is
12 how the auditor decides whether they are meeting that
13 standard.

14 Q. Okay, so I think that is fine.

15 If we can then go to paragraph 20 of your statement,
16 you say there that in response -- you refer to
17 the initial stages of the procurement process. You say:

18 "In response to the standard supplier questionnaire,
19 RSSB received six tender responses for each of lot 1 and
20 lot 2."

21 So six for IT and six for auditing. Can you recall,
22 how many were there -- how many tender responses in
23 total, because obviously Achilles fell both into lot 1
24 and lot 2.

25 A. Yeah, so --

1 Q. How many were there in total?

2 A. You mean how many suppliers were there in total? So

3 there was -- off the top of my head, no. I know for

4 certain there were three that bid in each lot.

5 Q. Okay. In that case perhaps ... -- so you cut down from

6 the -- the standard supplier questionnaire, that was

7 essentially your pre-qualification -- was that ...?

8 A. Yes. I mean, that is a form that's kind of mandated by

9 the Crown Commercial Service.

10 Q. So you received six tender responses and you cut out

11 three from each lot because they were not up to scratch?

12 A. Yes, they failed.

13 Q. They failed, what, on financial requirements or ...?

14 A. I cannot recall what each of them failed on.

15 Q. Okay, but they failed -- they were not just ones you did

16 not -- were not as good as the others; you actually

17 failed three in each lot?

18 A. Yes, I mean, we -- I think the tender was set up so that

19 we could take more than three through to the next stage.

20 Q. So only three qualified under each lot. Of the then

21 three in lot 1, three in lot 2 -- Achilles was clearly

22 common to both lot 1 and lot 2; yes?

23 A. Yes.

24 Q. -- so how many suppliers were there in total for both

25 lot 1 and lot 2? That's easy.

1 A. There were four.

2 Q. Thank you.

3 Now, you say at paragraph 28 of your statement
4 that -- you refer to two lessons learned, which are
5 relating to pricing and then also you wanted to be able
6 to contract with each RISQS member directly. I think we
7 have already covered that.

8 In relation to pricing, you say that RSSB wanted to
9 be in control of pricing under the new arrangement and
10 you say you return to that below. I think you pick it
11 up at paragraph 34, when you say:

12 "When RISQS was operating under a concession,
13 Achilles was in control of pricing and would retain all
14 profit achieved from provision of the RISQS services."

15 Then you say:

16 "There is a mechanism through which RSSB can adjust
17 the costs of RISQS to suppliers if profit levels
18 permit."

19 Just to clarify that, when you say "adjust the costs
20 of RISQS", you mean the price that you charge?

21 A. Yes.

22 Q. Do you mean just adjust it to suppliers or to suppliers
23 and buyers?

24 A. Both.

25 Q. You say there that RSSB guaranteed to the industry that

1 it would not increase the fees in the first year. So
2 you maintained Achilles' current fee levels; that is
3 right?

4 A. Yes, we wanted to kind of make as smooth a transition as
5 possible and not make too many changes unless we had to.

6 Q. Achilles, when it was operating the scheme, was making
7 a profit, was it not?

8 A. I assume so.

9 Q. Exactly. So the level of fees that RSSB was charging
10 were no lower than those which applied to
11 a profit-making organisation?

12 A. Yes.

13 Q. Presumably Capita and Altius are both making a profit
14 for providing their parts of the service to RSSB as
15 well; yes?

16 A. I would assume so.

17 Q. They would be doing a bad job if they did not. Okay.

18 Now, you say at paragraph 35(a) -- you refer to some
19 protections and benefits that accrue. First of all you
20 say:

21 "RSSB is a not-for-profit organisation."

22 Then at 35(a)(i) you say:

23 "To the extent that RSSB generates revenues which
24 exceed the overall cost of running the scheme, RSSB will
25 be able to and as a not-for-profit entity will be

1 obliged to re-invest any surplus back into the scheme
2 for the benefit of its members."

3 First of all, in terms of the costs of running
4 the scheme, you mean exceeding the costs of paying
5 Altius, paying Capita and paying your internal costs; is
6 that right?

7 A. Yes.

8 Q. We have established that the prices charged to you by
9 Altius and Capita will include an element of profit.

10 A. Yes.

11 Q. So, in fact, any saving of profit, if you like, that
12 Achilles was previously making only relates to profit on
13 the costs -- the internal costs of RSSB; that is right,
14 is it not?

15 A. Yes, so in terms of obviously the -- it's whatever's
16 left over from what the members give us after we have
17 paid Altius and Capita and after we've covered our own
18 internal costs.

19 Q. You say that as a not-for-profit entity RSSB will be
20 obliged to re-invest any surplus back into the scheme.
21 Have you still got bundle C1 there?

22 A. Yes.

23 Q. Can I take you to tab 7, please. That is an exhibit to
24 Ms. Ferrier's statement. On page 56, so just over the
25 first ...

1 A. Mm-hmm.

2 Q. It says "Page 2 of 223", page 56 in the bundle
3 numbering -- we have so many page numbers on this now.
4 If we turn perhaps over one more page, 57, we see what
5 it really is:

6 "Constitution agreement relating to Rail, Safety and
7 Standards Board Limited."

8 Are you familiar with the existence of this
9 document?

10 A. The existence, yes.

11 Q. But you are not familiar with the detail of it?

12 A. No.

13 Q. Now, if I could just take you to pages 67 and 68. So 67
14 says, "Primary objective and principles of operation of
15 the company", the company here being RSSB, and you can
16 see the primary objective here, to support its members
17 by doing certain things.

18 Over the page:

19 "The company will fulfil its primary objectives
20 through the delivery of functions and services in
21 accordance with the principles of operation."

22 Which we will see in a moment.

23 Then principles of operation are set out at 2.2.1.

24 I would just like you to look down that list, if you
25 could. (Pause)

1 Now, none of those principles require RSSB to ensure
2 that one of the activities, taken individually, is not
3 profit-making. RSSB as a whole is a non-profit-making
4 body, but none of these objectives require the company
5 to ensure that RISQS is non-profit-making, do they?

6 A. I think it would be hard on the RSSB to argue that they
7 could use it because they are custodians of the scheme
8 on, you know, behalf of the RISQS board, which is an
9 industry scheme. I don't think they could see that
10 profit very easily, bearing in mind these principles as
11 entirely theirs.

12 Q. So --

13 A. I don't know their plans for ...

14 Q. Okay. So when you say, "RSSB as a not-for-profit entity
15 will be obliged to re-invest any surplus ..." -- when
16 you say "obliged", you were not meaning a legal
17 obligation?

18 A. No, it's my sense that they would be obliged because
19 this is industry money, it's an industry scheme. It's
20 not -- it's -- they just do the governance on behalf of
21 the RISQS board.

22 Q. Okay.

23 Can I take you to page 86 in the same document. You
24 will see at the bottom of that page, 8:

25 "The company shall not declare, pay or make any

1 dividend or other distribution."

2 So that is meaning that the RSSB cannot pay money
3 out by way of profit or dividend. That is what it says,
4 is it not?

5 A. I don't know what that's supposed to mean, no.

6 Q. Just one last point then. If I can take you to page 80
7 and if you look at paragraph 6.1.1 at the bottom of
8 the page, it says:

9 "The company shall be funded on a five-year cycle
10 commencing 1 April 2014."

11 Are you familiar with the idea that -- leaving aside
12 this document, are you familiar with the idea that RSSB
13 operates on a five-year funding cycle?

14 A. Yes.

15 Q. At the bottom of the page:

16 "The company's funding will include levies paid by
17 members in accordance with clause 6, grants received
18 from the Department of Transport and other funders for
19 specific purposes, payments from members and other
20 parties for specific services and such other income as
21 the company may receive through its operations."

22 So the company can make income from its operations,
23 can it not?

24 A. I suppose, under that wording, yes. I don't know
25 specifically how RSSB are treating the income received

1 under RISQS.

2 Q. Okay, thank you.

3 You can put bundle C1 away, I think.

4 At paragraph 24 of your statement you refer to
5 the fact that Achilles' tender -- the lot 1 tender was
6 disqualified as they submitted a dependent price
7 offering. So Achilles did not fail any requirement
8 relating to the quality of their audit work, did they?

9 A. No, they submitted a non-compliant bid.

10 Q. It was non-compliant for financial reasons, if I can put
11 it that way, because --

12 A. Yes.

13 Q. At paragraph 26 you say:

14 "... it was disappointing that Achilles withdrew
15 from the re-tender since it had experience of delivering
16 the audit services ..."

17 Hence you were left with only one supplier. So you
18 saw Achilles as an experienced and credible provider of
19 audit services, did you not?

20 A. Absolutely, and throughout the process they were really
21 professional, really enthusiastic at the negotiation
22 sessions. So, yeah, I was disappointed and a bit
23 surprised.

24 Q. I am just being reminded. RSSB members -- now we know
25 there are many suppliers who have signed up to RISQS,

1 there are several thousand -- that is right, is it not,
2 roughly? Do you know how many members the RSSB has in
3 total?

4 A. No.

5 Q. But it is a much smaller number than the number of
6 suppliers?

7 A. Yes.

8 Q. It is mainly the larger bodies who are members of --

9 A. No, we are -- I believe there's a big push at the moment
10 to kind of expand our membership to include -- to be
11 more representative of the industry. So it is
12 increasing quite rapidly at the moment, but I can't give
13 you numbers.

14 Q. But that is a drive that you have got on. In terms
15 of -- it is nothing like the 1,500 or 2,000 or more who
16 are RISQS suppliers, is it?

17 A. Yes, I mean, I'm not sure of the numbers on the scheme
18 or our members, but I can say it's -- our membership's
19 smaller.

20 Q. Would 83 sound about right?

21 A. I don't know, sorry.

22 Q. You do not know.

23 Now, just returning to paragraph 26, you say you
24 were disappointed.

25 A. Mm.

1 Q. You say over the page:
2 "It was confusing to me ..."
3 On page 91:
4 "... that Achilles would turn down the opportunity
5 to deliver audit services and make money through doing
6 so."
7 But they explained their reasons to you, did they
8 not?
9 A. Yes and no. I mean, they sent me a letter --
10 Q. Yes.
11 A. -- and in that letter -- I don't know if you've got
12 it --
13 Q. Yes, it will be in bundle E5, if you can be handed it,
14 actually. (Handed)
15 It is at tab 6 and page 1906. Perhaps I could just
16 ask you to read it to yourself and remind yourself of
17 the content of it first and I will ask you a question
18 about it in a moment.
19 A. So, yeah -- no, I've read this quite recently --
20 Q. If I could ask you to pause just for a second because it
21 may be that the Tribunal would like to read it through
22 before you -- is that okay?
23 A. Okay.
24 Q. Then say whatever words you were going to say. Thank
25 you. (Pause)

1 Now, I was going to ask you some questions, but
2 I think you were saying something.

3 A. Yes. So they provided a number of reasons for their
4 withdrawal which I found a little confusing. So
5 the first main one is the timelines for the completion
6 of system planning and service transformation being
7 unrealistic, so the sense that they couldn't -- this
8 couldn't be delivered in the time that we planned to go
9 live by, which was confusing to me because, as part of
10 the tender exercise, all suppliers, including Achilles,
11 provided very detailed project plans, including roles,
12 responsibilities, task breakdown, to a very detailed
13 degree, approvals, contingencies, complete with a risk
14 assumptions dependencies register, to demonstrate to us
15 that it could be delivered by the time we needed, and
16 Achilles did submit project plans that demonstrated
17 this.

18 It was also clear in the tender that both lots --
19 these project plans had to be provided on the assumption
20 that they didn't know who their partner in the other lot
21 would be so therefore they had to build that contingency
22 in. All suppliers provided project plans demonstrating
23 that, so that particular point, to me, was a little
24 confusing.

25 Q. Okay, just take it there -- Achilles' general position

1 was they had been providing this service as an
2 integrated one, end-to-end, as both -- including both
3 what you had as audit and what you had as IT, but also
4 including the functions that were going to be done
5 in-house by the RSSB; that is right?

6 A. Yes.

7 Q. So they had some concerns that service transformation --
8 that splitting this into two -- setting up a new service
9 by the RSSB and then splitting it into two requirements,
10 their concern was that the timescales were unrealistic.
11 There is nothing -- you may disagree with it, but there
12 is nothing unclear about it, is there?

13 A. No, and yet they submitted plans demonstrating that it
14 could be done and any concerns like that were logged in
15 their RAID log, so they were essentially -- should they
16 have been successful, because they stood a chance to
17 win, they would have had to deliver to those timescales,
18 which they presumably believed were manageable.

19 I will admit that lot 1/lot 2, the interface between
20 that did carry some risk and we were very open about
21 that during that tender process and there were some
22 elements that through negotiation we were able to
23 clarify before the BAFO as to how things would work.
24 But we were very upfront that a lot of the detail would
25 have to be hashed out during the implementation, and

1 RSSB, taking it from a concession to a services
2 contract, understood that there would be a lot of
3 management required from our part to make that work.
4 And we tried to dig out those risks and those details as
5 much as we could during the tender process, and by
6 the time I got this letter we were all fairly confident
7 in the ability to make it work.

8 The letter also goes on a lot about the risk to
9 the industry in this -- in this structure, but it's
10 really hard to read too much into it because they then
11 don't identify any specific kind of risks.

12 Q. Well, if I can just take you to the second bullet point,
13 they have some concern that there is -- essentially that
14 the interface between the lot 1 and lot 2 provider -- it
15 is unclear how it will work in practice and hand-offs in
16 management -- there is a tripartite relationship, so --
17 between lots 1 and 2 and RSSB remain unclear, and that
18 was their concern as to where the risks would arise
19 from.

20 A. Yes, there were some unknowns. As far as possible -- so
21 in that spreadsheet specification we -- down
22 the left-hand side there's a column that indicates
23 whether it's the responsibility of lot 1 or lot 2 and,
24 where we're unsure on elements, there was a lot 3, and
25 all those decisions would have been taken through

1 the project implementation process.

2 We also knew through the RAID logs what particular
3 issues might get thrown up and what we needed to resolve
4 very, very early on.

5 So, yeah, they say it's -- there was a little risk
6 there and that is true, but the risks were being
7 identified and, again, they failed to identify what the
8 consequences of those risks were. So, again, I was
9 confused on that point.

10 Then the last point was, you know, that we had
11 indicated no willingness to enter debate on to
12 the proposed service delivery model mandated in
13 the tender process over -- well, when they say "the last
14 several months", that would have been through the tender
15 process itself, and Achilles, being public kind of
16 procurement experts, will have known that changing
17 the structure and the specification that significantly
18 during the CPN procedure would not have been possible.
19 It's not a competitive dialogue. We weren't looking to
20 build the requirements with the suppliers.

21 Q. So it was your concern that, as a procurement manager
22 operating within the procurement procedure you were
23 running at that time, you could not have facilitated
24 that request?

25 A. If I had changed something that drastically in the

1 middle of a tender process, I could have invited
2 a challenge from a supplier that might have been
3 interested at the outset if that had been the case.
4 Also, like I said, that's what the competitive dialogue
5 process is for, not CPN. And, lastly, it's something
6 that happens quite a lot in procurement, that you go
7 through a great deal of effort to define your own
8 business requirements and then the supplier comes along
9 and tries to tell you what you want instead, which is
10 what I heard from that.

11 Q. But it would always have been the option, would it not,
12 for the RSSB to cancel the procurement process and run
13 a different procurement process?

14 A. I don't think timescale-wise that really would have been
15 very feasible.

16 Q. But essentially what I think we see from this is that
17 Achilles wanted to provide a single unified service, you
18 wanted to split it into two lots and there was a bit of
19 a mismatch of who wanted to do what. Is that a fair
20 summary?

21 A. Yes, but, like I said, it's not really for the market to
22 tell you, you know, "We've already got this product.
23 I know you're tendering for something else, but here,
24 have this instead", and we did -- we were very clear in
25 the OJEU notice and through the tender documents that we

1 weren't accepting variant bids.

2 Q. In short what happened is they said, "We will provide
3 with you a unified service", you said "No" by rejecting
4 lot 1 and in consequence they said, "In that case,
5 that's fine, but we're not going to provide lot 2".
6 There is nothing confusing about that, is there?

7 A. Well, they came to the negotiations, they were very
8 enthusiastic and professional and all the rest of it, so
9 I was expecting a response.

10 Q. Now, if I could take you to -- put bundle E5 away unless
11 there is anything else that you want to say. If I can
12 take you to bundle I2 ...

13 In that case, sorry, could you -- before you look
14 into it, could I ask, actually ...

15 Could you perhaps turn to the document, page 608.
16 That would be best.

17 This is not a document that emanates from my client.
18 We are not the ones that have a confidentiality claim
19 over it. It is marked as "Confidential" at the top --

20 MR. FLYNN: No issues there. No issue.

21 MR. WOOLFE: Okay. In that case, could the witness be
22 handed the document. Thank you.

23 Now, Ms. Pearson, just to be clear, this file as
24 a whole contains some confidential materials, much of
25 which is confidential to Achilles. Therefore, could

1 I ask you to -- I will be showing you this document
2 which runs for about ten pages up to page 617. Could
3 I ask you just to stay on this document?

4 A. Yes.

5 Q. Now this is an ISAST project report. Can you just help
6 the Tribunal by saying what ISAST is?

7 A. Industry Supplier Assurance something something?

8 Q. Transformation?

9 A. Scheme Transformation, possibly.

10 Q. Something like that, okay.

11 And "Sponsor: George Bearfield. Author:
12 Sonya Bhooma-Loader". Who is Sonya Bhooma-Loader?

13 A. She was the project manager for this project.

14 Q. The project being the transformation of supplier
15 assurance services?

16 A. Yes.

17 Q. So you must have dealt with her when dealing with
18 the procurement of the --

19 A. Yes.

20 Q. -- RISQS service contract?

21 You are not a member of the RISQS board, are you?

22 A. No.

23 Q. Are you familiar with this document at all?

24 A. No.

25 Q. Okay.

1 In which case I will, I am afraid, ask you to put
2 the document away. I am not going to ask you any more
3 questions about it.

4 Could you be passed H17. Within this, if you would
5 go to page 4793. What this is is a risk log for
6 the Rail Industry Supplier Qualification Scheme. Were
7 you familiar with this risk log during the procurement
8 phase as a project for the RISQS scheme?

9 A. Yeah, the risk log would have been started at the
10 beginning of the project, so it existed during
11 the tender and the entire project, but I don't think
12 I ever saw this much of it.

13 Q. Okay.

14 You can see on the left-hand side, at the top, there
15 is "ID number" then "Date raised". As I understand it,
16 it has to be the date on which a risk was first
17 identified?

18 A. Yeah, they all appear to be the same date.

19 Q. Yes, they all say 1 June 2016. Do you think that is
20 right?

21 A. I'm not sure.

22 Q. Most of them then have "Due date" on the right-hand side
23 of the columns at the top and several of them say
24 "1 May 2018". Some of them do not, though. So if you
25 go down to -- perhaps the third one up from the bottom,

1 we have one that is due by 8 December 2016 and one due
2 by 1 January 2018, so they do have some different dates
3 on them.

4 A. Mm-hm.

5 Q. Can I take you to item 4 on the first page. We have
6 a --

7 A. Yeah.

8 Q. -- risk date raised, according to this raised on
9 1 June 2016.

10 A. Mm-hm.

11 Q. Do you have any reason to think this -- if you can
12 perhaps read what the risk description is:

13 "Buyers do not support the scheme,
14 and an alternate scheme is created."

15 Were you aware of that as being a risk that was
16 being considered?

17 A. Yes, I mean, we knew that we probably couldn't mandate
18 the scheme on our buyers. RISQS, as an industry scheme,
19 works because the buyers and the entire industry has
20 come together and basically said, "This is what works
21 for us and this is the best for us", but it's not
22 something that is kind of legally bound. You just all
23 get together and you get involved.

24 Q. So that risk was -- so the risk-owner is the chair. Do
25 you know who the chair was that this referred to?

- 1 A. No.
- 2 Q. Okay. "Likelihood 4" -- so the likelihood scale, did it
3 run from 1 to 5 or 1 to 10? Any idea?
- 4 A. You'd have to ask the project manager.
- 5 Q. All the numbers seem to go up to 5 and no higher.
6 Impact 5 so severity 20 -- is that the way it works?
7 You multiply up the likelihood and the impact?
- 8 A. Yes.
- 9 Q. So this is one relatively severe risk.
10 The mitigation strategy identified is:
11 "To create a buyers' charter to show support for the
12 schemes so there is no perceived market for a competing
13 scheme."
14 Were you aware of that as a mitigation strategy that
15 was in place?
- 16 A. I was aware that that is one of the ideas that came
17 about. I don't know how -- I mean, it says this was
18 last reviewed in May 2017, but my recollection is by
19 that point there was a view that we were not going to
20 take anything -- any measures that were so formal as
21 that.
- 22 Q. Right. But are you aware that that is in fact what
23 happened?
- 24 A. I do not believe that that was what happened.
- 25 Q. Okay, well, if I could take you to bundle -- actually,

1 perhaps we could read across and I will take you to that
2 in a moment:

3 "Comment: communications of project work being
4 undertaken to ensure that everyone is aware of support
5 for the scheme to prevent an alternative."

6 Can you see what it says?

7 A. Yeah.

8 Q. That is next to be reviewed on 1 September 2017.

9 If I can ask you to take up bundle G4.

10 We found it, wonderful. Thank you. In that bundle,
11 behind tab 42A -- there should be a 42A in it. Do you
12 have a 42A?

13 A. I've got a 42 and then nothing splits that.

14 Q. That was not dated.

15 In that case, put G4 away after that and I will take
16 you to G2. If you could go to G2/13. Do you see
17 a Rail Industry Supplier Qualification Scheme charter?

18 A. Mm-hm.

19 Q. If I could just ask you to read that.

20

21 So that is the buyers' charter that is referred to in
22 the RISQS matrix, is it not?

23 A. Mm-hm -- I don't know, I have never seen this document
24 before and I've never seen any documents of this nature
25 come back signed. So if this happened, it was not part

1 of the tender process.

2 Q. Well, in fact, Network Rail has signed it and TfL has
3 signed it and it has been announced on the RSSB website
4 that they have signed it; that is right? But you are
5 not familiar with it?

6 A. No, I mean it just seems to be some declaration of
7 support.

8 MR. WOOLFE: Thank you, Ms. Pearson. That is everything.

9 A. Is it?

10 MR. WOOLFE: Yes.

11 Re-examination by MR. FLYNN

12 MR. FLYNN: Ms. Pearson, can I just ask you a couple of
13 things. In relation to your statement, paragraph 24/25,
14 you were just discussing with Mr. Woolfe Achilles'
15 withdrawal from the tender process. Could you explain
16 perhaps in a bit more detail for the Tribunal what had
17 happened between the disqualification of the lot 1
18 tender and the letter you had relating to the withdrawal
19 from the lot 2 process. You said they had been very
20 professional and --

21 A. Yes. So between the point where they were disqualified
22 from lot 1, there was a series of negotiation sessions
23 on all elements of the tender. So that's all the
24 requirements, all of the contractual terms, like looking
25 at their pricing and things like that, and answering

1 clarifications, especially around the interface between
2 lot 1 and lot 2; so basically removing all the kind of
3 risks and dependencies that the supplier is kind of --
4 on assumptions that they have, working with all
5 suppliers that are in negotiation stage to make sure
6 that the contractual terms are fair and making
7 adjustments where necessary, and -- yeah -- they
8 attended those for lot 2. Like I said, they were very
9 professional, very enthusiastic about the prospect.
10 Following the negotiation sessions -- obviously each one
11 was recorded, minuted, they got those minutes, and then,
12 using the feedback from all of those sessions, we made
13 changes to the tender documents and the contracts, which
14 were clearly red-lined, and then the final -- best and
15 final offer pack was issued to them.

16 Q. Thank you.

17 It was put to you and you agreed that under the new
18 arrangements Altius and Capita are presumably making
19 a profit or aiming to do so. Can they charge what they
20 like for the services they are performing for the RSSB?

21 A. No. The pricing they submitted at the tender is then
22 fixed in the contract.

23 Q. Are they evaluated? Is there performance against
24 the contract --

25 A. Yes.

1 Q. -- to evaluate it?

2 A. There are key performance indicators in both contracts
3 with associated service credits for failing to meet
4 those performance levels.

5 Q. The service credits are the things you explain in
6 paragraphs 31 to 33 of your statement?

7 A. Yes. Yes, that's right.

8 MR. FLYNN: I have no further questions for Ms. Pearson,
9 sir.

10 Questions from THE TRIBUNAL

11 MEMBER 3: I have just one or two questions. You said there
12 were four suppliers in total who get through to the
13 final tender. So of the six tenders, it is four
14 different companies?

15 A. Yes.

16 MEMBER 3: Can you tell us how many of them were bidding in
17 both lot 1 and lot 2?

18 A. So there were two companies in both lots and then one
19 separate one.

20 MEMBER 3: Thanks.

21 Can I just ask a question about one of
22 the paragraphs in your witness statement. It is at
23 paragraph 35(b), I think, first. So it is a question
24 that comes out of that. When you put in the tender, it
25 was explicit, was it, that there would be one supplier

1 for each lot -- that you would be choosing one?

2 A. It was absolutely explicit that one contract would be
3 awarded for each lot.

4 MEMBER 3: Okay.

5 Then there is the point in 35(a)(ii) where it says
6 that the pricing depends on the number of members in
7 the scheme and pricing goes up if there are fewer
8 members.

9 A. Sorry, 35(a)(ii) was that?

10 MEMBER 3: Yes, halfway down (ii) you say that if scheme
11 numbers exceed 4,500, there is a discount.

12 A. Oh, right, okay.

13 MEMBER 3: Then there is a further discount for every 500.

14 A. Yes.

15 MEMBER 3: But if there are fewer members, the cost of
16 providing the scheme goes up.

17 A. The cost to us would go up. The costs that we would
18 charge the industry wouldn't necessarily go up and
19 the costs we would pay our suppliers wouldn't
20 necessarily go up, but --

21 MEMBER 3: Is that indicating that the costs go up if there
22 is a competing scheme or if members choose to get their
23 assurance in other ways?

24 A. Yes, it's a volume-based thing. If we have fewer
25 members, it obviously costs more per member to deliver

1 the service based on whatever costs our suppliers and we
2 have internally.

3 MEMBER 3: So it is -- I mean, is it a penalty? Does it
4 work as a penalty or is it simply a unit pricing?

5 A. Sorry, could you ...?

6 MEMBER 3: When it says that the cost goes up, does that
7 work to penalise you if there are fewer members in
8 the scheme or is it just purely about the recovery of
9 their costs?

10 A. It would be less profitable to us initially to the point
11 where it would become unfeasible for us to be able to
12 run the scheme at all.

13 MEMBER 3: Is that done on the basis that the accounts are
14 open book between you and the suppliers?

15 A. It's not completely transparent. We have a very
16 detailed breakdown of how their pricing is built up, but
17 on an ongoing contract management basis, no, it's not
18 open book. It was requested during negotiation by all
19 suppliers that that be removed.

20 MEMBER 3: So you tried to get an open book basis then?

21 A. Yes.

22 MEMBER 3: Okay, thanks.

23 MEMBER 2: Can I just clarify one thing, please, Gemma,
24 which is, when Michael asked you the question around
25 awarding one contract for each lot, when you say

1 "contract", do you mean contract or do you mean separate
2 suppliers? So was the decision that actually each lot
3 would go to a different organisation or was it that they
4 would just be independent contracts?

5 A. They would be independent contracts. It was completely
6 possible that the same supplier could win both.

7 MEMBER 2: Okay. Thank you.

8 THE CHAIRMAN: Thank you, Ms. Pearson.

9 (The witness withdrew)

10 MR. FLYNN: Is this a convenient moment for the shorthand
11 break or shall we go into the next witness, sir? We are
12 ready.

13 THE CHAIRMAN: How long do you think the next witness is
14 going to be?

15 MR. FLYNN: That is for Mr. Woolfe to say.

16 MR. WOOLFE: It might depend a little bit --

17 MR. FLYNN: It will be Mr. Matthews.

18 MR. WOOLFE: He will probably take a bit longer than
19 the time to take us up to a convenient break.

20 THE CHAIRMAN: Let's break now then.

21 (11.27 am)

22 (A short break)

23 (11.44 am)

24 MR. FLYNN: Sir, we call Mr. Matthews.

25

1 MR. DARREN MATTHEWS (affirmed)

2 Examination-in-chief by MR. FLYNN

3 MR. FLYNN: Bundle D for Mr. Matthews, please. In tab 7 of
4 that bundle, Mr. Matthews, you see a document, "First
5 witness statement of Darren Matthews".

6 A. Yes.

7 Q. A couple of pages on, at the end of it, just before
8 the divider, you see a signature. Is that your
9 signature?

10 A. It is.

11 Q. You have told me there are a couple of small corrections
12 that you would like to make to the witness statement.

13 A. Yes. In paragraph 6, at the start of that, I alluded
14 the fees to the business were 15,000. This was
15 a mistake on my behalf. It was a joint fee, because
16 Readypower is in two companies and I assumed it was
17 a price per company, so it's actually 6,800 plus VAT.

18 Q. 6,800 plus VAT to be registered with RISQS.

19 There was one other?

20 A. The day rate for the audits was 995 plus VAT.

21 Q. So 955 plus VAT?

22 A. 995, I believe.

23 Q. 995. So that is two corrections. 995, plus VAT.

24 Thank you, Mr. Matthews. Subject to that, this is
25 your evidence in these proceedings? That is your

1 statement?

2 A. Yes.

3 MR. FLYNN: Mr. Woolfe will have some questions for you on
4 it.

5 Cross-examination by MR. WOOLFE

6 MR. WOOLFE: Morning, Mr. Matthews.

7 You are currently working for Readypower. You have
8 been there for six years or so. At paragraph 2 you set
9 out what it is that Readypower does. So it has operated
10 asset hire of road-rail vehicles and specialist
11 attachments. So that would be on-track plant, would it
12 not?

13 A. It would, yes.

14 Q. So you need to be authorised by Network Rail as
15 a provider of on-track plant in order to be allowed onto
16 Network Rail infrastructure?

17 A. That's correct.

18 Q. Your staff who carry out the activities with
19 the road-rail vehicles, they would need to be
20 Sentinel-authorised as well, would they not, in order to
21 get onto the infrastructure?

22 A. So to operate the plant they do, yes.

23 Q. You provide the on-track plant services to Network Rail
24 and to other -- presumably you do not provide them
25 direct to Network Rail, you provide them to other

- 1 people; that is right?
- 2 A. Both. So Network Rail direct and the principal
3 contractor community.
- 4 Q. But in any event, irrespective of who you are providing
5 the on-track plant to, you still need to be authorised
6 by Network Rail as an on-track plant provider, do you
7 not?
- 8 A. Yes.
- 9 Q. You are currently in the process, you say, of applying
10 to Network Rail for a principal contractor licence; is
11 that correct?
- 12 A. That's correct.
- 13 Q. You say in paragraph 5:
14 "As a supplier of on-track plant and personnel ...
15 Readypower is a member of RISQS."
16 Are you just a supplier member then?
- 17 A. Yes -- at the moment, yes.
- 18 Q. You say there:
19 "As a supplier of on-track plant and personnel to
20 the UK rail network, and to Network Rail in particular,
21 Readypower is a member of RISQS."
22 But it does not matter whether it is Network Rail or
23 not, does it? You have to be a member of RISQS in order
24 to be allowed onto the infrastructure?
- 25 A. You do, yes.

1 Q. Who else do you supply to other than Network Rail? What
2 other buyers do you have?

3 A. In the principal contractor community, there's quite
4 a lot of companies. There's -- including the larger
5 players such as Colas.

6 Q. Could you speak up a little?

7 A. Sorry, Colas Rail, Amey. There's quite a lot of
8 the smaller companies.

9 Q. Are they all construction firms or are there other kinds
10 of firms as well?

11 A. Primarily they are a mixture of construction- and
12 rail-type specialists.

13 Q. Do you ever use -- no, actually, I will leave that one.

14 Now, at paragraph 7 you say:

15 "Readypower also specifies a requirement for RISQS
16 registration in its own supply chain. This ensures that
17 Readypower can be confident that any of its own
18 suppliers meet the requisite safety standards."

19 I just want to check because you said that you are
20 not registered with RISQS as a buyer.

21 A. That's a good question. I think we are. I'm not sure
22 if we are or not.

23 Q. Okay, but --

24 A. When we become a principal contractor, then it will be
25 more apparent that we will need our own supply chain.

1 Q. If you become a principal contractor, you will need your
2 own supply chain --

3 A. Yes.

4 Q. -- but at the moment -- you say it costs you this amount
5 to be registered as a supplier. I asked you whether you
6 are registered as a buyer and you said "No", but is that
7 right?

8 MR. FLYNN: I apologise. This may be my fault. I was given
9 a sheet -- and I think my friend has it -- which were
10 the corrections that Mr. Matthews wished to make, and
11 I had thought that the first one was related --
12 I thought they were both related to the prices.
13 Actually, the phrase has had -- in his paragraph 6 has
14 had the words "as a buyer/supplier with RISQS" added to
15 it, and I am afraid I had not picked that up so
16 I apologise for that.

17 MR. WOOLFE: Thank you.

18 So applying that correction, it costs you 6,800
19 plus VAT per year to be registered as a buyer/supplier.
20 So do I understand then you are registered both as
21 a supplier and as a buyer on RISQS?

22 A. Yes.

23 Q. So when at paragraph 7 you say you specify the
24 requirement for RISQS registration for its own supply
25 chain, as a buyer through RISQS, you are looking at

- 1 RISQS-registered suppliers, obviously, but are you
2 saying that you require your suppliers themselves to
3 require RISQS registration further down the supply
4 chain; is that what ... You will make it a contractual
5 condition that all your subcontractors and
6 sub-subcontractors apply RISQS registration?
- 7 A. They need to be RISQS-qualified if they're going to work
8 on or near the line.
- 9 Q. In a sense that is just because Network Rail require
10 RISQS registration -- as a condition of being on
11 Sentinel, everybody has to be on RISQS, do they not?
- 12 A. Yes.
- 13 Q. At paragraph 9 you go on to say:
14 "Network Rail's use of a RISQS ..."
15 I think just "RISQS".
16 "... enables Readypower to have access to all
17 Network Rail tenders and those of the rest of the rail
18 industry."
19 So there I understand you are not talking about
20 Network Rail's use of RISQS as a condition of Sentinel
21 authorisation; you are talking about issues of RISQS as
22 a qualification system, sending out tenders to RISQS; is
23 that right.
- 24 A. Yes.
- 25 Q. You say:

1 "Readypower does not need to spend time and
2 resources monitoring the market across multiple
3 portals."

4 How many contracts a year does Readypower pick up
5 through RISQS?

6 A. At the moment, because we're not a principal contractor,
7 we don't get any because we have our market -- we
8 already have our market, but when we go into principal
9 contracting, this would be quite important to us.

10 Q. So that is an aspiration as a principal contractor?

11 A. Yeah.

12 Q. So do I understand then -- because you say there, "Use
13 of RISQS enables Readypower to have access to all
14 Network Rail tenders and those of the rail industry",
15 but you said a moment ago that you do not pick up
16 contracts through RISQS because you have them in place
17 already, so in fact you are not picking up contracts
18 from the rest of the rail industry --

19 A. No, this is the aspiration.

20 Q. This is the aspiration -- okay -- as a principal
21 contractor.

22 If there were two portals, there would not be a huge
23 amount of work involved in monitoring multiple portals,
24 would there?

25 A. Well, there would be twice as much if there was two.

- 1 Q. Well, you are checking them for contracts that are
2 suitable for your product codes. That is not a huge
3 amount of work, is it, just simply having that look to
4 see what is out there?
- 5 A. If it's two, then it's more work. If it's more than
6 two, then it obviously -- it gets more and more work.
- 7 Q. In terms of the tenders, how do you find out about them
8 from RISQS?
- 9 A. The -- is it OJEU? I think that's the portal at which
10 we get any notifications.
- 11 Q. So they come as notifications to you, do they?
- 12 A. Yeah, they come -- we get an email saying there's
13 a potential opportunity for tender.
- 14 Q. So if there were more than one portal that worked in
15 that way, you would just get multiple emails, would you
16 not?
- 17 A. I would imagine so, yes.
- 18 Q. Now, at paragraph 11 you say:
- 19 "The use of a single supplier assurance scheme
20 allows Readypower to be clear on what standards it must
21 meet and to give Readypower confidence that any
22 co-contractors it works alongside on the rail network
23 have also met the same stringent safety standards."
- 24 So what you are saying now I think, it is important
25 that everybody applies the same standards; yes?

1 A. I'm looking for a standard approach, yes, that's -- so
2 everybody has the same thing.

3 Q. You can have a single set of standards without having
4 a single scheme, can you not?

5 A. Yes.

6 Q. Then at paragraph 12 you say that:

7 "Readypower are subject to only one audit process
8 which reduces the costs and time involved in complying
9 with its obligations."

10 Then you set out your fact about becoming
11 a principal contractor. So Network Rail will treat
12 the modules you do in RISQS as a given and then audit
13 further requirements on top; that is right, is it not?

14 A. Yeah.

15 Q. So that is really a matter of whether or not
16 Network Rail recognises the audit that has been done, is
17 it not?

18 A. Yeah.

19 Q. So as long as there was certainty as to what the audit
20 covered and Network Rail accepted it, there would not be
21 any -- you could still only have one audit process,
22 could you not?

23 A. Yes, you could, yes.

24 Q. Thank you.

25 Now, at paragraph 13 you say:

1 "Readypower only has to pay one registration fee and
2 one annual audit fee."

3 Now, again, as regards the audit fee, if you only
4 had to do one audit, you would only have to pay one fee,
5 would you not?

6 A. Yes.

7 Q. I will leave the registration fee.

8 As regards the registration fee, it would depend how
9 many schemes you were registered with, would it not?

10 A. Yes, it would.

11 Q. You would have a choice?

12 A. Yes.

13 Q. At paragraph 14 you say:

14 "... membership of RISQS ensures that Readypower
15 receives regular and timely safety updates through
16 a single portal."

17 Now, am I right that those safety updates you
18 receive by email?

19 A. That's correct, yes.

20 Q. Do you know off the top of your head what email address
21 they come from?

22 A. I know it's a -- it's RISQS. It's the RISQS and then
23 there's a link on the -- on the RISQS page as you open
24 the email.

25 Q. You can get all the safety bulletins in the industry via

1 Safety Central, can you not?

2 A. You can, mostly, yes.

3 Q. And do you look on Safety Central regularly?

4 A. I do.

5 Q. I think you said you are group compliance director so
6 you probably spend quite a bit of time --

7 A. -- looking on there.

8 Q. -- looking at that stuff, yes.

9 At paragraph 15 I think you explain your concern as
10 to what would happen if different customers required you
11 to be certified through different assurance bodies. You
12 say that:

13 "Readypower could be accredited with RISQS ..."

14 At the top of page 86.

15 "... having gone through the entire registration and
16 audit process, and then another of its customers may
17 require it to be certified by another supplier assurance
18 body. Readypower would then have to go through the same
19 process for every supplier assurance scheme adopted by
20 its customers."

21 So you are assuming there that buyers would require
22 different schemes; yes?

23 A. I am, yes. I'm a little bit worried that if there was
24 multiple providers accredited to give the RISQS
25 qualification, we may have customers who prefer one body

1 or another, and if you've got several customers, you
2 could end up with one customer saying "We need RSSB",
3 another says "We need Achilles" and so on.

4 Q. So you are worried that that buyers would not recognise
5 the audit provided by one scheme and then insist on the
6 audit provided by another scheme?

7 A. It's a potential. I don't know if it would happen or
8 not, but it is a potential.

9 Q. Okay. But if you are looking at providing on-track
10 plant, I mean, what buyers need to know is that you have
11 an authorisation to provide on-track plant from
12 Network Rail, do they not?

13 A. (Nods)

14 Q. That covers not just the Sentinel module and
15 the on-track plant module, but it also covers
16 the technical audit --

17 A. It does.

18 Q. -- that Network Rail carried out?

19 So as long as a buyer knew you were authorised to
20 provide on-track plant, they could hire you, could they
21 not, if they wanted to?

22 A. They could.

23 Q. Does your business carry out general construction work
24 as well or is it only in the rail sector?

25 A. Part of our company does, yes.

1 Q. Would it not be an advantage for you to be able, for
2 example, to carry over some form of assurance or
3 certification from the construction sector into rail?
4 Perhaps I can put that another way. Are you a member of
5 any assurance schemes like Building Confidence or
6 Construction Line?

7 A. Yes, we are.

8 Q. Which schemes are you members of?

9 A. On that side, Builder's Profile -- there's three --
10 there's three or four. I can't remember off the top of
11 my head, but there's around about three or four.

12 Q. Okay, because I think you said that you -- Readypower
13 has experience of this work in the construction
14 industry. So you are --

15 A. Construction Online is another one.

16 Q. Construction Online.

17 Because there is a standard question set, is there
18 not, for supplier assurance in the construction
19 industry? Are you aware of that?

20 A. Yes, there is a standard set and then different --
21 different buyers within that ask for additional items on
22 top.

23 Q. Yes.

24 A. So there's more to do for each potential customer.

25 Q. But there is a core standard question set?

1 A. Yes.

2 Q. Each of those schemes mutually recognise each other's
3 audits of their question set, do they not?

4 A. I don't know if they do. I'd have to -- I don't deal
5 with the construction side directly.

6 Q. At paragraph 16 you say that -- in fact, it is a burden
7 on you, in the second-last sentence -- sorry -- of
8 paragraph 16, that as a smaller operator, "... regular
9 audit ... carried out by [your] customers in other
10 sectors in addition to RISQS for the rail industry
11 already puts a huge strain on our resources".

12 So would it not be an advantage if you could be
13 audited by a body in the rail industry, validly audited
14 by them, but then could also carry over aspects of that
15 assurance to other industries? That would be a benefit
16 to you, would it not?

17 A. That would be a benefit.

18 Q. Now, at paragraph 19 you refer to there being a risk --
19 you refer to certain safety benefits being lost if there
20 were multiple schemes:

21 "There is a risk that if a supplier fails an audit
22 with one supplier assurance body, there would be nothing
23 to stop them going through an audit and accreditation
24 service with another body ..."

25 As regards Sentinel, as I understand it, access to

1 the track is controlled by the Sentinel card system;
2 that is right, is it not?

3 A. It is.

4 Q. So if somebody fails an audit, Sentinel switches off the
5 access. It does not matter what they may tell you, they
6 cannot get access to track, can they?

7 A. I actually don't know that, actually, if that's the case
8 or not. I've never actually been in a position where
9 I failed an audit, so ...

10 Q. Have you ever had a position where any subcontractors
11 have failed an audit and not been able to get access to
12 track?

13 A. We get notified of supply chain out there who are
14 failing audits on a weekly basis at the moment. I don't
15 know if they have access to track or not.

16 Q. In terms of on-track plant, does Readypower hire in --
17 cross-hire in plant from other people?

18 A. Sometimes it does, yes.

19 Q. Anybody you hire in from would have to be authorised by
20 Network Rail's plant operation scheme; is that right?

21 A. Yes, it would -- no, no, it wouldn't.

22 Q. No, it wouldn't?

23 A. No, it wouldn't. It would have -- the company that we
24 cross-hire the plant in from would need to have RISQS,
25 but there's no requirement for plant-owning companies to

1 have the plant operating scheme qualification.

2 Q. Okay.

3 You say they would be required to have RISQS because
4 ...?

5 A. They would be required to have RISQS because that's
6 our -- that's what we would want as a business.

7 Q. That is what you want. That is a requirement that you
8 choose to impose?

9 A. Yes.

10 MR. WOOLFE: Okay.

11 Can I just check one thing, sir? (Pause)

12 Those are all the questions I wanted to ask, sir.

13 THE CHAIRMAN: Thank you.

14 MR. FLYNN: No re-examination, sir.

15 THE CHAIRMAN: Thank you very much.

16 A. Thank you.

17 (The witness withdrew)

18 MR. FLYNN: Sir, our next witness is Mr. Berwick, sir.

19 Mr. ADAM BERWICK (sworn)

20 Examination-in-chief by MR. FLYNN

21 MR. FLYNN: Thank you, Mr. Berwick. Do sit down and you
22 will be given bundle D. If you could turn to tab 6
23 within that bundle, you will see there a document
24 entitled "Witness statement of Adam Berwick". If you
25 turn to the last page in the tab, just before the

1 divider, you will see a signature. Is that your
2 signature?

3 A. It is.

4 Q. Is there anything in the statement that you wish to
5 change or clarify?

6 A. No, there is not.

7 Q. So this is your evidence in these proceedings?

8 A. Yes, it is.

9 MR. FLYNN: Thank you.

10 Cross-examination by MR. WOOLFE

11 MR. WOOLFE: Morning, Mr. Berwick.

12 A. Good morning.

13 Q. Now, at paragraph 14 of your statement, having reviewed
14 matters generally about assurance at Balfour Beatty, you
15 go on to say:

16 "As mentioned above, we have taken the decision at
17 Balfour Beatty to use RISQS for all suppliers engaged in
18 our rail business."

19 Then you set out some reasons below. So you are now
20 using Construction Line in a construction sector --

21 A. Correct.

22 Q. -- and RISQS in the rail sector.

23 Just focusing on Construction Line for a second,
24 where you now use Construction Line, in the past did you
25 accept Building Confidence as well or you might have

- 1 accepted it?
- 2 A. The original system we had in, we had multiple systems
3 in sort of -- I am going back now probably about
4 pre-October 2017 -- one of which was
5 Building Confidence.
- 6 Q. You decided it would be more efficient for you as
7 a buyer to go with one scheme only and go with
8 Construction Line. Presumably that choice to go with
9 Construction Line was because you thought it did some
10 things better than Building Confidence did?
- 11 A. Yeah, I wasn't involved in the kind of procurement of
12 the Construction Line system, but from what
13 I understand, they took it out to market, looked at
14 their options and decided on Construction Line was
15 the best fit --
- 16 Q. Was the best fit for your needs?
- 17 A. -- for what they wanted.
- 18 Q. Okay, but Building Confidence still exists?
- 19 A. Still exists or still used within ...?
- 20 Q. Still exists.
- 21 A. It still exists, yes.
- 22 Q. I'm presuming there were then other buyers out there who
23 like what Building Confidence has to offer; it suits
24 them better than Construction Line?
- 25 A. If it still exists, then I would make that assumption,

- 1 yes.
- 2 Q. Over time, if you were unhappy with Construction Line in
3 any way, you would have the option to switch back and
4 use Building Confidence, would you not?
- 5 A. In the construction business, yes.
- 6 Q. Both Construction Line and Building Confidence use
7 the PAS 91 standard, do they not?
- 8 A. I believe so, yeah.
- 9 Q. PAS, publicly available standard.
- 10 A. Yeah.
- 11 Q. As I covered with Mr. Matthews, they mutually recognise
12 each other's verification of that question set, do they
13 not?
- 14 A. I'm not sure they do.
- 15 Q. In that case, can I take you to bundle B, please, and go
16 to tab 5 of that.
- 17 A. Yeah.
- 18 Q. You will see a statement of Ms. Ferrier, which she gave
19 the other day, and on page 80, using the bundle
20 numbering down at the bottom, at paragraph 32, it refers
21 to the basic industry standard known as "PAS 91" and
22 includes the specific safety elements against which
23 desktop audits are carried out.
- 24 A. Yeah.
- 25 Q. Does that reflect your understanding?

- 1 A. Yes.
- 2 Q. There is an industry forum of supplier assurance
3 providers, SSIP. Are you familiar with the existence of
4 that forum?
- 5 A. No, I'm not -- sorry, just to clarify, is that Build UK?
6 Is that the same as Build UK?
- 7 Q. I do not believe so, no. "SSIP", I think, stands for
8 "safety systems in procurement", but there is a specific
9 industry group. It says there that:
10 "A supplier who has been audited by one member
11 against the SSIP standard [the PAS 91 standard] would
12 not need a further audit from another member of the same
13 information. SSIP members recognise each other's audits
14 as being of the accepted standard."
15 That is right, is it not?
- 16 A. Well, that wasn't my understanding. My understanding
17 was there was an aspiration to get there, but they
18 weren't there yet.
- 19 Q. Okay.
20 Now, in the construction sector, the fact that
21 Building Confidence exists as an alternative does not
22 stop you from organising your supplier assurance
23 arrangements as you want, does it?
- 24 A. Again, so are we talking about the rail business or --
- 25 Q. No, we are talking about the construction business.

1 A. We're talking about construction, so -- no, so
2 effectively the business is choose -- is free to choose
3 its assurance provider.

4 Q. So you can achieve all the benefits of streamlining your
5 assurance process by choosing Construction Line?

6 A. Correct. That's the decision we took at Balfours.

7 Q. Balfour Beatty is a very big company, is it not?

8 A. Correct, yeah.

9 Q. So if you say to suppliers, "I want you to register with
10 Construction Line", they will generally, if they want to
11 supply us, that is what they will do?

12 A. Yes, there are -- you know, not everybody will
13 subscribe. There are cases where people do not
14 subscribe.

15 Q. People choose not to for some reason?

16 A. Yes.

17 Q. Okay.

18 Then for the rail sector, turning back to what you
19 say in paragraph 14 of your statement, you say that you
20 have taken the decision to use RISQS for all suppliers
21 engaged in your rail business. Can I just check what
22 you mean by all suppliers engaged in your rail business
23 because back on the previous page at paragraph 11(a),
24 you say, "Construction Line is used for non-rail
25 business and for certain elements of the rail supply

- 1 chain ..." --
- 2 A. Correct.
- 3 Q. -- "... where the services or goods ... are ... low
4 risk". So back at 14(a), when you say, "... for all
5 suppliers engaged in our rail business", it looks like
6 you are using a narrow definition of "rail business"
7 there.
- 8 A. Let me clarify. So for what we call our "high-risk
9 suppliers", which are kind of -- a loose definition
10 would be "subcontractors", so people who actually go out
11 and do physical works, we apply RISQS; for our
12 lower-risk rail suppliers, so for want of a better
13 definition, that is typically sort of suppliers of
14 services or material into the rail industry that don't
15 go on-site, we use RISQS; and for what we call
16 "ultra-low-risk suppliers", such as caterers,
17 professional service consultancy, we will accept
18 Construction Line associate.
- 19 Q. As regards any suppliers who have staff who need to go
20 on-site in the rail industry, there was not much of
21 a decision for you, was there?
- 22 A. No, it made sense to stick with the RISQS scheme.
- 23 Q. It is not that it makes sense. You did not really have
24 the option because they have to be -- you have to be
25 Sentinel-registered to be allowed onto Network Rail's

- 1 property.
- 2 A. You do, but not all of our supply chain needs to be
3 Sentinel-registered.
- 4 Q. Okay but most of it does?
- 5 A. 50%.
- 6 Q. The critical bit, the ones who actually go and do
7 the works, have to be?
- 8 A. Correct.
- 9 Q. Then in fact, going down to 14(d) -- I think this is
10 perhaps the point you pick up there -- you say:
- 11 "We do not want to import additional cost to
12 the supply chain by requiring compliance with a further
13 assurance scheme where those deployment workers
14 trackside would already be registered with RISQS for
15 other clients."
- 16 So for those people who have to be registered with
17 RISQS, if you try to make them do another supplier
18 assurance system on top, that would impose additional
19 costs on them because they would have to be doing two?
- 20 A. Correct.
- 21 Q. So given that they already have to be on RISQS for
22 Sentinel, it does not make sense for you to go with
23 anything but RISQS?
- 24 A. Correct.
- 25 Q. But the situation in rail is rather different from that

1 in construction. In construction you picked the scheme
2 which you thought best fitted your needs, whereas in
3 the rail business effectively you have to pick RISQS
4 because you have no option?

5 A. We have no option for 50% of our supply chain, yes.

6 Q. But you choose to apply it to --

7 A. Correct, we do.

8 Q. But you do have a choice, okay.

9 Now, in terms of the benefits you set out at 14(a),
10 you point out at 14(a) I think -- I am not going to
11 dispute with you that RISQS is rail-industry recognised
12 and designed to assess against rail-specific standards.

13 At 14(b) you say you wanted to have full confidence
14 in suppliers and relying on a single consistent scheme
15 allows you to have that confidence. So you are talking
16 here about your consistency across all of your
17 suppliers; is that right?

18 A. Yeah, so our understanding of the assurance process.

19 Q. But this is going across your suppliers. You are not
20 forcing all your -- all people down the supply chain all
21 to use RISQS all the way down?

22 A. No, so this is going across our supply chain.

23 Q. In a sense you can achieve that in construction because
24 you just have chosen to say all your suppliers have to
25 do Construction Line. So you have achieved the same

1 benefit in construction, have you not?

2 A. I'm going to say "Yes" and "No" to this. Yes, in terms
3 of it's a standard scheme across construction. I mean,
4 from a rail perspective the scheme we choose in
5 Construction Line isn't -- it doesn't -- it doesn't
6 assure to as high a standard as the RISQS scheme.

7 Q. But there is a difference in standard of the scheme, but
8 in terms of consistency --

9 A. Yes.

10 Q. -- across -- on your construction business you have
11 chosen one consistent standard --

12 A. One platform.

13 Q. I see. Thank you.

14 Then at 14(c), this is the point you mentioned that
15 there is in fact -- it is a higher-risk business so
16 a higher standard of assurance is required.

17 A. It's a higher level of assurance, yeah.

18 Q. But that is a matter of what the audit covers and how it
19 covers it, is it not?

20 A. Yes, correct. So Construction Line Gold doesn't involve
21 an audit of the supply chain where the RISQS scheme
22 does.

23 Q. 14(d) we have covered.

24 14(e), you set out your view that having RISQS is
25 clearer. With respect, I mean, that is just your

- 1 opinion, is it not?
- 2 A. It is.
- 3 Q. I am putting to you that there may well be buyers who
- 4 feel perfectly happy to accept more than one
- 5 qualification.
- 6 A. There could be.
- 7 Q. Indeed in the construction sector you used to do that --
- 8 A. Yes.
- 9 Q. -- and there may be construction firms who still do --
- 10 A. Yeah.
- 11 Q. -- and who want to?
- 12 A. Yeah.
- 13 Q. I think you mention -- sorry, at 14(f), again you set
- 14 out your view that it reduces barriers to entry for new
- 15 suppliers. Again, that is just your opinion, is it not?
- 16 A. I say my opinion -- yes, if they joined the RISQS scheme
- 17 and it's an industry-recognised scheme, then there will
- 18 be a -- they will be eligible to work for anybody on
- 19 that one scheme.
- 20 Q. But in another sense it is a barrier to entry
- 21 because, if you are not registered with RISQS, you can't
- 22 get in -- it's a separate step you have to do before you
- 23 get into the rail industry?
- 24 A. It is.
- 25 Q. Then at 14(g) you refer to there being a question of

1 different interpretations, but it is perfectly true, is
2 it not, that you can ensure that auditors have
3 reasonably similar interpretations of the same standard?

4 A. I'm not sure I can do that, but ...

5 Q. Every standard that is applicable in the construction
6 industry, they are not all audited by the same person,
7 are they?

8 A. No, they're not.

9 Q. Measures are taken to ensure that people audit them to
10 the same standard?

11 A. I don't know.

12 Q. You do not know. It is not your area. Okay.

13 At paragraph 15 you refer to having great levels of
14 engagement by the scheme provider.

15 A. Yes.

16 Q. Are you saying this has improved since the new provider
17 came along?

18 A. Yes.

19 Q. So would you say that having a competitive process for
20 choosing a provider led to an increase in service
21 standards?

22 A. I can't say that. All I can see is an improvement in
23 the service.

24 Q. At paragraph 16 you say that you are not aware of
25 Network Rail specifying to any tier 1 contractor,

1 including Balfour Beatty, that they must use RISQS in
2 qualifying their supply chain. Then you say you have
3 always worked on the basis of demonstrating compliance.

4 I have already gone through it with you, but it is
5 true, is it not, that as regards the on-track work --

6 A. Yes.

7 Q. -- you have no choice but to be RISQS-registered or not?

8 A. Yes.

9 Q. Okay.

10 So then, at paragraph 17, when you say you have
11 recognised the benefits of using RISQS as the provider
12 of choice in carrying out assurance checks on your
13 suppliers, there is not much choice about it, is there?

14 A. No, not for the -- the elements of subcontract that we
15 need to go on-site trackside.

16 MR. WOOLFE: Those are all the questions I wanted to ask,
17 sir, thank you.

18 THE CHAIRMAN: Thank you.

19 MR. FLYNN: I have no questions.

20 THE CHAIRMAN: Thank you, Mr. Berwick.

21 A. Thank you.

22 (The witness withdrew)

23 MR. FLYNN: In that case, sir, subject to Ms. Scott's third
24 witness statement, that completes our factual evidence.

25 I think we are now in the Tribunal's hands as to

1 what happens next, as it were.

2 MR. WOOLFE: Yes -- no, obviously the next phase is safety
3 experts.

4 THE CHAIRMAN: Yes.

5 MR. WOOLFE: Our safety expert, Dr. Cox, is here and we
6 could start with him. I do not know if my learned
7 friend would like to start now.

8 MR. FLYNN: Easy.

9 THE CHAIRMAN: Let's carry on then.

10 DR. RAYMOND ANTHONY COX (affirmed)

11 Examination-in-chief by MR. WOOLFE

12 MR. WOOLFE: Could Dr. Cox be given bundle F, please.

13 Dr. Cox, if you could turn to tab 3 of that bundle, you
14 will see there a report headed "RA Cox Risk Management"
15 and the case number. Is that your report in these
16 proceedings?

17 A. It is.

18 Q. Thank you.

19 Then if you could turn to page 156 of the bundle,
20 you will see an expert declaration and signature page
21 there. First of all, do you understand the nature of
22 the declaration that you have given --

23 A. I do understand.

24 Q. -- and your duties to the Tribunal?

25 A. Yes.

1 Q. Is that your signature at the bottom?

2 A. That is mine, yes.

3 Q. Is that the evidence you want to give in these

4 proceedings?

5 A. Yes.

6 Q. At tab 6 of the same bundle there is a joint

7 statement --

8 A. Yes.

9 Q. -- that you prepared with Prof. Jack. Again, if you can

10 look at page 294 of the bundle, you will see two

11 signatures. Is the first one your signature?

12 A. It is.

13 Q. Again, do you understand this to be covered by the same

14 duties as your main report?

15 A. I do.

16 Q. Is there anything in this joint statement you want to --

17 you cannot amend, this is a joint statement, but

18 anything you want to clarify in any way?

19 A. No.

20 MR. WOOLFE: Thank you.

21 Cross-examination by MR. FLYNN

22 MR. FLYNN: Good afternoon, Dr. Cox.

23 A. Good afternoon.

24 Q. When you were instructed in this matter, had you had

25 cause to examine the RISQS scheme in any detail before?

- 1 A. No.
- 2 Q. So you came to it fresh, as it were?
- 3 A. Yes.
- 4 Q. Let's have a look at some paragraphs in your report, so
5 the one at tab 3. If we look at paragraph 7.8 --
- 6 A. I have it.
- 7 Q. You have it.
- 8 I mean, this summarises really some of your views on
9 what is going on with RISQS and you talk about generic
10 safety management requirements and related audit
11 protocols, and you say that those requirements are met
12 at the first stage of pre-qualification and are of
13 a basic or general nature.
- 14 A. That is my understanding. Obviously I had instructions
15 relating to this scheme because I did not have prior
16 experience of it.
- 17 Q. Thank you.
- 18 Then you refer to the generic standard RIS 2750 RST.
19 Is that a standard with which you had some familiarity
20 before these proceedings?
- 21 A. No, I only had familiarity with the great body of all
22 railway industry standards.
- 23 Q. Familiarity -- looking round the bundles, "familiarity"
24 could be an over-used term.
- 25 A. Yes, and familiarity with any one of them I wouldn't

1 necessarily claim.

2 Q. But in relation to that standard then, you say:

3 "It defines, among other things, the expected
4 proportionality between the rigour of the SMS..."

5 "Safety Management System", I think.

6 "... and the degree of hazard associated with
7 the supplies."

8 That is what you understand RIS 2750 to be doing?

9 A. I do say "among other things".

10 Q. Among other things.

11 Then you say:

12 "With the full authority of the RSSB behind it,
13 RIS 2750 represents a gold standard for supplier
14 assurance schemes."

15 A. Yes.

16 Q. I think it is essentially your view in this report that
17 if a provider of supplier assurance has said that it
18 will comply with RIS 2750, it is complying with the gold
19 standard and that should be good enough for anyone
20 taking supplier assurance certifications under these
21 basic protocols?

22 A. Yes. The key point that I'm making is that there must
23 be a standard that ensures that any provider of supplier
24 assurance services is working to a proportionately high
25 quality of service.

1 Q. In this particular area then, it is RIS 2750 that
2 provides that?

3 A. That's --

4 Q. That's --

5 A. That was my assessment of it when I read it.

6 Q. Indeed. If we just look, for example, at paragraph 8.8
7 of your report -- I am afraid I have not got the page
8 numbers in front of me, but it is at the top of a
9 page --

10 A. Yes.

11 Q. -- again there you say that in relation to consistency
12 and reliability of the manner of supplier assurance,
13 your opinion is that is supposed to be ensured by
14 RIS 2750?

15 A. Yes.

16 Q. Now, in relation to what the audits under RISQS are
17 actually doing, if we look at paragraph 6.7 of your
18 report -- and for navigation purposes, it is one just
19 before a pyramid chart -- sorry, just after the pyramid
20 chart.

21 A. Just after.

22 Q. -- there you say:

23 "... what is being audited in these RISQS modules is
24 still the management systems of the suppliers.
25 The auditors are checking whether documented processes

1 and policies exist, not checking whether the processes
2 are being complied with or the actual safety of working
3 practices."

4 That is your understanding, is it not?

5 A. It is.

6 Q. As you go on to say, completion of those modules does
7 not itself authorise a supplier under the relevant
8 Network Rail schemes; it is --

9 A. Yes.

10 Q. -- the basic or generic qualification stage, as it were,
11 beyond which it is then for Network Rail to carry out
12 further assessment?

13 A. It's basic and it's -- you might say it's
14 a screening-out phase that eliminates some and passes
15 others.

16 Q. Another feature of the benefits of having the single
17 scheme that Network Rail claims in these proceedings and
18 on which you comment -- if we could look at
19 paragraph 8.13 --

20 A. Yes.

21 Q. -- the benefit that Network Rail is claiming is that
22 the single scheme ensures that "... supplier assurance
23 scheme modules meet Network Rail's own needs ... and ...
24 the needs of the broader rail industry ..."

25 You say that those modules would continue in any

1 event and the Network Rail schemes are distinct and
2 would operate irrespective of the underlying supplier
3 assurance, and you say:

4 "To the extent that the defence ..."

5 So Network Rail.

6 "... refers to the RISQS modules, I do not believe
7 that having only one provider of supplier assurance will
8 help to ensure that the modules meet the industry's
9 needs. Buyers and suppliers should not be obliged to
10 purchase supplier assurance services that do not meet
11 their needs."

12 So you accept, do you, that supplier assurance is
13 something for -- buyers have a requirement and they
14 should be able to purchase the service that meets their
15 needs as they perceive them?

16 A. Yes.

17 Q. In principle you would accept that?

18 A. In principle they've got a variety of duties and
19 obviously my locus is safety and they have duties in
20 relation to safety, so they will have requirements.
21 They have a duty, in a way, to have requirements.

22 Q. Yes, duties -- legal duties?

23 A. Yes.

24 Q. You mean statutory duties --

25 A. I'm thinking of statutory duties.

1 Q. -- and duties under their licence probably?

2 A. No doubt, but I am less familiar with that.

3 Q. Then you go on to say in that paragraph:

4 "Buyers and suppliers should not be obliged to
5 purchase supplier assurance services that do not meet
6 their needs."

7 Really the flip-side of the same point?

8 A. Yes. They may have needs within this scheme that are
9 not only safety-critical ones.

10 Q. What I wanted to ask you about -- you then say:

11 "Examples of such needs might include
12 the 'community' element of the service."

13 I think by "community element", what I understand is
14 this is a term that Achilles uses in that it sets up in
15 particular industries what it calls "communities of
16 buyers/suppliers" that all rely on Achilles for their
17 supplier assurance, buyers getting it and suppliers
18 going through the process.

19 A. Exactly so, and there can be a lot of intangible
20 benefits through that kind of networking, let's call it.

21 Q. When you say "examples of such needs", are those needs
22 that buyers do need or do not need? There was
23 a slight ambiguity in my mind which may be unfair,
24 but:

25 "Buyers and suppliers should not be obliged to

1 purchase services that do not meet their needs.

2 Examples of needs might include the 'community' element
3 of the service."

4 Are you saying that it is a good thing or something
5 they might be able to dispense with?

6 A. It may be possible for them to dispense with it, but it
7 may be a good thing. But I'm not sure that it's --
8 within the safety remit, if buyers have established
9 their own requirements, that's the thing that they have
10 to do, but the other things are optional.

11 Q. So the community element could be optional?

12 A. In principle it could be if you didn't want to be part
13 of a community. From a safety point of view I wouldn't
14 say it's absolutely critical, but it may be desirable.

15 Q. Part of the community element might be matters such as
16 supplier forums and discussions within -- let's not
17 say "the community", but within the industry then, might
18 it not?

19 A. Yes.

20 Q. That could be a useful aspect of a supplier assurance
21 framework under which buyers and suppliers get to talk,
22 discuss problems that have arisen, how they might be
23 sorted out and avoided?

24 A. Yes, I'm trying to stick within my own expertise, which
25 is in safety, but certainly within the field of safety

1 such somewhat unstructured communications and networking
2 are valued.

3 Q. So if we look at paragraph 8.20 in your report, which is
4 at the bottom of the next page, there you are talking
5 about supplier forums and you say, in respect of a point
6 that Network Rail makes, that if you have lots of
7 different schemes, then your supplier forums would be
8 fragmented because basically you would have several of
9 these communities --

10 A. Yes.

11 Q. -- but they would not necessarily be talking to each
12 other, so you would have lots of different forums.

13 A. They wouldn't necessarily, but their structure would be
14 flexible, and what I had in mind is that some such
15 forums might include members who were not necessarily
16 from the railway sector, so there could be --
17 cross-fertilisation could be healthy because it helps to
18 break down insularity of the sectors.

19 Q. In your second sentence at 8.20 you make possibly along
20 those lines. You say:

21 "I agree, but diversity of forums could be
22 beneficial to safety because it allows more voices to be
23 heard."

24 A. That is what I had in mind, and all of those thoughts in
25 my mind were related to safety-cultural aspects.

1 Q. But if you had cross-industry forums of the sort you
2 have just been discussing, would that not potentially
3 dilute the safety value of the discussions when railway
4 operations raise particular and rather acute safety
5 concerns?

6 A. No, they are very singular safety -- they're very
7 specific to the sector.

8 Q. Singular?

9 A. Yes, and I certainly am not suggesting that this should
10 be -- that such diversity should be, if you like,
11 the dominant feature of such forums. They clearly would
12 be principally railway-related. The diversity I'm
13 talking about is simply the fact that with multiple
14 providers you would have a little bit more -- you
15 probably would have some participants who weren't
16 necessarily solely engaged in the railway sector and so
17 on, so there would be a little bit more diversity
18 through that means. I'm merely pointing to the tendency
19 in that direction. I'm not saying that it would or
20 should go a very long way in that direction.

21 Q. I understand, thank you.

22 Another aspect that is of concern to Network Rail --
23 and you may have been in court this morning and heard
24 some of the evidence on this point -- is reducing risk
25 of confusion on the part of suppliers, which you address

1 in 8.9 of your report.

2 A. Yes.

3 Q. You say:

4 "If the standard to be attained is the same,
5 I cannot see what confusion could arise. It is nothing
6 more than a short list of qualified supplier assurance
7 providers."

8 Why do you think it would be a short list?

9 A. Well, I know enough about the process of this type of
10 accreditation to know that any player who wished to
11 enter that field as a provider of supplier assurance
12 services would have to make quite a substantial
13 investment one way or another in developing their
14 approach and methodology, and also this industry, as
15 I mentioned earlier, is a very particular industry. It
16 has particular technologies, it's got particular safety
17 issues --

18 Q. The rail industry?

19 A. The rail -- the railway sector.

20 Q. Yes.

21 A. -- and it has the very characteristic feature that it's
22 a huge network of essentially similar objects, rail
23 stations, trains and so on, and essentially similar
24 operators, but they're not the same as what you find in
25 other sectors. So I can't see there being very large

1 numbers of players, but I've not been a practitioner in
2 that line of work so I can't say that from direct
3 personal experience. But my imagination of what they
4 would have to achieve to qualify as a supplier assurance
5 provider is that it's quite a substantial thing and
6 that's why I think there would be very few of them.

7 But the other reason why I don't quite get the idea
8 that there would be a lot of confusion is simply that if
9 I were standing in Network Rail's position and looking
10 at a particular supplier, all I would really need to
11 know is that they had passed through the process of one
12 or other of those providers of supplier assurance.

13 I don't think that's inherently very confusing.

14 Q. If a new entrant to supplier assurance in the rail
15 sector comes along, you think really the key is that
16 they should be assessed or comply with RIS 2750 and then
17 Network Rail would have the assurance that they were up
18 to the mark, as it were, even if this were a new area of
19 activity for them?

20 A. Yes, if I may refer you to the joint statement where we
21 do deal with the 2750 standard definitively. The --
22 where we landed that was that there should be some --
23 I forget now the choice of words we landed -- we
24 actually finished with --

25 Q. We can look it up.

1 A. -- because there were several variations before we
2 landed on with what we finally came up with --

3 Q. Yes.

4 A. -- but there should be some overarching mechanism or in
5 fact that there needed to be an overarching mechanism to
6 ensure that, if there were more than one supplier
7 assurance provider, they both worked to equivalent
8 standards.

9 Q. I think you are referring to paragraph 2.16 in the joint
10 statement.

11 A. Yes, I can't now remember which tab the joint statement
12 is in.

13 Q. Tab 6 for the joint statement.

14 A. Sorry, 16 ...?

15 Q. 2.16.

16 A. 2.16?

17 Q. Yes.

18 A. Well, that's where it refers to the standard. Earlier
19 on -- the phrase I was looking for was "additional set
20 of supervisory activities". The "additional set of
21 supervisory activities" is the language that we agreed
22 and I'm happy with it, and the point was that those were
23 supposed -- the intention of those was to ensure that
24 two or more supplier assurance providers worked to
25 equivalent standards.

1 Q. Yes, we are just tracking back so we understand where
2 you are coming from. So the phrase "additional set of
3 supervisory activities" comes in 2.3, "Two or more
4 providers".

5 A. Yes, and those activities would ensure that both
6 providers -- both or more providers worked to the same
7 standard, whether that was 2750 or something else.

8 Q. That is a point that you reiterate in one of your, as it
9 were, personal elements of the joint statement in 2.14;
10 correct?

11 A. 2.14. Let me find that. 2.14, yes.

12 Q. In a way it is the point you just made.

13 "... what matters is whether the supplier assurance
14 providers are ... working to broadly the same standard
15 of safety performance, which could be ensured by
16 the additional supervisory mechanism mentioned above."

17 A. Yes.

18 Q. "That mechanism could make comparisons between
19 the approaches and methods used by the suppliers, which
20 would provide a mechanism for benchmarking and
21 ratcheting up of practices, absent in the sole-provider
22 framework."

23 That is --

24 A. Yes.

25 Q. -- the point you are making there.

1 Ratcheting up or ratcheting down is perhaps a point
2 of difference between the parties here, if not
3 necessarily possibly also between the safety experts, as
4 to whether a system under which Network Rail were in
5 some way required to recognise more than a single
6 scheme -- the view obviously being that the single
7 scheme provides the best guarantee of the safety
8 concerns that it has -- that if actually there were two
9 or more or several schemes in operation, quality would
10 be ratcheted down rather than ratcheted up.

11 You say for example, at paragraph 8.28 of your
12 report, so the report in tab 3 -- to put that in
13 context, at 8.26 you say -- and you are not dealing with
14 costs and efficiencies exactly here -- that you are
15 responding to a safety-related point made in
16 Network Rail's document, "... where it is suggested that
17 the effect of having more than one supplier assurance
18 organisation would be to incentivise suppliers to shop
19 around for either the cheapest services, or the most
20 lenient auditors". That is the point we are on.

21 A. Yes, I understand.

22 Q. You recognise at 8.27 that such incentives could exist,
23 at least in the mind of some suppliers, and you say that
24 such incentives exist in a rather different sector, that
25 of fairground operations. Is that a sector you also

- 1 have some familiarity with?
- 2 A. Oh, yes, I do.
- 3 Q. Well --
- 4 A. I'm not making any comparison between that and
- 5 the railway sector.
- 6 Q. But the incentives to go for the cheapest options might
- 7 be pronounced in that sector, if not in the railway,
- 8 I think --
- 9 A. Well, I've observed it, yes.
- 10 Q. You say in 8.28 -- and here I think you are talking
- 11 about the railway:
- 12 "From a safety perspective ... I am not concerned
- 13 with the choice of the cheapest of the services. That
- 14 is simply a matter of efficiency (and a benefit) and not
- 15 a safety concern."
- 16 A. Yes.
- 17 Q. Now, I am not asking you to draw parallels with
- 18 railways, but does there come a point at which a cheap
- 19 service is likely to be or could potentially be a less
- 20 good service, a less thorough service, possibly?
- 21 A. It doesn't follow as night follows day, no, but
- 22 obviously that could happen. But I believe that
- 23 efficiency and safe and good-quality practices often go
- 24 hand in hand. It's a matter of -- I've had about
- 25 40 years of philosophical debate about this question as

1 to whether achieving a high-level of safety necessarily has
2 to cost money, or the alternative view, which is that
3 a safe organisation, a clean, healthy organisation, is
4 also a profitable and more financially successful and
5 efficient -- financially efficient organisation.

6 Those two quite incompatible beliefs seem to me to
7 be matters of faith. I have failed to find absolutely
8 concrete evidence for this throughout my safety career,
9 but my belief is that there is no reason why
10 a lower-cost service can't be as efficient or more
11 efficient in terms of the quality of the service
12 provided.

13 Q. Would you generalise that? I mean, that is -- if you
14 are talking about, say, a safety-critical industry or
15 a safety-critical operator, such as Network Rail --
16 I mean, Network Rail is under obligations and statutory
17 obligations to the Treasury and ultimately to
18 the taxpayer to be lean and efficient in its costs, and
19 I do not think it is said that that necessarily,
20 you know, has any impact on its ability to run a safe
21 railway, make sure that it is safely run -- but in what
22 you might call "ancillary services", is it necessarily
23 the case that if actually what they are doing is
24 competing for business in these assurance services we
25 are thinking about, they are competing for the business

1 of suppliers, in this case on price -- is it necessarily
2 the case that that has no impact on the quality and
3 thoroughness of the service that they provide? If they
4 are going in low on price, let's say, they have got to
5 provide something against the standard, as you have
6 said, they have got to provide it, so if they are doing
7 this on a low-cost basis, they are going to have to make
8 some economy somewhere, are they not?

9 A. Yes, but not in lowering the standard. They can make
10 economies wherever they like so long as they don't fail
11 to meet the standard.

12 Q. In 8.29, at the top of the next page, you are looking at
13 this idea and reacting to, I think, Network Rail's idea
14 that there could be a sort of race to the bottom. Again
15 you say it is really about the standard and RIS 2750 in
16 this particular case. Then you say:

17 "There are safety benefits from competition."

18 About halfway through the paragraph.

19 "Where one provider supplies assurance to a higher
20 standard, that could be used as a ratchet to influence
21 any provider whose service was more lenient."

22 So you recognise there could be, as it were, more
23 lenient auditors or audit services in this field. If
24 you had several providers, there might be one that comes
25 to be regarded as -- I do not mean it in any

1 disrespectful way -- a softer touch. You recognise that
2 as a possibility?

3 A. It's a possibility between individual auditors.

4 Q. Yes.

5 A. It's a possibility that constantly needs to be resisted
6 and managed, and that's why the so-called supervisory --
7 the additional supervisory mechanisms are needed. They
8 are an essential function within the concept of having
9 multiple providers.

10 Q. I mean, I can see that there is a sort of infinite
11 regress problem --

12 A. Yes.

13 Q. -- but how do you see a ratchet mechanism working here?
14 If you have several independent -- you know, three or
15 four -- any number you like really -- but a few
16 independent schemes all looking for the business of
17 suppliers in this industry and having to stress their
18 advantages, which may be wide industry coverage -- who
19 knows? -- it may be price, it may be speed, how do you
20 see a ratchet mechanism operating as between them?

21 A. Well, it necessarily would have to be part of the
22 supervisory mechanism because only that part of the
23 mechanism would be able to make the comparisons in
24 the manner in which the various providers had conducted
25 themselves and conducted this activity, and it would

1 have to kick in -- if an improvement -- safety-related
2 I'm speaking of, of course -- if an improvement were
3 developed in one of the providers, that supervisory
4 mechanism would need to kick in and try to consolidate
5 that in the others.

6 Q. Going back to -- we have looked at these, but just so we
7 have it in front of us -- the joint report then, and in
8 paragraph 2.3, let's just be clear, the additional
9 supervisory mechanism that you are talking about is on
10 the part of Network Rail?

11 A. That's -- that's as was discussed in the joint meeting.

12 Q. Yes, and this is a point you were able to agree on in
13 what was, I am sure, a very civilised conversation. You
14 agree that, "... supplier assurance in this sector has
15 always, to date, been the subject of a single provider
16 scheme"; you agree that, "... it is possible to
17 contemplate a situation in which there is more than one
18 provider of such services"; you agree that, "... if two
19 or more such providers were required to be recognised,
20 there would need to be a significant additional set of
21 supervisory activities by Network Rail, to ensure that
22 they ... work to common standards of performance and
23 with compatible and linked IT systems".

24 Just -- we can use the shorthand "additional
25 supervisory mechanism or activities", but these are

- 1 activities that would have to be carried out by
2 Network Rail in this agreed hypothesis?
- 3 A. In the agreed hypothesis -- I think it is right that
4 I should mention, which I didn't do as a separate item
5 in here, not because -- well, mainly because I hadn't
6 had this thought until subsequently -- it isn't
7 necessarily the case that Network Rail is the right
8 place to put those additional mechanisms. It could be
9 RSSB. I had not thought of that at the time. I am just
10 saying that as my evidence now and not jointly,
11 obviously.
- 12 Q. I understand.
- 13 A. I do not know which of those two might be the best
14 place.
- 15 Q. But insofar as what these proceedings are concerned with
16 is Network Rail's own requirements and own perception of
17 its needs, which for the moment it has entrusted to the
18 scheme within the RSSB, now running RISQS directly, what
19 we are concerned about is the impact of a possible
20 change in the structure on Network Rail's own needs. So
21 I take your point, the additional supervisory mechanism
22 could be -- on the part of Network Rail, it could
23 possibly be the RSSB, depending on how that works or
24 what the governance arrangements are -- I understand you
25 to be saying that -- but it would have to be done?

1 A. Yes, and in fact, to be clear about what I'm saying, it
2 starts with Network Rail's responsibility to do it.

3 Whether they procure RSSB to do that on their behalf or
4 not, that's another matter. That's not for me.

5 Q. A downstream question, as it were?

6 A. Yes.

7 Q. But you do agree -- and that is the last sentence in
8 this paragraph -- that, "This would introduce additional
9 complexity into the system overall".

10 A. Yes, without -- and obviously this is the joint
11 statement we're talking about here --

12 Q. Yes.

13 A. -- and I agreed this statement --

14 Q. Yes.

15 A. -- and there is nothing said about the scale of that
16 complexity in that.

17 Q. It would introduce a degree of additional complexity --

18 A. Non-zero.

19 Q. Non-zero additional --

20 A. Non-zero amount.

21 Q. -- complexity. In philosophical terms, in relation to
22 safety, safety management and how you go about it, is
23 not avoiding complexity almost rule 1?

24 A. Well, avoiding complexity is -- sometimes complexity is
25 not avoidable and it doesn't follow that complexity has

1 to lead to an increased risk. There are plenty of very
2 complex systems that I could point to, including some
3 railway systems that are quite complex, but not -- and
4 maybe dealing with potential hazards, but they are safe
5 or at least the risk involved in them has been reduced
6 a very, very long way.

7 Complexity in human organisations in the management
8 side of things should be reduced as far as possible,
9 just to make them less prone to error. But apart from
10 that, I don't think complexity itself is -- it doesn't
11 figure in my thinking as being a sort of direct --
12 having a direct relationship to increased risk.

13 MR. FLYNN: Thank you.

14 Would that be a convenient moment, sir?

15 (1.02 pm)

16 (The short adjournment)

17 (2.01 pm)

18 MR. FLYNN: Dr. Cox, could we go back to the joint
19 statement, please, and paragraph 2.3. We have already
20 looked at this, but just to go onto a slightly different
21 theme. There you say in the joint statement, towards
22 the end of the paragraph:

23 "... there would need to be a significant additional
24 set of supervisory activities by Network Rail, to ensure
25 that they all work to common standards of performance

1 and with compatible and linked IT systems."

2 A. Yes.

3 Q. We have looked at that, but it is the last element
4 I wanted to come back to.

5 Your point in paragraph 2.5 which builds on this
6 element of the joint statement, as it were, is that you
7 are of the view that any increase in risk that
8 Professor Jack thinks this might lead to would only
9 arise, "... if the additional supervisory mechanisms
10 were not adequately resourced or well enough designed
11 and operated".

12 That phrase -- you tell me -- but that seemed to
13 match up with the reference to the "compatible and
14 linked IT systems" that you were talking about in 2.3.

15 A. Well, it would include --

16 Q. It would include --

17 A. -- such systems.

18 Q. It would include such systems.

19 Then in -- it is just the IT bit that I want to
20 focus on for now, so just understanding where you are
21 coming from. In paragraph 2.11 of this joint statement
22 is a section with an italicised heading, "Effect on
23 safety communications", and Professor Jack's view is
24 given, and then you agree in 2.12 that:

25 "Communication of safety information both ways in

1 the supplier/buyer community is important."

2 It says that you understand from your instructions
3 that, "... an Achilles witness will provide factual
4 evidence concerning the means by which two computer
5 systems may be interfaced so that such communications
6 can pass between all participants on both systems with
7 negligible delay or inconvenience". Do I understand
8 that you are not an expert on computer systems and how
9 interfaces of this sort would be achieved?

10 A. That's correct.

11 Q. So you are reliant on Achilles' evidence on this matter?

12 A. As is clearly stated in my part of that joint statement.

13 Q. Yes, just to understand that.

14 So if in fact the computer systems do not deliver,
15 then the risk could arise?

16 A. Assuming that the functions in question are delivered by
17 means of a computer system, which is a pretty fair
18 assumption in the present age --

19 Q. Yes.

20 A. -- obviously if those practical problems are really big
21 challenges and difficult, then that would be an
22 important shortfall in functionality; the communications
23 would suffer.

24 Q. Therefore this is where you are differing as to whether
25 these risks can be managed, and you are saying provided

1 there is a -- and you are reliant on Achilles on this --
2 but provided the computer systems can be put in place
3 and work, then fine. If they do not, then obviously
4 the problem has not been solved?

5 A. Well, I'm not claiming to know as a matter of fact,
6 never mind expertise, what form the communications would
7 take. They could be by any means of communication
8 available in the current age. It wouldn't necessarily
9 have to be through a large-scale computer systems
10 portal, for example. It could be by a communications
11 method, email or text or anything. So I'm not claiming
12 any knowledge of what the medium of communication would
13 be. All I'm referring to is the functionality that's
14 important from a safety point of view is that sort of
15 news, if you like, in the safety aspects of running
16 the railway system, if it's news about an incident, for
17 example, or a methodology, a change of practice or
18 something like that, it needs to be got out to all
19 the people who need to know it --

20 Q. Yes.

21 A. -- and that's the functionality I'm interested in.
22 I really don't have expertise that goes beyond that
23 functionality.

24 Q. No, and I was using what you say in paragraph 2.12 just
25 to check with you that indeed that is not your area of

1 expertise and you are reliant on someone else to say
2 that the computer system can be made to work(?). If it
3 is a question of a computer system here and their
4 interfaces, someone else will have to tell the Tribunal
5 that that can work and how it can work?

6 A. If it's a computer system, yes.

7 Q. If it is a computer system, the point being -- as I say,
8 I was using that as an illustration because in 2.3,
9 which we just looked at, in relation to the additional
10 set of supervisory activities by Network Rail, you say
11 that they would be needed to ensure that they all work
12 to common standards of performance and with compatible
13 and linked IT systems, and insofar as there is a need
14 for compatible and linked IT systems, you are not
15 the person to tell us how that could be achieved?

16 A. That's correct.

17 Q. I think, before writing your report and partly because
18 of the timing, the expedited nature of these
19 proceedings, you had not looked at the witness evidence
20 of either party. I think that is correct, is it not?
21 You had not looked at the factual witness statements?

22 A. No, I think that's correct, yes.

23 Q. I think it is correct, and you list at the end of your
24 report a number of the documents that you have
25 consulted.

1 Nevertheless, perhaps we could just have a quick
2 look at one part of Achilles' factual evidence here.
3 If, please, Dr. Cox can be given bundle B/2, there is
4 a witness statement from Ms. Ferrier at Achilles.

5 A. Yes.

6 Q. At paragraph 93 of that statement -- this is dealing
7 with the procurement of, as it were, the new RISQS
8 scheme, and you may have been in court earlier to hear
9 the evidence of Ms. Pearson about the tender that
10 the RSSB carried out.

11 A. I heard part of that.

12 Q. You heard part of that.

13 Well, you will understand -- and you probably knew
14 anyway -- that under the new RISQS contract, as
15 the evidence points out here, the functions of
16 IT provider and audit provider were divided into
17 separate lots which could be tendered for separately --

18 A. I understand.

19 Q. -- and could and indeed were secured by different
20 providers --

21 A. Yes.

22 Q. -- although not necessarily.

23 So in paragraph 93 of the witness statement,
24 Ms Ferrier says:

25 "Achilles also believes, based on the information

1 available in the procurement, that the splitting of the
2 service into two lots for the purpose of the
3 restructured new RISQS contract itself created more
4 complexity in the monitoring of safety issues."

5 Then she illustrates or describes that concern of
6 complexity:

7 "Under the new contract, the audit provider,
8 currently Capita, is required to notify the RSSB of any
9 audit failures. The RSSB then notifies Altius in its
10 capacity as a data-holder. During the procurement,
11 Achilles noted this inefficient communications structure
12 and considered it might create a risk of delay as
13 compared to direct communications."

14 So she is saying that the way they have carried out
15 the procurement, divided it into two lots, creates an
16 inefficient structure and introduces complexity in the
17 monitoring of safety issues.

18 So there is Achilles' view that importing additional
19 interfaces and extending the communications chain in
20 this way adds to the difficulty in monitoring safety and
21 imports risk into the system. Do you accept that in
22 a more fragmented world, whether that is as between two
23 providers in a single scheme or with a number of
24 different providers, there could be issues of
25 complexity, monitoring, importing risk into the system?

1 A. Well, I'm not really concerned with complexity per se,
2 I'm -- within the safety locus, the key issue is the
3 communication of information about safety issues, which
4 Ms. Ferrier takes as her starting point in effect, that
5 it's that that needs to be communicated.

6 We are in an age of really excellent communications
7 with lots of alternative channels. I do not see much in
8 terms of the significance or scale of any additional
9 difficulty in communication that either would arise by
10 the splitting of the overall functions of RISQS into two
11 big chunks or in the introduction of more than one
12 provider of supplier assurance services. I --

13 Q. You do not know, do you --

14 A. I know enough about communications to know that there
15 are ways of setting up those channels, which basically
16 only really have to transmit information about, let's
17 say -- let's say it's a safety incident that has
18 occurred -- what happened, what the conclusions were of
19 whatever investigation was done, and perhaps only an
20 initial one, and what safeguards need to be taken up by
21 any other duty-holder or operator who might run the same
22 risk. It's not a very big challenge.

23 Q. So do you disagree with her assessment that this was
24 a problematic approach?

25 A. Well, it's true that it introduces an element of

1 additional complexity. I don't think it needs to give
2 rise to an increase in risk.

3 Q. You are suggesting possibly that different methods could
4 be used, other forms of communication could be used --

5 A. Well --

6 Q. -- other systems --

7 A. Bearing in mind I'm not an expert on IT, but I know that
8 different IT systems can have interfaces built between
9 them relatively easily these days, so they can
10 synchronise data, and systems that aren't what you would
11 really call a computer system, more a communication
12 system, can also be set up so that they can broadcast
13 messages to lots of people in parallel. I do this in
14 the local football club. It's not difficult.

15 Q. Well, I think we are all familiar with email
16 distribution lists --

17 A. Exactly.

18 Q. -- I suppose.

19 This seemed to be a matter of great concern to
20 Achilles. Perhaps if we could have a look at H15,
21 towards the back of that file, 4470. I think this is
22 a script that is being developed for, as it says, "core
23 stakeholder management points". If you turn over
24 the page, this is a script that Achilles -- it is
25 talking points, as it were, that Achilles has developed

1 at a time when the RISQS changes to the new system are
2 in the offing.

3 If you look at 4471, the second heading:

4 "The RSSB process is a significant risk to industry
5 assurance. Achilles respects the need for a competitive
6 process and have participated fully. However, as the
7 process progressed, a complex model for delivery of
8 the new system has emerged. In Achilles' assessment,
9 the specified model for introduction of an
10 intermediary/intermediaries into the process
11 significantly increases the potential for process
12 failure because it imposes additional interfaces into
13 the system that significantly increase system complexity
14 and therefore risk."

15 Then they talk about the timetable, which they say
16 is optimistic.

17 That is an amplification of the previous point.
18 They seem to have a concern that the additional
19 interfaces are importing risk unnecessarily into
20 the system. Now, you have said you are not an
21 IT: expert and neither am I, but they are suggesting
22 that this is a problem that will need to be overcome.
23 It increases risk by adding additional interfaces. As
24 a matter of your expertise, can you really disagree with
25 that statement?

1 A. There's a question of degree, of course, that arises in
2 all of this, but if I put that to one side for the
3 minute, what I mean by that is the degree -- how much
4 complexity is there really, what degree of complexity is
5 there really, and then there's a question of what degree
6 of risk that brings in its train.

7 Leaving that aside, because I think both of those
8 are probably quite small --

9 Q. Is that --

10 A. -- the principle --

11 Q. If I may, is that an informed view or a matter of
12 impression?

13 A. It's an opinion, it's a judgment, and it's a judgment
14 based on, you know, half a lifetime doing risk
15 assessments and the other half of a lifetime doing
16 accident investigations. In the accident investigations
17 I learn a lot about what really triggers real accidents,
18 and I can't remember an occasion where I have ever
19 concluded that there was something about communications
20 or management complexity that played any kind of role
21 at all, never mind a significant one, in causing an
22 accident. But I would accept that there must be some
23 incremental effect of awkwardness or complexity in
24 a management system that might lead to errors or
25 failures that might lead to an accident or contribute to

1 the causing. There's no possibility it could be the
2 sole cause of an accident actually occurring in
3 the field, but it might be a contributory one.

4 So that's why I raised the question about the degree
5 of importance of these parameters, complexity and risk,
6 in terms of the -- you know, the safety of
7 the operation.

8 Forgive me, that was a long answer to your question
9 and I've now forgotten what the original question was.
10 Would you care to put it again?

11 Q. So have I, Dr. Cox. We are just having an interesting
12 discussion.

13 We started with your paragraph 2.3 and the need for
14 the additional supervisory measures to be properly
15 resourced, well governed and have basically
16 a functioning IT system behind them. That is where all
17 this started. You have said you are not the functioning
18 IT person, you are reliant on Achilles or someone else
19 to say how that can be done, and we were talking
20 specifically about their concern that adding interfaces
21 into the split between audit and IT in the new RISQS
22 system added complexity. I think you are saying, well,
23 it probably does not -- it is not going to be the sole
24 cause of an accident, it could be a contributory cause,
25 it is something that essentially could be managed.

1 I think that is what you are saying. You do not think
2 it is a big problem. If I summarise you correctly, your
3 judgment is this is not a particularly significant issue
4 and it would not be a principal cause of an accident?

5 A. That is pretty much my position, yes.

6 Q. It is common ground -- this is a slightly different
7 point now, and if you have that H15 file, you could hand
8 that back. It is common ground between the parties --
9 at least I do not think it is in dispute -- that since
10 the new RISQS arrangement came into place, there has
11 been a higher strike rate, as it were, of audit
12 failures. That is in our evidence from Ms. Scott of
13 the RSSB, and Mr. Nelson of Achilles, while obviously
14 not knowing the situation on the ground because Achilles
15 is not providing these services now, was prepared to
16 accept it and said that, yes, different auditing bodies
17 may carry out the things in different ways and that is
18 why you may get a different result.

19 I do not need to go into the reasons for it, but the
20 simply point is different auditors working for different
21 supplier assurance providers may approach things
22 different ways and reach a different result from that
23 which would be reached under the supervision of
24 a different -- the number one supplier assurance body.
25 That is correct, is it not?

1 A. Yes, they may, and any sort of -- any system of carrying
2 out audits, like any other management system, may need
3 a periodical shaking up because they can get set in
4 their ways and become rather routine --

5 Q. Yes.

6 A. -- and that is not really good from a safety point of
7 view because you always want to have a lively challenge
8 function.

9 Q. Yes. Well, I think Achilles would say and have said
10 that they keep refreshing the auditors on particular
11 jobs so you do not get the same person going to the same
12 place the whole time. But, more fundamentally,
13 Network Rail sought to shake things up and refresh
14 things by going along with the RSSB tender for new
15 providers with new standards set in the contract, so --

16 A. That is indeed an example of what I just said.

17 Q. Yes.

18 If we can go back to your report, your original
19 report in tab 3, paragraph 4.5. This is the last
20 paragraph in a section you describe as "Background", but
21 I imagine you would suggest that it is important
22 background. You say:

23 "The reason why this industry manages safety
24 principally by standardisation and related compliance
25 monitoring is that it is an extended network ..."

1 We discussed that earlier, I think. It is a complex
2 infrastructure with a lot going on, if I can put it
3 crudely.

4 Then you say in the second sentence:

5 "This is not an industry that can allow much
6 deviation from standard operating practices without
7 a great deal of prior thought and careful consideration
8 of unintended consequences."

9 Now, you would accept, would you not, that
10 Network Rail and the RSSB have given a lot of careful
11 thought to this issue, a great deal of prior thought and
12 careful consideration, and have come up with a firmly
13 held view over the last 20 years that a single source of
14 supply of supplier assurance is the best way of doing
15 that? I mean, you would not question that that was
16 their view, I assume?

17 A. I wouldn't question whether that is their view --

18 Q. Conscientious --

19 A. Obviously. It is their view.

20 Q. Conscientiously reached.

21 A. I was not party to any of those deliberations so
22 I really know nothing about what went on in the course
23 of them.

24 Q. No, but in the course of the discussion you and I have
25 been having, we have seen possibly the differences and

1 the consequences that can arise from having different
2 auditors conducting audits. We have seen, even if you
3 would seek to minimise it, a real concern on the part of
4 Achilles about the problem of adding interfaces into
5 the system, and you have accepted a need for supervisory
6 activities by Network Rail and a functioning -- their
7 functioning IT system to make sure that that supervision
8 is effective. All these things are deviation from what
9 you call "standard operating practice", are they not?

10 A. They may be that, but they're not really the sort of
11 thing I had in mind when I wrote these words. The sorts
12 of things I had in mind when I wrote those words were
13 far more -- far closer to the field in which real major
14 causes of accidents, direct causes of accidents, arise;
15 that is to say in things like the quality of a piece of
16 machinery or the competence of a driver or platform
17 staff or whatever. I was thinking mainly in terms of
18 things that are what you might call "mainstream" in
19 the world of safety management, rather than things like
20 this, which is at several removes from the sort of
21 coalface, so to speak, of preventing accidents from
22 happening.

23 Q. Supplier assurance has been identified in public
24 inquiries as something of critical importance, that if
25 you get it wrong or if it is not properly structured,

- 1 can indeed be a contributory cause to accidents.
- 2 A. Oh, I would agree with that, but it's a diffuse and
3 widespread cause. It's not usually the proximate cause
4 of an accident.
- 5 Q. Well --
- 6 A. But it's an influence, if you see what I mean.
- 7 Q. Looking at the other way, it is an important mechanism
8 for avoiding the repeat of accidents, is it not?
9 I mean, it is almost more important that way than
10 identifying it as the cause.
- 11 A. It is -- it is very important because the same accident
12 doesn't actually repeat. What happens is a different
13 accident happens the next time.
- 14 Q. Yes.
- 15 A. So the management aspect is to try to learn the generic
16 lessons from a given accident and apply the generic
17 lessons to the prevention of a whole raft of different
18 future accidents.
- 19 Q. Through the assurance of management procedures which you
20 have described as "generic"?
- 21 A. Yes.
- 22 Q. That is an important component of that?
- 23 A. Yes.
- 24 Q. So with all of that, can you really be confident that
25 changing the structure in what has potential for being

1 quite a dramatic way in the field of supplier assurance
2 from the current long-term approach will not have even
3 unintended consequences?

4 A. Well, I don't know that it's that dramatic. Can I leave
5 that to one side? In your question you said -- you said
6 that it was dramatic. I'm not sure that I agree that
7 premise. But leaving that aside -- sorry, forgive me.
8 I've lost my thread slightly because I tripped up over
9 those words. Could you put it to me again?

10 Q. I am really asking you whether, with your experience and
11 your expertise in the safety field, you would feel
12 confident that there would not be unintended
13 consequences from the point of view of safety of
14 fiddling about with the supplier assurance model?

15 I said it could potentially be a dramatic change.
16 I think Network Rail would regard it as a dramatic
17 change if it were required to recognise three or four or
18 five or six other supplier assurance providers. But
19 leaving aside the epithet, if that were to happen, can
20 you be sure that there is no risk of unintended
21 consequences?

22 A. It would need to be carefully deliberated over before it
23 was implemented and the actual implementation would need
24 to be, you know, set about with precaution, as with any
25 other change that anybody makes in any industry.

1 MR. FLYNN: Thank you, Dr. Cox.

2 Re-examination by MR. WOOLFE

3 MR. WOOLFE: Dr. Cox, you were taken a number of times to
4 paragraph 2.3 of the joint statement. If I could ask
5 you to turn to that. That is at tab 6 of volume F.

6 A. I've got it.

7 Q. There were the words there about an additional set of
8 supervisory activities by Network Rail, and you were
9 taken to that. What would you understand
10 by "significant" in this context?

11 A. In that paragraph, "significant additional set of
12 supervisory activities" -- this is agreed text in
13 the joint statement, of course. I can't speak for
14 Professor Jack, obviously. I was content with these
15 words in the sense that the "significant additional set
16 of supervisory activities" -- what I had in my mind was
17 "significant" in the sense that their function was
18 crucial. I didn't have in my mind "significant" in
19 the sort of lay interpretation of that word, which
20 sometimes means "large" or "huge" or something like
21 that. What I had in my mind -- but it is possible he
22 and I didn't have quite the same thing in our minds --
23 what I had in my mind was that these functions were
24 important.

25 Q. Then I think you were asked whether by "supervisory

1 activities" you meant the IT systems point, which you
2 were then asked about, and I think you said that it
3 would include that but it would be other things. What
4 sort of supervisory activities are you actually thinking
5 of in that context?

6 A. Well, it needs the setting up of a little bit of an
7 organisation, a manager and some staff, I suppose.
8 I haven't really taken out, you know, the drawing board
9 to work out any details, but it would need people, it
10 would need all the attributes of a management system on
11 a relatively small scale, I would think, and support
12 tools, such as an IT system probably, and it might --
13 well, yes, that's all I can really say, I think.

14 Q. Then just on the subject of IT, because I think that
15 there are perhaps different senses in which it is being
16 used here, one area -- I think you were talking about
17 the distribution of safety incident information; is that
18 right?

19 A. Safety communications of any sort.

20 Q. Right. It was in that context that you said -- I think
21 you referred to email communications or you could set it
22 up at a local football club is what you said.

23 A. Well, I'm not claiming this as part of my expertise.
24 I was just giving a -- I'm saying something about the
25 year 2019. We have these communication methods

1 available to us, quite a rich choice of them.

2 Q. That was in the context of distributing, though --

3 A. It was in the context of distributing stuff to a few
4 hundred people.

5 Q. Sure.

6 Then you were taken to a document in volume H15, if
7 you could be passed that, at page 4471. This was in
8 the context of RSSB splitting the provision of its
9 safety assurance scheme into an audit function and an
10 IT function.

11 A. Yes.

12 Q. It was in that context that -- I think the paragraph you
13 were taken to referred to process failure because of
14 imposing additional interfaces. How, if at all, does
15 that context differ from distributing safety updates?

16 A. Distributing safety updates, if it's some sort of safety
17 alert or some safety newsletter or something like that,
18 functionally all that's really required is a list of
19 email addresses or mobile phone numbers or whatever it
20 might be to suit the communications medium in question,
21 or the material may need to be posted up somewhere so
22 that it's permanently accessible to everybody as an
23 archive, searchable perhaps and things like that. Well,
24 you wouldn't implement that by email. You would have to
25 have a database and you would have to have

1 a communications means to dip into that database. So
2 the topology of the systems varies depending on what the
3 functionality is you are trying to communicate. Within
4 the safety area generally, there could be a need for
5 both of those types.

6 Q. Do those comments apply to what is being talked about in
7 this document here?

8 A. Well, as I understand it, what this is talking about is
9 the splitting of the overall RISQS system into two large
10 segments. That is a subject about which I'm afraid
11 I don't know very much.

12 MR. WOOLFE: Okay. Thank you, Dr. Cox. Those are all
13 the questions I had. The Tribunal may have some
14 questions for you now or it is possible there may be
15 some questions for you later as well, so ...

16 Questions from THE TRIBUNAL

17 THE CHAIRMAN: Dr. Cox, Mr. Spence, who is one of
18 Network Rail's witnesses, referred to a principle in the
19 area of health and safety that -- I am paraphrasing, but
20 it was essentially to the effect that elimination of
21 hazard or risk is the optimal situation and controlling
22 risk is sub-optimal. Would you agree with that as
23 a general proposition?

24 A. Well, there is a piece of widely accepted philosophy in
25 the world of safety management of something they call

1 the "hierarchy of safeguards", and that actually appears
2 even in some EU-driven legislation, where, when you have
3 decided -- when you have identified a hazard and you
4 have done a risk assessment which concluded that that
5 hazard needs further controls, when you start looking at
6 what those controls are, the first thing you ask
7 yourself is, "Can I eliminate the hazard entirely by
8 simply not doing that operation?", or some means that
9 truly eliminates it. If that's not possible, then there
10 is a subsequent hierarchy, which actually is about seven
11 deep -- it's not just a dichotomy. It's quite rich
12 hierarchy -- of things that you would look at next, and
13 there is a tendency to think in terms of, for example,
14 reducing the maximum possible consequences of an
15 accident and doing that as far as -- well, to the legal
16 standard as far as reasonably practicable, say.

17 Then further down the ranking in terms of merit are,
18 for example, procedural safeguards that are not physical
19 safeguards, which people tend to have a lot of faith in,
20 but they depend on people following the correct
21 procedures, which people generally don't have so much
22 faith in.

23 So there's a hierarchy like that which is well
24 established in safety management folklore, if I can use
25 that term, which I do agree with. But elimination is

1 very rarely a possible option and it is -- it usually
2 has problems of the trade-off against other desirables,
3 and such a trade-off is admissible in modern safety
4 management thinking, provided you have some other way
5 which would be lower down the hierarchy -- some other
6 way of controlling the risk.

7 THE CHAIRMAN: Thank you. That is helpful.

8 Looking at the joint statement, as I read
9 paragraphs 2.3 and 2.5, you do accept that the need for
10 additional supervisory activities would inevitably
11 introduce some element of additional risk; is that fair?

12 A. Yes, through the intermediary of some element of
13 additional complexity, yes.

14 THE CHAIRMAN: The point you make in 2.5 is that an "...
15 increase in risk could only arise if the additional
16 supervisory mechanisms were not adequately resourced or
17 well enough designed and operated ..." But that has to
18 be a possibility, does it not, given the ...?

19 A. I mean, yes, obviously it's a possibility that it
20 wouldn't be so.

21 THE CHAIRMAN: Similarly, flicking on to paragraph 2.13, you
22 say there -- or rather this is an agreed statement:

23 "It is foreseeable that some suppliers will try to
24 select the supplier assurance provider which is, or at
25 least is perceived to be, the most lenient."

1 There, again, that suggests that having multiple
2 scheme assurance providers would introduce this risk as
3 well.

4 A. Well, I'm not of the view that that -- on
5 the assumption, of course, that the two or more
6 providers are working to the same standards in reality.
7 There may be suppliers who shop around and they feel
8 that one of them is more lenient and go for that one,
9 but as long as the service is actually being carried out
10 to the required standard, then I don't think there would
11 be any impact on risk.

12 THE CHAIRMAN: Again, it is contingent on the controls being
13 operated --

14 A. Yes.

15 THE CHAIRMAN: -- in a satisfactory way?

16 A. It is.

17 THE CHAIRMAN: Thank you. No further questions. Thank you
18 very much, Dr. Cox.

19 A. Thank you.

20 (The witness withdrew)

21 MR. FLYNN: We will therefore call Professor Jack, sir.

22 PROFESSOR ANSON JACK (sworn)

23 Examination-in-chief by MR. FLYNN

24 MR. FLYNN: Could you give Professor Jack bundle F, please.

25 Could you look at tab 4 of that bundle, Professor Jack.

1 You will see a document I hope entitled "Expert report
2 of Professor Anson Jack". If you turn to the end of it,
3 you will see a signature. Is that your signature?

4 A. Yes, it is.

5 Q. While we are at it, shall we look at tab 6, the joint
6 statement? You have it there?

7 A. Yes.

8 Q. Again, at the end there is a signature --

9 A. That's my signature.

10 Q. -- that is your signature.

11 You are aware of your duties to the Tribunal as an
12 expert?

13 A. I am.

14 Q. Is there anything you wish to supplement or elaborate on
15 before saying that this is your professional opinion
16 before the Tribunal?

17 A. Only to say that I attended the Tribunal on Friday and
18 heard the evidence of Mr. Prosser and Mr. Spence and
19 I was here this morning.

20 Q. Otherwise, I think you had not -- like Dr. Cox, you had
21 not reviewed the factual evidence before submitting your
22 report?

23 A. I had not seen any of the -- I'd seen Mr. Spence's
24 report prior to submitting my report and I have had an
25 opportunity to see some of the witness statements since

1 submitting my report.

2 MR. FLYNN: Thank you. I think that is clear.

3 Cross-examination by MR. WOOLFE

4 MR. WOOLFE: Good afternoon, Professor Jack. I would just
5 like to begin, if we can, by clarifying the different
6 angles which people are coming at this from. Dr. Cox is
7 by background an engineer, but I think your experience
8 is largely through the management in the rail sector and
9 then into the Rail Safety Standards Board.

10 A. That's correct.

11 Q. If I can take you to paragraph 85 of your statement, you
12 say that you are not an expert in supplier assurance
13 schemes and services, but then you say your experience
14 means that you are well versed in and able to comment on
15 the important role played by assurance from a safety
16 perspective.

17 So can I just take you back to your experience where
18 you set it out, from paragraph 2 onwards. I am afraid
19 I am going to take you on a little trip down memory lane
20 across your career to see where the experience fits
21 together. So you began with British Rail in 1979?

22 A. That's correct.

23 Q. You obviously started off as a graduate trainee. Your
24 academic background, was that of any relevance to this
25 at all?

- 1 A. Well, I did a degree in philosophy, politics and
2 economics.
- 3 Q. So then you were a traffic information trainee, station
4 supervisor, movements manager and yard manager. So
5 presumably in those roles you saw day-to-day application
6 of safety standards in that context?
- 7 A. Indeed. I both had to pass the exams in Rules and
8 I examined people in Rules.
- 9 Q. So you were interested in management standards around
10 safety in that sort of day-to-day context?
- 11 A. Yes.
- 12 Q. But you weren't looking in any systemic sense in those
13 days at supplier assurance and safety or anything of
14 that sort?
- 15 A. No, I hadn't dreamt of systemic safety at that time.
- 16 Q. Then you seem to have gone into the freight side of
17 the business for a period of time through the 1980s:
18 yard manager in freight, regional freight, business
19 manager's office. Then Speedlink, that was in
20 the freight side of the business as well; is that right?
- 21 A. It was, yes.
- 22 Q. Was that on the commercial side or was that on the sort
23 of operational side?
- 24 A. It was commercial and project development.
- 25 Q. Then you had a period of time in -- is it petroleum side

1 of the business as a contract manager and commercial
2 manager and national business manager? Were those
3 commercial roles?

4 A. They were commercial roles, but they were also
5 operational roles. I had responsibility for interaction
6 with the local operators and particularly safety of
7 dangerous goods, for instance.

8 Q. But in those days -- presumably you still were not
9 looking at it from a sort of policy level in those days?

10 A. No, I didn't start looking at policy of safety until
11 I was at Railtrack -- in the last late years at
12 Railtrack.

13 Q. Okay, yes, because I was going to come to it. Turning
14 to Railtrack, the big bang, as it were, national freight
15 manager, account executive -- presumably that is on
16 the commercial side -- and then you were strategy
17 manager and head of policy. Was that the time at which
18 you began to become involved in the sort of policies
19 around safety?

20 A. No, it was when I was -- sorry, I beg your pardon. When
21 I was responsible for strategy, I became involved with
22 the response to the Cullen Inquiry, so that would have
23 been around the turn of the century.

24 Q. Yes, it says you were head of strategy in Europe from
25 2002 -- I see, head of strategy in Europe for

1 Network Rail from 2002 to 2003, and it was during that
2 time that you were involved in the provision of evidence
3 by Railtrack. Okay.

4 So you were in Network Rail doing that function for
5 two or three years and then you moved to the RSSB, and
6 in your time there you were involved in oversight of
7 policy and standards and the like?

8 A. Yes. I should -- I have just recalled that when I was
9 responsible for the petroleum business of British Rail,
10 that was -- that coincided with the introduction of
11 a line safety management process and at that stage I was
12 put through a strategic safety management course. So
13 that was probably the first time at which I was exposed
14 to system safety issues.

15 Q. Thank you.

16 Then when you moved to the RSSB, you became
17 executive director. That was quite a senior board level
18 post, was it not?

19 A. Yes.

20 Q. Am I right in thinking that for most of that time the
21 board of the RSSB was mostly non-executive directors and
22 in fact there were only two executive directors; is that
23 right?

24 A. When I joined RSSB there were three executive directors,
25 including myself. Following the departure of one

1 executive director in 2007, there were only two.

2 Q. During your time at the RSSB -- you were obviously
3 responsible for much of the work. The RSSB had a head
4 of research. Did that person report to you?

5 A. From 2007 they reported to me.

6 Q. Fine.

7 In that role there, you did not yourself carry out
8 independent research into --

9 A. No.

10 Q. -- safety structure and policy?

11 You were at the RSSB for some 12 years and then you
12 left in 2015 --

13 A. That's correct.

14 Q. -- and took up your chair.

15 You say at paragraph 6 of your report that you were
16 aware of the creation and development of RISQS and
17 participated in board decisions concerning its
18 activities, but were not directly involved at any time
19 in the scheme management and supervision or developments
20 of its policies.

21 Given that there were only two executive directors
22 at this time, in terms of the oversight by the RSSB
23 board, you must have been fairly -- had a fairly good
24 oversight of what was being done with RISQS; is that
25 right?

1 A. I wouldn't say so. I was -- as a board member and
2 the executive director, I had responsibility for
3 a number of departments which reported to me.
4 The department that was responsible for supplier
5 assurance reported directly to the chief executive. So
6 I was aware of the personalities, I was aware of the
7 relationship between that department and the chief
8 executive and from time to time board papers came up,
9 presentations came along, about RISQS.

10 Q. But it was not part of your function within the RSSB --

11 A. That's correct.

12 Q. -- to be involved with what RISQS was trying to achieve?

13 Okay.

14 What about -- in November 2014 the RSSB signed
15 a contract -- a concession contract with Achilles. Were
16 you involved in the approval or the signing off of that
17 contract?

18 A. No, I wasn't.

19 Q. If I could ask you to take up bundle -- I think it is

20 H1. Give me a second to check. (Pause)

21 It is bundle H5. I do apologise. You should see
22 there a document that --

23 A. There are no tabs; is that right?

24 Q. Sorry?

25 A. There are no tabs; is that right?

1 Q. There are no tabs, I am afraid. That is right.

2 At 1459, a future GB rail supplier assurance
3 framework document. Do you recognise that document
4 at all?

5 Well, perhaps -- if you turn back to 1443 in
6 the same tab, you will see another version of the same
7 document that says on the front "RSSB". Are you
8 familiar with this as an RSSB document?

9 A. I have no direct recollection of it. Some of the --
10 some of the shapes of -- you know, figure 1, etc, I have
11 seen things like that before, but I'm not sure whether
12 I have seen this document before.

13 Q. So look at page 1461. The earlier version is
14 headed "Draft" whereas this is headed "Final draft", so
15 I am working off the version at 1459. It says
16 "Purpose":

17 "Set out the future approach for the collaborative
18 cross-industry assurance of suppliers. The paper has
19 been produced by the Supplier Assurance Sponsor Group."

20 Do you recall who the Supplier Assurance Sponsor
21 Group were?

22 A. In general terms, yes. I couldn't tell you who --

23 Q. In general terms, who were they, can you remember? In
24 general terms, who were they?

25 A. Sorry, in general terms I think there was

1 a non-executive director of RSSB; I think there were
2 people from Network Rail. I don't know whether there
3 were people from Achilles. I wasn't particularly
4 familiar with Achilles at the time. What date was this?

5 Q. It says on the front page "6 May 2010".

6 A. So some of the people who were on the RISQS board would
7 presumably have been on that as well, but I am
8 speculating as to the type of people that would have
9 been on it.

10 Q. It says at the bottom of that first page:

11 "RSSB and the members of the Supplier Assurance
12 Sponsor Group are sponsoring a project to take the best
13 of the current arrangements and build them into a new
14 framework."

15 Were you involved at all in that project?

16 A. No.

17 Q. No, okay.

18 In which case I will just put one point on that
19 document to you. At page 1470, under the heading at the
20 bottom, "Minimisation of duplication of effort", it
21 says:

22 "Whilst the extent of the duplication often leads to
23 debate, there appears to be no doubt that it exists and
24 adds cost to the industry."

25 If I ask you to read what is said in those two

1 paragraphs.

2 A. Sure. (Pause)

3 Okay, I've read that.

4 Q. What I am going to suggest to you is that a view was
5 being expressed that there was duplication of effort in
6 supplier assurance at that time and that could be dealt
7 with through an accreditation process to make sure that
8 things were being done to the right standard, and that
9 is a reasonable view, is it not?

10 A. I think, yes, it is. You asked me before about my
11 responsibility for research. There was a report
12 commissioned by RSSB in 2008 by Messrs. AD Little, which
13 reported on the experience of the supplier assurance
14 within the industry and identified duplication as
15 something that was causing both confusion and excessive
16 cost in the industry.

17 Q. Well, I think we know --

18 A. And that report, I'm not sure whether it has been tabled
19 to the -- is one of the reports that I referred to in
20 preparation of my statement.

21 Q. On the Arthur D Little report?

22 A. Yes.

23 Q. I am going to be taking you there in a bit.

24 Well, actually, we can go there now. Why not? If
25 you go to bundle H1, please. You can put H5 away.

1 Within bundle H1 there are multiple copies of this -- of
2 similar reports at different times. So if you think at
3 some point I am taking to you a slightly wrong version,
4 please just say.

5 If you go to page 197 within that, and for your --
6 just so you are aware and so the Tribunal is aware,
7 there is a -- what we have here is a PowerPoint
8 presentation which is summarising a review and analysis
9 of existing supply chain final report, dated
10 13 November 2008.

11 There is an executive summary PowerPoint
12 presentation starting at page 177 that is a sort of
13 cut-down version of this, but this is the fuller
14 version.

15 Was this the workstream at any rate that you were
16 thinking about in relation to Arthur D Little?

17 A. I think this was commissioned by the workstream, yes.

18 Q. So it was commissioned by the RSSB?

19 A. Yes, it would have been.

20 Q. Were you involved in the commissioning of it?

21 A. No, I wasn't.

22 Q. If I could ask you to go to page 198, it says it was
23 commissioned by the RSSB, and then to 200, and there's
24 a reference to improvement opportunities equating to
25 35 million in cost saving. Just to check, this report,

1 it looks at cost saving; it does not seem to me to look
2 at any safety implications. Is that your understanding?

3 A. Yes, I think that's fair.

4 Q. Then we can see how that applies.

5 On page 201 there is a slide explaining the
6 relevance of supplier assurance. Do you think that
7 slide is a fair summary of what supplier assurance is
8 used for?

9 A. I think it's rather a cluttered slide to comment in
10 detail on at the moment without spending some
11 considerable time on it, but I can see in general terms
12 that it looks quite sensible.

13 Q. Okay. I suppose from a safety perspective you would
14 note the bottom left-hand box, where there is
15 a reference to "safety criticality", but much of
16 the rest of it seems to be about procurement and project
17 investment and so forth.

18 Then over the page at 202 is a slide -- the heading
19 says, "All companies have an in-house supplier assurance
20 process which, together with industry schemes and other
21 companies' in-house processes, consume considerable
22 effort every year". Does that slide reflect
23 the difficulties which led to the RSSB commissioning
24 this project?

25 A. I think RSSB is and was a product of its members and

1 what its members want to be done, and the commissioning
2 of a research project was always undertaken when the
3 industry, either membership of RSSB, indicated that it
4 had a task or an issue it wanted to resolve.

5 So RSSB, whilst it was the commissioning body, was
6 not the body that decided that it was an issue. So this
7 would have been commissioned because there was
8 a ground-swell of sort of problem statements from
9 amongst the membership.

10 Q. Would it be fair to say that the problem which led to it
11 being commissioned was this perception of the overall
12 effect of both -- not just industry schemes but also
13 in-house assurance processes?

14 A. I'm not sure about the in-house assurance processes, but
15 the -- I mean, the thing that I -- probably the single
16 thing that I distinctly recall from that period, given
17 that I was not myself directly responsible for it, was
18 the continuing assertion that there were multiple audits
19 being done across the industry, cross-auditing, and that
20 that was causing difficulties both in terms of
21 efficiency and confusion for the industry players.

22 Q. If you could turn to page 109 in that, we have types of
23 efficiency improvement opportunities. This says:

24 "A number of efficiency opportunities were
25 identified and prioritised according to potential

1 impact."

2 The first one of those is:

3 "Mutual recognition, allowing suppliers to skip all
4 or parts of an assurance process, using a common
5 risk-based approach or acceptance of other
6 industry-recognised schemes."

7 It says:

8 "Who does this impact?"

9 It is prioritised at number 1.

10 Before I ask you the question, can I just take you
11 to slide 211, so the slide on page 211. It's says:

12 "Three main effects and opportunities were
13 identified and analysed independently."

14 Number 1 is "Duplication" and it refers to an "...
15 assessment of duplication across categories of
16 assessment and both scheme and in-house assessments
17 repeat questions/evidence, limiting non-value-adding
18 duplicated activities, with a potential saving of around
19 30 million".

20 So I put to you that what this report in particular
21 was suggesting was that if you eliminate duplication,
22 there can be cost savings, and in terms of eliminating
23 duplication, one of the main ways you can do that is
24 mutual recognition. Is that a fair summary?

25 A. Yes.

1 Q. Sorry, to return to where we started, which was where
2 your expertise and so on comes from or what kind of
3 expertise it is, you, in your role at RSSB, were not
4 particularly involved in looking at the safety aspects
5 of supplier assurance; that was not what you did when
6 you were there?

7 A. No.

8 Q. Now, if I could take you to what you say about the Tebay
9 incident. That starts at paragraph 60 of your
10 statement. We covered this in quite some detail with
11 Mr. Spence. Were you here for Mr. Spence's evidence?

12 A. I was.

13 Q. In that case we can probably do it quite swiftly.

14 You say that you were a signatory of the final
15 report, but the conduct of the Inquiry was undertaken
16 independently, and so all of your understanding of the
17 incident derives from the content of the final report.

18 Now, if I could ask you to take up the report at --
19 it is in volume G3, I believe, tab 39. You said you did
20 not conduct the Inquiry. Mr. Spence obviously had some
21 involvement in the subsequent criminal proceedings.
22 Were you involved in those in any way?

23 A. No.

24 Q. You are aware, are you not, that the remit of the
25 Inquiry was not just to report on the causes of the

1 accident and what made it worse, but also to report on
2 any incidental matters which were observed in the course
3 of the Inquiry?

4 A. Yes, that's a standard remit.

5 Q. In fact that standard to which this was produced, that
6 was a standard which you were responsible for; is that
7 right?

8 A. Correct.

9 Q. Now, we heard from Mr. Spence that the brakes of
10 the trailers involved had been tampered with; that is
11 right? I mean deliberately tampered with.

12 So when you say at paragraph 61 of your report --
13 you discuss the immediate cause of the fatalities and
14 you say:

15 "These included an absence of clear, explicit and
16 practical instructions for checking the effectiveness of
17 trailer parking brakes and the failure to verify that
18 the parking brakes on the trailer were fully
19 functional."

20 That is a fair summary of what is in the Inquiry
21 report, but as a matter of what happened in fact, it
22 went considerably beyond a failure to verify that
23 the brakes were functional; there was actual tampering
24 with the brakes. That is right, is it not?

25 A. That is the evidence I heard from Mr. Spence and I have

1 got no reason to doubt it. But I think it is fair to
2 say that the report that you're referring to did not go
3 that far.

4 Q. At paragraph 62 of your statement -- I am going to take
5 you to the report in a moment -- you say:

6 "The Inquiry report detailed the importance of
7 supplier assurance in the rail industry."

8 You refer there to -- the footnote is to
9 section 8.3.3.1 of the Inquiry report. Now, that is
10 part of the Inquiry's recitation of the evidence, is it
11 not?

12 A. Yes.

13 Q. So that was not part of its conclusions that supplier
14 assurance was important. It was just noting it in
15 passing; yes?

16 A. Yeah, I witnessed all of your cross-examination of
17 Mr. Spence and I would endorse where you got to.

18 I think the point that Mr. Spence was making is that
19 the things like the existence of supplier assurance,
20 which was a much less-well-developed management practice
21 at the time, is the sort of barrier to events and it was
22 not identified by the panel of Inquiry as a cause or
23 even a secondary cause. But what Mr. Spence was
24 highlighting is that we know -- now know with our
25 current knowledge that things like effective supplier

1 assurance are -- can be an effective barrier to events
2 escalating. So we are wiser now than we were when that
3 Inquiry concluded in 2004.

4 Q. It is always good if we get wiser over time.

5 If I could go to your report at paragraph 23 [sic],
6 you focus to quite some extent, do you not, on
7 the Link-Up supplier assurance --

8 A. Sorry, which paragraph?

9 Q. Paragraph 63 of your statement. You set out in quite
10 some detail I think the non-conformance report which was
11 raised by Carillion Rail arising from the Link-Up audit
12 which is set out at -- in fact at annex F of the Inquiry
13 report. I did not take Mr. Spence to these in detail.
14 But none of these non-conformities were found to have
15 any causative effect in relation to the accident,
16 were they?

17 A. No, I understand that.

18 Q. I think A, B and C were all cleared up before the
19 accident ever happened, and 5, the one about employers'
20 liability and public liability insurance certificates,
21 that, it said in the Inquiry report, was due to
22 a misunderstanding. So the only one that had not been
23 cleared up was the one about site safety audits or
24 inspections of the work site, but that was not a matter
25 which was found to be causative, was it?

1 A. No, that's correct.

2 Q. I think --

3 A. The reason that I inserted material about
4 the Tebay Report in my report is firstly because, as
5 I indicated, I was commenting on Mr. Spence's evidence
6 and he had introduced it, and secondly that I felt that
7 there were some points that came out of the Tebay Report
8 that highlighted the progress and the need for progress
9 in the industry on things like developing a supplier
10 assurance scheme. I don't think anyone was claiming
11 that a failure in supplier assurance caused this
12 accident.

13 Q. It is just because at paragraph 64 of your statement you
14 go on to say that:

15 "It shows the immaturity of the scheme and therefore
16 the need for further development and also how ..."

17 So shows how.

18 "... the consequences of confusion among suppliers
19 can lead to fatal results."

20 Now, the confusion such as there was in that case --
21 and there may have been confusion -- was not anything to
22 do with Link-Up, was it?

23 A. No, I don't think anyone was criticising Link-Up.

24 Q. Okay -- not only criticising, but what we are concerned
25 with here or what the significance for safety of

1 supplier assurance is and what -- intentionally or
2 unintentionally, what your report has done is pick out
3 some facts about Link-Up non-conformances at
4 paragraph 63, then at paragraph 64 it goes to say about
5 how the consequences of confusion among suppliers can
6 lead to fatal results. It is important to clarify your
7 position. You are not saying that the confusion which
8 led to fatalities in Tebay was a confusion arising from
9 supplier assurance?

10 A. Sorry, can you just rephrase that?

11 Q. I just want to check that you are not saying that
12 confusion about supplier assurance was in any way
13 causative of the fatalities at Tebay?

14 A. No, I'm not -- I'm not saying that. I'm saying that
15 there was confusion about supplier assurance, which was
16 identified as a consequence of looking in more detail at
17 the events around the Tebay accident.

18 Q. Okay, right.

19 Just for completion, the non-conformance regarding
20 site safety audits and inspection of the work-site, it
21 was Carillion who had control of the work-site where
22 the accident actually happened, was it not, rather than
23 MMSL?

24 A. I'm not competent to answer that question.

25 Q. You do not recall from the report?

1 A. No.

2 Q. Okay. In fact it was Carillion who prepared briefing
3 packs about site safety and so on; did you recall that?
4 Do you recall?

5 A. No, not directly.

6 Q. Then just to complete on Tebay and then perhaps we can
7 give the writers a break, at paragraph 69, having set
8 out -- at 67 you mention a significant number of
9 recommendations being addressed to Network Rail, but
10 without saying what they were. You refer to
11 recommendation 8, which is about competent standards for
12 machine controllers, which obviously was raised. You do
13 not mention, do you, recommendations regarding the
14 Vehicle Assessment Bureau? You have not mentioned those
15 here?

16 A. No.

17 Q. There are quite a number of recommendations, are there
18 not, that are made? I think there are -- I do not know
19 how many in number there are -- 12 recommendations and
20 you mention two.

21 69, in relation to Link-Up in particular, you
22 recalled that recommendation of the Inquiry report.
23 Then you say:

24 "In essence, the Inquiry found that further work was
25 required to improve the effectiveness of the Link-Up

1 audits."

2 Now, I suggest to you that that is not in any way
3 the essential finding of Tebay. That was not the core
4 of what Tebay was about, was it?

5 A. No, I think I've already answered that we all recognise,
6 particularly with Mr. Spence's evidence, that there were
7 much more significant causes of Tebay. What I was
8 highlighting here and what all good inquiries' reports
9 highlight is things that they identify whilst they are
10 in the course of their investigation.

11 Q. Then at paragraphs 70 to 72 you sum up on Tebay.
12 You say your view, your opinion, that the report "...
13 clearly demonstrates the focus on supplier assurance ...
14 and its safety-critical nature".

15 You say:

16 "The report shows the propensity for confusion and
17 misunderstanding in this industry."

18 Certainly there was a degree of operational
19 confusion in relation to Tebay. Then you say:

20 "Finally, Tebay shows very clearly what can happen
21 when the system for adequate and effective assurance
22 fails."

23 To pick that up, I am not going to suggest to you
24 that there were no consequences of a system of assurance
25 failing, but I suggest to you that Tebay does not show

1 what happens when a system of assurance fails; Tebay
2 shows what happens when people are criminally negligent.
3 That is right, is it not?

4 A. I think the further evidence that Mr. Spence brought
5 would cause me to agree with you in general terms, but
6 what I'm saying here is that the evidence that was
7 produced by the Inquiry panel did show that certain
8 things went wrong which, had there been an effective
9 form of assurance -- and by "effective assurance",
10 I don't just mean supplier assurance -- then that may
11 not have happened.

12 MR. WOOLFE: Thank you.

13 Sir, that might be a convenient moment to take
14 a break for the shorthand writers. Thank you.

15 (3.20 pm)

16 (A short break)

17 (3.43 pm)

18 MR. WOOLFE: Now, Professor Jack, if I could take you -- you
19 can put Tebay away if you have not already --
20 paragraph 93 of your report, which is on page 182 of
21 the bundle. At paragraph 93, as I understand it, you
22 set out points numbering down from (a) through to (j),
23 so some ten points, I think, and you refer to what you
24 say are the benefits of having a single supplier
25 assurance scheme -- or you say the benefits of

1 prescribing a single supplier assurance scheme.

2 Then just to check, at paragraph 105, which is on
3 page 190, you set out what are the specific safety
4 implications, you say, of requiring Network Rail to use
5 multiple supplier assurance schemes. Am I right in
6 thinking that one is sort of the mirror image of
7 the other, largely speaking?

8 A. Yes, they are. There are some towards the end of
9 paragraph 105 where I didn't feel able to comment on
10 them --

11 Q. Yes, you say that in quite clear terms.

12 A. -- but broadly speaking what you say is correct.

13 Q. I will go through 93 with you and then perhaps we will
14 look at 105 --

15 A. Okay.

16 Q. -- fairly swiftly to see if there is anything additional
17 we need to discuss.

18 So in 93(a), the first benefit which is being
19 suggested by Network Rail is ensuring that prescribing
20 a single supplier assurance scheme helps ensure "... in
21 a consistent and reliable manner that suppliers have
22 appropriate management systems, procedures and processes
23 in place to comply with health and safety requirements,
24 including those described in Network Rail's schemes".

25 First of all I think you set out quite a high-level

1 opinion, which is that, where participants have a clear
2 and uniform set of safety requirements which are then
3 applied in a consistent and reliable manner, that is
4 conducive to improved safety. So am I right in thinking
5 that essentially you have two requirements there? One
6 is that the substantive safety requirements themselves
7 are clear and uniform and secondly that they are --
8 the consistency of application point.

9 A. Yes.

10 Q. Now, safety requirements themselves are not what
11 supplier assurance directly addresses; is that right?

12 A. Well, I think the nature of the one that we're talking
13 about, there are degrees of safety criticality and there
14 are degrees of management assurance.

15 Q. The safety requirements that are applicable to
16 a particular activity, sort of what kind of personal
17 protective equipment one needs to wear to do it safely
18 or whether electricity needs to be switched off on
19 the track and so forth, those sort of detailed safety
20 requirements, they are not what supplier assurance
21 addresses; is that right?

22 A. No, that's fair.

23 Q. If we could perhaps just look at the detail of that
24 a bit more. If I can take you to bundle G1 at tab 2.
25 Turn to page 52 within that tab.

1 These are Network Rail's requirements in terms of
2 the Sentinel scheme. At 3.4, "... is required to have
3 a competent management system in place to flag training
4 assessment and mentoring ...", and so forth. But this
5 requirement, it does not set out details of what
6 competences people need to have, does it? It does not
7 go down to that level of detail?

8 A. Correct.

9 Q. If then we look at -- if I could ask you to have two
10 bundles at the same time -- bundle G2, and if you can
11 look in tab 16 of that. Actually, if I can perhaps
12 backtrack slightly. So looking at these two documents
13 together, 3.4 in the Sentinel scheme rules is competence
14 management; 3.5 is management of working hours and
15 the requirement to have a fatigue management system and
16 so forth.

17 If you look at how those are dealt with in the
18 Sentinel audit protocol, under -- well, I think
19 "Management systems" on page 358 of bundle G2, there is
20 a requirement to have documented procedures under 1.2
21 that cover various matters, including, for example,
22 management of working hours and competence management.
23 But again this does not specify exactly what competences
24 need to be had, does it?

25 A. No, I think the -- I mean, some of this is -- in 1.1 it

1 talks about the auditor verifying the personnel
2 responsible for it. So we're not talking about just
3 checking that there is a management system in place;
4 we're talking about the auditor having to satisfy
5 themselves that they see it and they can see
6 the records, etc --

7 Q. Yes --

8 A. -- although I don't want to go any further because I'm
9 not an expert on how the auditing is actually
10 undertaken.

11 Q. So it is checking that the management system is real.
12 It is not merely the existence of documents, but that
13 you know who the people are who are responsible for it
14 and you get a sense that the management system is being
15 performed by the interaction of those people; yes?

16 Can I take you to page 365 of that bundle. At
17 365, "Fatigue management" -- have you got 365 open?

18 A. Yes.

19 Q. "The auditor has to establish that general arrangements
20 include ..."

21 Then there are sort of fairly high-level
22 requirements that identify activities where fatigue
23 could result in impaired performance and increase
24 operating risk. There are general arrangements for
25 carrying out fatigue risk assessments:

1 "General arrangements shall include the working time
2 limits the worker shall be permitted to work ...", and
3 so forth.

4 But this does not itself set out what those working
5 hour limits are, does it?

6 A. No.

7 Q. In no sense does the RISQS audit of this check that
8 people are complying with whatever working hour limits
9 they are supposed to have?

10 A. I don't know about that. What I understand is that
11 Network Rail have stated -- and I think I am
12 referring to the witness statement of Bill Cooke,
13 William Cooke -- is that Network Rail rely upon the
14 audits that are undertaken by RISQS to satisfy
15 themselves that companies and workers are adequately
16 prepared to be registered for Sentinel.

17 Q. Well --

18 A. So the fact that Network Rail relies upon it seems to
19 me to imply that they're expecting each of these things
20 to be tested, rather than just, "Have you got a system
21 in place?"

22 Q. Well, they rely upon it, do they not, in order to
23 authorise the organisation as a sponsor? That is what
24 this audit protocol tests. They do not rely upon this
25 to ensure that individuals know what they are doing on

- 1 track, do they?
- 2 A. No, because that's what the sponsors do in signing
3 people off.
- 4 Q. Well, the sponsor -- there is also training, is there
5 not, and training does not fall within the scope of this
6 audit protocol, does it?
- 7 A. If you say so, yes.
- 8 Q. No, because there is a whole separate system for the
9 accreditation of training providers. There is the rail
10 training accreditation scheme rules, which is dealt with
11 by the rail skills --
- 12 A. National Skills Academy for Rail.
- 13 Q. National Skills Academy for Rail, thank you,
14 Professor Jack. The National Skills Academy for Rail is
15 what accredits bodies as being able to train people to
16 be safe on track and it is that that Network Rail rely
17 upon to make sure that people know what they are doing.
18 That is right, is it not?
- 19 A. You're telling me things that I can't verify because
20 they're beyond what I have researched.
- 21 Q. Okay.
- 22 What I am putting to you is that the extent of
23 Network Rail's reliance upon this is -- it's only
24 relying on this for the purpose of allowing
25 organisations to sponsor people in an organisational

- 1 sense?
- 2 A. Yes, but I think if they're relying upon an audit of
3 someone who's going to sponsor people to be issued with
4 Sentinel cards, etc, that what they are expecting out of
5 that -- and I'm not Network Rail, but if you're stating
6 that you're relying upon the RISQS audit, I would expect
7 that to include something that tests the quality of that
8 work and the safety criticality of what the risks are
9 that they're managing, and I think you highlighted
10 fatigue.
- 11 Q. Yes.
- 12 A. There are arrangements for monitoring people's time and
13 taking action in the event of people being fatigued
14 would be a good example.
- 15 Q. Yes, I am certainly not intending to suggest that the
16 monitoring of fatigue is unimportant, by no means.
- 17 Returning to what you say in your report at
18 paragraph 93, you see, because you are referring to
19 operating a clear and uniform set of safety
20 requirements -- and what I was going to put to you is
21 that what RISQS does is ensure that suppliers are
22 audited against a uniform set of audit protocols that
23 cover a range of management systems, and that is what we
24 are actually talking about here, rather than
25 the nitty-gritty of operational safety. Would you

1 accept that?

2 A. Well, I think there's a lot of safety between management
3 systems and nitty-gritty of operational safety --

4 Q. Yes.

5 A. -- and it's probably a judgment call where you draw
6 the dividing line. But, as I say, when I see
7 a statement by William Cooke of Network Rail saying that
8 they rely upon the RISQS audit for the testing of
9 sponsors in the Sentinel scheme, I understand that to
10 mean that that is an important safety test that they're
11 relying upon.

12 Q. So --

13 A. I don't -- I don't take that as they're just testing
14 management systems, and that, I think -- Dr. Cox and
15 I had a very productive discussion, but I think both he
16 and I would acknowledge that we had a difference of
17 opinion about the relevance and the depth of the audits,
18 and it's really not a matter for either he or I to
19 resolve because my understanding -- the understanding
20 I have been given and the understanding I've derived
21 from the statements that I have read is that these
22 audits go into more detail than his briefing suggests.
23 I'm not -- I'm not the right person to resolve on
24 whether that is the case or not.

25 Q. Well, I do not want to ask you to go into areas which

1 you do not feel competent to talk about, but -- perhaps
2 to try and get some common ground to move on to the next
3 area of debate --

4 A. Sure.

5 Q. We are not saying on this side that merely because if
6 management systems, the management systems are not
7 important for safety. We in no sense are saying that.
8 We are also quite clear that Network Rail relies upon
9 the audits for sponsors that are carried out for
10 the purpose of granting authorisation. So I think to
11 that extent there is common ground and I am not meaning
12 to imply the contrary. I am just trying to focus on the
13 words "safety requirements" because "safety
14 requirements" could cover many things.

15 The point I want to test you on, in fact, is over
16 the page at 793(a), because having said that having
17 a uniform set of safety requirements consistently
18 applied is a benefit of a single scheme, I think what
19 you then go on to consider is to what extent that could
20 be delivered by other means. You say halfway through
21 the first main paragraph on page 183:

22 "Whilst I believe that it would be theoretically
23 feasible to recognise more than one umbrella function
24 that determines whether suppliers have appropriate
25 systems in place, it would be almost impossible to

1 ensure that this is done in a consistent and reliable
2 manner."

3 That seems to be quite a strong conclusion, does it
4 not, Professor Jack?

5 A. Mm-hm.

6 Q. I would suggest to you that in fact consistent auditing
7 against standards is a general problem that exists in
8 the modern world and it can be achieved. That is right,
9 is it not?

10 A. It's certainly the case that it's a general problem in
11 the modern world, but I think we were hearing in
12 the cross-examination of Dr. Cox and I think we've also
13 heard it from Mr. Spence's evidence, etc, that actually
14 achieving consistency is not something that is just
15 delivered by having a common set of standards and
16 a common set of protocols.

17 Q. No, merely having a common set of substantive
18 requirements is not enough, but there are standards, are
19 there not, governing how audits are carried out?

20 A. Yes.

21 Q. Were you in court the other day for the discussion of
22 the ISO 17021 standard?

23 A. I don't -- no, I wasn't.

24 Q. Are you familiar with that standard at all?

25 A. Only its existence.

1 Q. That is an international standard which governs the
2 auditing of management systems and one can be certified
3 against that --

4 A. Yes.

5 Q. -- by an accreditation organisation, can one not?

6 That is the kind of approach which international
7 standardisation bodies adopt in dealing with this very
8 problem; that is right, is it not?

9 A. Well, it's possible to have a standard that deals with
10 any particular challenge or problem.

11 Q. Yes.

12 A. The challenge that you highlighted of different
13 interpretation and application of it is not necessarily
14 achieved just by having another standard; it's achieved
15 by a much more rounded set of arrangements involving
16 feedback loops, direct communication, etc.

17 Q. Well, perhaps we could separate out the different things
18 because one question is the quality to which an audit is
19 carried out, how rigorously it is carried out, and
20 another thing is how consistently the same audits are
21 carried out by different people. It is possible, is it
22 not, that you could have a whole set of auditors, all of
23 whom who are carrying something out sufficiently
24 rigorously, but with little bits of variation as to
25 exactly how they do it, but they are all above some

1 threshold; that is possible, is it not?

2 A. That's distinctly possible.

3 Q. Are you aware of which auditing standard Capita uses
4 when it is auditing to -- which auditing standards
5 Capita follows to guarantee its quality in relation to
6 the provision audit?

7 A. Only from my research associated with this case, which
8 I think -- is it PAS 91 or something?

9 Q. No, PAS 91 I believe is a standard in the construction
10 sector --

11 A. Oh, I beg your pardon.

12 Q. -- as I understand it. This is -- under the contract
13 between RSSB and Capita, Capita is required to follow
14 the ISO 17021 standard. Were you aware of that?

15 A. I am now.

16 Q. Okay. Now, I just want to suggest to you that in fact
17 it would not be impossible to ensure that a number of
18 auditors carry out the audit function in a sufficiently
19 consistent and reliable manner, would it?

20 A. Yeah, I think it's distinctly possible.

21 Q. Now, at 93(b) you refer to a risk of confusion on the
22 part of suppliers when seeking to comply with supplier
23 assurance requirements and health and safety
24 requirements, including those described in
25 Network Rail's schemes, and you refer to Tebay again and

1 I think we have dealt with that.

2 Now, you say towards the bottom of that paragraph:

3 "Suppliers would have grounds to question how
4 another scheme or schemes would secure industry buy-in
5 and engagement to ensure they were operated to at least
6 the same safety thresholds."

7 What I suggest to you is if Network Rail authorised
8 Achilles to provide audits for the purpose of the
9 Sentinel scheme, the on-track plant scheme,
10 the principal contractor scheme, suppliers would know
11 that Achilles or any other authorised provider was
12 operating to the required safety threshold, and there is
13 nothing confusing about that, is there?

14 A. I think they would know that they were -- or they would
15 have a reasonable degree of confidence that they were
16 supplying to the standard that you talked about, but
17 what they wouldn't have is the confidence that, as they
18 develop the scheme with all the -- what I would call
19 "organic governance" around the scheme, which we haven't
20 come on to yet, that the development and the evolution
21 of that scheme would be difficult to undertake if there
22 was more than one player.

23 Q. Okay, so I think that might be -- are you referring here
24 to sort of engagement in forums over the development of
25 the scheme and so forth? Is that what you intend to

- 1 refer to?
- 2 A. The forums would be one element of it, but the existence
3 of the RISQS board, which I think came into creation in
4 the -- I don't know whether it's called the "Link-Up
5 board", but there was certainly an early form of it
6 whilst the scheme was under Achilles' management. But
7 the existence of a cross-industry governance body that
8 is the authority for the development and evolution of
9 the standards, and in this case it's the protocols that
10 the audits are undertaken under, is something that would
11 be difficult to replicate if there was more than one
12 supplier.
- 13 Q. Well, there are, in other industries, open industry
14 forums dealing with matters of common concern, are there
15 not?
- 16 A. So the -- my understanding is that the industry has
17 chosen to go to a regime that has been a natural
18 evolution from -- out of the Link-Up scheme and that
19 the industry has collectively evolved into that, and
20 I don't know -- I've looked around at a few industries,
21 but one of the features of the rail industry which is
22 not reproduced in many other sectors is the existence of
23 this thing called "RSSB", and RSSB, which was a creation
24 of -- that was effectively carved out of -- depending on
25 your historical perspective, you could say British Rail,

1 Railtrack or Network Rail, but it came out of, if you
2 like, the safety and standards part of that, was --
3 created a governance structure that was designed to
4 enable the industry to get together and shape its
5 standards. It's the ownership and control of that
6 activity through this entity that is RSSB that gives the
7 industry that unique sort of direction and control over
8 the evolution of its supplier assurance scheme.

9 Q. But the RSSB could offer a forum for the development of
10 standards -- I mean, it does. It offers a wide range of
11 non-mandatory standards, does it not, and it could offer
12 the industry a forum within which to develop common
13 standards without necessarily being the only body who
14 provides a supplier assurance service, could it not?

15 A. Well, it -- I think, going back to what Dr. Cox and
16 I agreed on it, in theory you can put something in place
17 to overcome any problem that you identify. So
18 I identify a problem, you identify a way of overcoming
19 it, but every time you identify a way of overcoming it,
20 you introduce a degree more complexity.

21 Q. I suggest to you that there is no great deal more
22 complexity in, for example, the RSSB developing an open
23 standard for supplier assurance, open standards for what
24 is required to meet certain management system
25 requirements and then other people being allowed to

1 assure against it -- there is nothing more inherently
2 complex in terms of the activity there than there is
3 with RSSB carrying out a whole activity of assurance
4 itself. In terms of the setting of the standard itself,
5 it is the same activity in both cases. It is the
6 industry getting together and discussing what
7 substantive requirements they want and putting them in
8 a document. It is the same activity whoever then
9 provides the audit.

10 A. But at the moment -- and I'm not directly familiar
11 with it, having (a) left RSSB some years ago and (b)
12 only familiarised myself with it for the benefit of this
13 hearing -- but my understanding of things is that the
14 existence of the single governing RISQS board is
15 something that would be difficult to replicate if it was
16 to become an open system, because if, for instance,
17 the other suppliers, albeit one or many suppliers, were
18 part of this governance arrangement, then we would have
19 a situation -- well, they would have a situation where
20 there would be, if you like, competitive behaviour going
21 on in the governance organisation; whereas at the moment
22 the parties all know what their respective role is and
23 there is no element of competition in the behaviour of
24 the supplier because the supplier knows they came
25 through a competitive process and they've got the task

1 of developing that system for the next -- is it three or
2 five years? -- however long the contract is.

3 Q. I fear we may be taking you out of your role as an
4 expert on safety and into the area of standardisation.
5 I appreciate that is something else --

6 A. I think you are, yes.

7 Q. -- that you have done.

8 There are plenty of contexts -- I mean PAS 91, which
9 you have mentioned, that is a common industry
10 specification for elements of supplier assurance in
11 the construction industry. That has been agreed upon by
12 multiple providers who are competitors. It can happen,
13 can it not?

14 A. Yes, it can happen, but it can also happen that
15 industries decide that they will have a single supplier.

16 Q. I think I will ...

17 If I can take you to paragraph 93(c) of your report,
18 you refer to "... reducing the risk of confusion on
19 the part of Network Rail when checking whether suppliers
20 are compliant with assurance requirements ..."

21 You do say you are not able to comment on this point
22 in detail. Just to check why, is that because you are
23 not familiar with the detail of how Network Rail uses
24 the output of supplier assurance in its business? Is
25 that why you do not feel able to comment in detail?

1 A. Well, I think the basic reason was that I was shown
2 the list of issues that Network Rail highlighted in
3 their response, of which (c) is obviously one, and
4 I have not spoken to or exchanged with Network Rail on
5 what aspects they felt would confuse them, but I can see
6 that faced with multiple suppliers, there is a greater
7 risk for confusion than if there was a single supplier.

8 Q. You go on to say that they faced confusion -- "... if
9 faced with suppliers through a number of supplier
10 assurance schemes, all of whom have passed that scheme's
11 relevant assurance requirements". So I think what you
12 are saying here is if a -- too many suppliers going
13 on -- if a construction firm, for example, had been
14 qualified through one of a number of supplier assurance
15 providers and it had passed the requirement in Sentinel
16 or the on-track plant or whatever -- that is what you
17 are talking about; yes?

18 A. Yes.

19 Q. What I was going to suggest to you is there is no scope
20 for confusion by Network Rail staff, is there, because
21 a supplier assurance provider is either accepted by
22 Network Rail or it is not. If they have passed the
23 audit done by that provider, it is quite clear and there
24 is no room for confusion on the part of Network Rail in
25 that situation, is there?

1 A. Well, I think you're suggesting things that sort of go
2 beyond where I've explored in detail, but I can see
3 the potential for confusion if, for instance, someone
4 rings up a Network Rail buyer somewhere who is in
5 a hurry to get a project underway and says, "Yes, I've
6 been approved by such and such", and the buyer may not
7 be familiar with all of the arrangements that
8 Network Rail has and may accept something that is
9 chancing it.

10 Q. But in terms of the actual schemes we are talking about,
11 Sentinel is a smartcard system. If Sentinel/Mitie have
12 to be notified that somebody has passed the relevant
13 audit, they have to accept that, and that is not
14 somebody who is in a hurry doing procurement; that is --
15 their job is to run Sentinel. So as long as the audit
16 has been done by somebody who is an approved provider,
17 as it were, is not Sentinel -- you know, they turn on
18 Sentinel access for that supplier and the people they
19 sponsor can get onto track. If they do not turn it on,
20 they cannot. There is literally no physical way they
21 can get onto the infrastructure, is there?

22 A. I think you're talking about the Sentinel scheme, but
23 there are two other schemes --

24 Q. Yes.

25 A. -- maybe the track plant scheme -- was it called the

- 1 "POS"?
- 2 Q. Yes, sometimes it is called "OTP" and "POS" and I always
3 get them mixed up. I think in RISQS it is called either
4 "OTP" or "POS" and within Network Rail it is called
5 the other, but it is the same basic problem. So you
6 were going to say ...
- 7 A. So I think what you said about Sentinel may well be
8 the case, but if someone is looking to get an urgent
9 piece of work done and they're ringing around, maybe
10 the sort of gentleman that we saw give evidence around
11 lunchtime, for some plant to do an urgent job, and they
12 say, "Oh yes, I am approved by such and such", that
13 could lead to confusion if it becomes known in
14 Network Rail that there are multiple suppliers.
- 15 Q. But in respect of on-track plant, any provider, they
16 need not just to have passed the on-track plant module
17 that RISQS offers, they also need to be separately
18 authorised by Network Rail's on-track plant scheme, do
19 they not? There is a separate level of authorisation
20 that Network Rail does.
- 21 A. Yes.
- 22 Q. So at the moment, if somebody turns up and says, "I have
23 done RISQS on-track plant module", that is not
24 sufficient. They have to say, "I am authorised by
25 Network Rail", and Network Rail hold a list of

1 the people who are actually authorised to be on-track
2 plant providers. So in any job, how urgent, that is
3 being done now or in the future, whoever is procuring
4 that job would be having to select somebody from
5 Network Rail's list of properly authorised on-track
6 plant providers, so there is no risk of confusion there
7 either, is there?

8 A. Well, I'm not confident enough to answer your question
9 in detail. I have been -- I have seen statements from
10 Network Rail explaining how they feel that there could
11 be confusion. I introduced this item by saying I'm not
12 qualified to deal with it in any detail --

13 Q. Okay.

14 A. -- and I'm not frankly convinced that you've
15 demonstrated to me that there is no possibility of
16 confusion.

17 Q. Well, what I was trying to get to by this possibility of
18 confusion is safety consequences.

19 Finally, to finish off the third scheme, principal
20 contractor licence, there is a certain discrete number
21 of people who are licensed as principal contractors by
22 Network Rail, is there not?

23 A. Mm.

24 Q. There would be no possibility of confusion as to whether
25 somebody is validly authorised because people who are

1 responsible for getting jobs done in Network Rail can
2 only pick one of the set number of licensed principal
3 contractors?

4 A. Yeah, that sounds reasonable.

5 Q. Finally, 93(d) and (e) you do not comment on a couple of
6 issues so we can skip over those. That will be nice.

7 At 93(f) you refer to the issue about whether audit
8 protocols have been developed to meet Network Rail's
9 needs. Now, are you aware that the audit protocols that
10 we see in the RISQS audit protocols were originally
11 written by Achilles?

12 A. I believe they were written at the time that Achilles
13 was responsible for it. I guess they had input from
14 other players.

15 Q. They were written by Achilles with input from the RISQS
16 board and then subsequently (inaudible), and as they now
17 exist, they have been developed further.

18 A. Mm.

19 Q. Now, in terms of the design of protocols to meet
20 Network Rail's and the industry's requirements --
21 perhaps this is the point we were talking about --
22 I suggest to you that if the protocols, the standards,
23 are developed by the RSSB on (unclear) an open basis,
24 there would not be any problem with ensuring they meet
25 Network Rail's needs, would there?

1 A. I think the -- this is an example of the -- if there
2 were to be multiple players in the industry, there would
3 need to be additional layers put in place to ensure that
4 it met those requirements, and as -- when Dr. Cox and
5 I were meeting, what we concluded was that he was
6 generally satisfied that suitable management
7 arrangements could be put in place to overcome those
8 issues and I was not convinced.

9 Q. In terms of the detailed requirements, Network Rail --
10 in a sense it has to undertake now, does it not, the job
11 of checking that the audit protocols do meet its needs,
12 does it not?

13 A. Yes, as part of the development of those protocols, yes.

14 Q. Leaving aside -- I mean, the development is done by
15 the RISQS board. I know Network Rail participates. But
16 Network Rail in some sense has to satisfy itself that
17 what it is procuring from RSSB actually meets its needs,
18 does it not?

19 A. Yes.

20 Q. So it is not a function that Network Rail does not
21 currently in some sense undertake?

22 A. No, it's not, but it fundamentally undertakes it by
23 participating in that cross-industry process that
24 the RISQS board supervises.

25 Q. In fact, I mean, it used to undertake it in a different

1 way, so it used to specify, did it not, what the core
2 requirements for all suppliers were? It had an internal
3 standard. Are you aware of that?

4 A. Yeah, I believe that you were talking to Mr. Spence
5 about the previous standard --

6 Q. Yes.

7 A. -- which I think is being withdrawn about now or
8 something.

9 Q. I think it was -- I understand it was withdrawn on
10 Friday, as it happens, but there we are.

11 A. Yeah, that's about now.

12 Q. But it also specifies what standards it requires in
13 terms of the Sentinel scheme rules, does it not, at the
14 moment?

15 A. Yes.

16 Q. It has a series of substantive requirements for
17 sponsors. It specifies what requirements it has for
18 on-track plant and licence-holders in its on-track plant
19 licensing rules and so on. So Network Rail has a formed
20 view of what it requires from schemes, does it not?

21 A. Yes.

22 Q. In terms of actually, from a safety perspective,
23 ensuring that the assurance modules meet its needs,
24 Network Rail would be well capable of doing that, would
25 it not?

1 A. Well, it needs to have a mechanism to ensure it can do
2 it and at the moment it has the mechanism that has
3 developed over 20 years or so.

4 Q. So it engages in the RISQS board.

5 A. Yeah.

6 Q. But Network Rail would be well capable -- if a supplier
7 says, "Here are my audit modules for Sentinel, on-track
8 plant, principal contractor and safe work planning",
9 Network Rail would be well capable of taking a view as
10 to whether or not those audit protocols were sufficient
11 for Network Rail's needs, would it not?

12 A. Yes.

13 Q. So there might be some tasks associated with that, but
14 from a safety perspective Network Rail could perfectly
15 well ensure that the schemes meet its needs, could it
16 not?

17 A. No, what I've been saying, both in my report and in my
18 responses to you, is that it is feasible that it could
19 achieve what you've just set out, but it would take more
20 effort and more -- introduce more complexity than
21 the current arrangement.

22 Q. Well, I suggest to you that there is no real more
23 complexity. Network Rail in both cases would be looking
24 at an audit protocol and deciding whether or not it
25 checks what Network Rail wants it to check. It is

1 the same interface between Network Rail and an external
2 organisation in either case?

3 A. You're, I think, choosing to put absolutely everything
4 in the description of what is in the standards and the
5 audit requirements when what we have before us is
6 a scheme that has got much -- a much richer both
7 genealogy and governance structure than merely
8 Network Rail sitting and deciding what its requirements
9 are and saying, "You've got to achieve them".

10 Q. Okay.

11 A. The richness of that derives from the relationships
12 between the various players in it. We haven't got on
13 yet to you questioning me about the incentives between
14 the two --

15 Q. No --

16 A. -- but if we were to anticipate the discussion about
17 the incentives, if we have a supplier of a scheme whose
18 incentive is to participate in it and to participate in
19 its development for the next three years or so until it
20 is next competitively tendered, then we have
21 a completely different set of incentives than if we have
22 two, three, four suppliers around the same table
23 participating in those discussions.

24 Q. Well, just to take that point -- I think we may be
25 moving out of the scope of safety. I do not know.

1 Would you count this as part of the safety discussion?

2 A. Yes, I would, yes, because the potential -- the --
3 anticipating another area that we haven't touched on
4 yet, but you -- is touched on in the cross-examination
5 of Dr. Cox is the sort of potential race to the bottom.

6 Q. Yes. Without wanting to -- I promise you we will come
7 to the race to the bottom so you will have a chance to
8 say what you want about that. But on this issue about
9 incentives for the moment, you refer to the incentive of
10 a supplier -- I think you meant a provider of a supplier
11 assurance scheme.

12 A. Yes.

13 Q. -- to participate if it knows it is going to be there
14 for three years or so.

15 So it might be said, might it not, if you have two,
16 three, four schemes, as you suggested, who are
17 participating in the market on a long-term basis, they
18 know that as long as they survive and (unclear)
19 competition, they will be there indefinitely and they
20 may have quite a large incentive to invest in
21 development, whereas if I know that I am competitively
22 tendering for a contract and I win it and it is of
23 a three-year duration plus two years, so I know at any
24 rate I am going to have to compete again for it in five
25 years' -- maximum five years' time, at which point

1 I could well be out on my ear, would not in fact I have
2 more incentive to invest in this situation with multiple
3 providers competing on a long-term basis compared with
4 the situation where I know I could be -- well be out on
5 my ear in five years' time?

6 A. I think I would understand both perspectives. I think
7 what we've seen with Link-Up, when Achilles was the sole
8 supplier, that Achilles did invest over the years. I've
9 seen reports about the improvements that they introduced
10 and I think that was aided and abetted by the fact that
11 they had security of tenure. But we -- as I think I put
12 somewhere in my report, we just haven't tested and
13 no one has seriously contemplated the alternative, so we
14 don't know what the impact of those incentives would be,
15 which is -- which then moves on to the points that
16 Allan Spence was making about the risks associated with
17 taking on things that you don't know about.

18 Q. If we can move to -- we are getting there slowly.
19 I realise I am not going to be done with Professor Jack
20 by 4.30. There is a certain amount more still to get
21 through. I do not know if my learned friend -- is
22 Professor Jack available for tomorrow morning?

23 A. Yes.

24 MR. WOOLFE: You are. In that case I think I will do a few
25 more minutes and then we might need to stop and come

1 back tomorrow morning.

2 93(g) -- and I think you will be happy to know that
3 this is where the race to the bottom argument might come
4 in -- is that right? Well, it refers to "facilitating
5 the timely efficient and effective monitoring of the
6 ongoing suitability", allowing Network Rail to examine
7 trends and so forth and having continuous feedback.

8 You have said here that these benefits will be
9 achieved more efficiently with a single supplier and you
10 believe that having broad industry experience on the
11 board of the supplier assurance scheme is critical to
12 achieving improvements in safety and best practice.

13 One of the things I have put to you is that those
14 benefits could be achievable through industry forums
15 without there being only a single scheme. That is
16 right, is it not?

17 A. I think just saying "That's right" is a little
18 premature.

19 Q. I am putting it to you as a question and inviting you to
20 comment.

21 A. Well, I'm not going to say "Yes".

22 Q. Okay.

23 A. I think what I've highlighted here is that -- I mean,
24 it's the classic repeat of the -- these -- overcoming
25 these issues is a matter of introducing more process,

1 more complexity, and with that goes the potential for
2 things being misunderstood or going wrong.

3 Q. 93(h), I think there is an issue about compatibility and
4 you say you are not able to comment on it. I think,
5 with respect, it is -- as regards being a benefit, it is
6 more of an efficiency point than a safety point; would
7 you agree?

8 A. No, I do not think I would. The -- I have dwelt, since
9 putting this report in, on things like the joining up of
10 IT systems, and before we get too far into IT, I'll
11 plead, as Dr. Cox did, that I'm not an expert. However,
12 I can imagine the situation where there is a desirable
13 enhancement of the supplier assurance system and that
14 desirable enhancement is signed off by the RISQS board
15 and it wants to introduce it as soon as possible. But
16 if it's got two, three or four suppliers, what are the
17 chances of all of those suppliers being in a position to
18 make the investment in an upgrade and to deliver that
19 upgrade on the same day so that the system is completely
20 interoperable? I find it difficult to conceive of that
21 sort of thing happening.

22 Q. You are envisaging a scenario where the providers of
23 schemes would have control over what the minimum
24 specification for a scheme was and, because they did not
25 want to do something, they would block it; is that what

1 you're envisaging?

2 A. No, no, maybe I didn't explain it well -- back to not
3 being the expert in IT.

4 If it is considered desirable to introduce a new
5 form of -- you know, a new platform, maybe -- we've
6 heard about things going on the cloud. Maybe there's
7 the next generation of cloud or something and the RISQS
8 board wish -- can see the benefits of that and wishes to
9 go ahead with it, but one of the suppliers doesn't have
10 an IT strategy that takes them in that direction,
11 another one doesn't have the investment funds available
12 to make the change, so what started out on day one as
13 a common system ends up being confusing for all because
14 not every supplier of those schemes can introduce
15 the system on the same day to the same specification.

16 Q. I suggest to you, Professor Jack, that there is a world
17 of difference between, on the one hand, members of
18 the industry discussing and saying, "These are our
19 minimum requirements of what we want the schemes to
20 provide. This is the kind of functionality we
21 want", and Network Rail saying, "We want only supplier
22 assurance providers who can provide a platform that has
23 certain whizzy features or is in the cloud", whatever it
24 may be, "and providers can either try and meet it or
25 not". But you do not need to block all competition

1 between any provider ever emerging simply because in
2 the future not all of them might be able to meet some
3 standard that you might set down the line. Is that not
4 rather risk-averse?

5 A. No, I am not talking about -- personally I'm not here to
6 talk about competition at all, I'm here to talk about
7 safety, and I'm highlighting a situation where
8 the cross-industry group decides that it is appropriate
9 to introduce an innovation, an upgrade, and it finds
10 that not all of the current suppliers are in a position
11 to do so. So it's not about Network Rail trying to
12 impose something; it's the cross-industry governance
13 group stressing that it's -- we're talking about other
14 players -- other buyers as well who wish to see
15 something change and they wish to see it done in an
16 orderly manner.

17 Q. If I may, I think we are going to deal with another
18 point in paragraph 93 and that might be a convenient
19 place to stop after that. At paragraph 93(i) you refer
20 to "incentivising suppliers to invest continuously in".

21 I think in a sense in your response you make two
22 points. One is about incentives for investment by
23 scheme providers and I think we already covered that to
24 an extent. If it is all right, I would like to move to
25 the second point, which is here you address there being

1 significant scope for unscrupulous providers of supplier
2 assurance services to cut costs in order to attract
3 suppliers. They have "... the incentive to reduce
4 complexity and substance of the accreditation process
5 and there would be a high risk subsequently of a 'race
6 to the bottom' in terms of quality". Are you not being
7 a bit cynical about suppliers? Do not suppliers, many
8 of them, have a genuine interest in being assured to
9 a high standard?

10 A. I don't think one should really ask me to judge
11 the -- sort of the morality and the motives of
12 suppliers. I think all we need to do is acknowledge
13 that there are a variety of business standards around
14 and to highlight that there is the potential for people
15 that are interested in offering, you know, the "pile
16 them high, sell them cheap" as distinct from the quality
17 product, and we see that in most walks of life.

18 Q. But --

19 A. So I'm not questioning the competence or the
20 professionalism of any individual supplier, just
21 acknowledging that there are incentives for people to
22 offer different levels of service at different prices.

23 Q. Yes, and they may well indeed offer different levels of
24 service in a variety of respects, but focusing on the
25 quality of the audit for a moment, is not the point the

1 one that came out in the interchange between Dr. Cox and
2 the Tribunal, which is that if -- this race to
3 the bottom argument comes back to if what is required to
4 be audited is established and sufficient control is
5 established over the quality of the audit that is done,
6 the race to the bottom point falls away. That is true,
7 is it not, if those two conditions are met?

8 A. I think, if you put in enough controls, you must
9 eventually get to the point where you can take that risk
10 away, yes.

11 Q. Indeed, if you had a -- bearing in mind that here we
12 have a situation where these assurance schemes audit
13 against certain modules and so forth, but buyers can
14 also pick which supplier assurance scheme they may want
15 to use to ask further questions and do further audit and
16 so on -- and so if you have competition in the provision
17 of supplier assurance and a qualification in which
18 schemes were competing for buyers, you could well have
19 a race to the top in terms of standards, could you not?

20 A. You're just stating the classic arguments for
21 competition.

22 MR. WOOLFE: That may be partly my job. Thank you,
23 Professor Jack.

24 You do not comment at all on the next benefit at
25 93(j) so I think that might be a convenient moment to

1 stop, sir.

2 (4.36 pm)

3 (Court adjourned until 10.30 am on Wednesday,

4 27 February 2019)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

1

2 MS. GEMMA PEARSON (sworn)1

3 Examination-in-chief by MR. FLYNN1

4 Cross-examination by MR. WOOLFE2

5 Re-examination by MR. FLYNN32

6 Questions from THE TRIBUNAL34

7 MR. DARREN MATTHEWS (affirmed)38

8 Examination-in-chief by MR. FLYNN38

9 Cross-examination by MR. WOOLFE39

10 Mr. ADAM BERWICK (sworn)53

11 Examination-in-chief by MR. FLYNN53

12 Cross-examination by MR. WOOLFE54

13 DR. RAYMOND ANTHONY COX (affirmed)66

14 Examination-in-chief by MR. WOOLFE66

15 Cross-examination by MR. FLYNN67

16 Re-examination by MR. WOOLFE107

17 Questions from THE TRIBUNAL110

18 PROFESSOR ANSON JACK (sworn)113

19 Examination-in-chief by MR. FLYNN113

20 Cross-examination by MR. WOOLFE115

21

22

23

24

25