



Grenfell Tower Inquiry

Day 96

February 24, 2021

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Phone: +44 (0)20 3008 5900

Email: transcripts@opus2.com

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1 Wednesday, 24 February 2021
 2 (10.00 am)
 3 SIR MARTIN MOORE—BICK: Good morning, everyone. Welcome to
 4 today's hearing. I'm here as usual with my fellow panel
 5 members, Ms Istephan and Mr Akbor.
 6 MS ISTEPHAN: Good morning.
 7 MR AKBOR: Good morning, everyone.
 8 SIR MARTIN MOORE—BICK: Today we're going to continue
 9 hearing evidence from Mr Clark, formerly of the BRE, so
 10 I'm going just to check that Mr Clark is able to see us
 11 and hear us.
 12 Are you there, Mr Clark?
 13 MR PHILIP CLARK (continued)
 14 THE WITNESS: I can see and hear you, sir, yes, I can.
 15 SIR MARTIN MOORE—BICK: Good. Thank you very much.
 16 Well, the arrangements will be the same as they were
 17 yesterday.
 18 We better begin with a little bit of housekeeping:
 19 can you please confirm that you don't have anyone else
 20 in the room with you?
 21 THE WITNESS: I can confirm I don't have anyone.
 22 SIR MARTIN MOORE—BICK: Thank you.
 23 Can you confirm also that you don't have any papers
 24 or other materials with you?
 25 THE WITNESS: I can confirm I don't.

1

1 SIR MARTIN MOORE—BICK: Thank you.
 2 Can you confirm that your mobile phone is in another
 3 room and that you don't have any other electronic
 4 devices with you that are capable of receiving messages?
 5 THE WITNESS: I can confirm that, yes.
 6 SIR MARTIN MOORE—BICK: Very good, thank you.
 7 Well, as I say, the arrangements will be the same as
 8 they were yesterday. We'll have a break during the
 9 morning round about 11.15, and also during the course of
 10 the afternoon.
 11 Is there anything you'd like to raise with me before
 12 you carry on giving your evidence?
 13 THE WITNESS: No, there isn't, sir, thank you very much.
 14 SIR MARTIN MOORE—BICK: All right, good, thank you.
 15 In that case, I'll invite Mr Millett to put some
 16 more questions to you.
 17 Yes, Mr Millett.
 18 Questions from COUNSEL TO THE INQUIRY (continued)
 19 MR MILLETT: Thank you very much, Mr Chairman, good morning,
 20 and good morning to the members of the panel as well.
 21 Good morning, Mr Clark.
 22 A. Good morning.
 23 Q. Can I please go back to {BRE00032372}. This is the
 24 first page of the delivery notes that we looked at
 25 yesterday together, Mr Clark.

2

1 Can we go to page 3 in that list {BRE00032372/3}.
 2 This is the FGF delivery note, dated 14 April 2014, as
 3 you can see from the right-hand side of the document.
 4 Yes?
 5 A. Yes, yes.
 6 Q. And it says "Description", underneath that:
 7 "Natura 3070x1250x8mm Ruby ... Sheet."
 8 "Original [quantity]: 6."
 9 Do you see that?
 10 A. Yes, I see that.
 11 Q. Underneath that:
 12 "Natura N154 Cream White 3130x1280x12mm. Sheet."
 13 "Original [quantity]: 5."
 14 Do you see that?
 15 A. Yes, I can see that.
 16 Q. Then there is an opal product below that.
 17 Then at the very bottom there is a signature, and
 18 I think you confirmed that that's your signature?
 19 A. I did, yes.
 20 Q. Yes. Would you have signed that document, do you think,
 21 on or about 14 April 2014?
 22 A. Yes, I would have thought so, if that's the delivery
 23 date, yes.
 24 Q. Where would you have signed it, in your office or in the
 25 Burn Hall or somewhere else?

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1 A. As I had a forklift licence, it may have been that I'd
 2 offloaded it myself and signed for it in the Burn Hall.
 3 Q. Did you, when you did that, check what you were signing
 4 for?
 5 A. No, it was usual practice that the material would be
 6 offloaded and placed by the work area of the client, and
 7 then the delivery note usually would be just left with
 8 the materials.
 9 Q. And what would happen to the delivery note after that?
 10 A. Obviously on this occasion it would be requested back
 11 from the client. So ultimately the materials were the
 12 client's property, so it was for them to check what they
 13 had, and then we would, if — request the delivery note
 14 from them when they'd finished with it.
 15 Q. Well, this looks like a counterfoil torn off from a book
 16 of standard delivery notes, doesn't it?
 17 A. Yes, most delivery notes would come with, like, three
 18 parts, which one would go with the client and one would
 19 go back with the driver, and there would be a spare,
 20 potentially, back for the office or something.
 21 Q. Back to your office?
 22 A. No, back to the — FGF's office.
 23 Q. Right.
 24 This signed version on the blue sheet, the blue
 25 counterfoil, was that kept by BRE somewhere?

4

1 A. It would have gone into the file, yes.
 2 Q. It would have gone into the file. At what point would
 3 it have gone into the file?
 4 A. Erm —
 5 Q. By which (inaudible) the file to you?
 6 A. Once the client had checked that they were happy with
 7 what was on the package and we — at some point we'd
 8 probably say to them, "Can we take all the delivery
 9 notes that you have?"
 10 Q. Did you have any ability to check this document after
 11 delivery of the materials identified in it against what
 12 was going up on the rig, either before or after the
 13 test?
 14 A. Yes, there was a chance to do that, I would say, yes.
 15 Q. How would you go about that?
 16 A. Normally what I would do, would go down to the client
 17 and say, "Can you get one of the boards of each and prop
 18 it against the wall or something", where I could see the
 19 batch number and production details, and then I'd
 20 photograph it, they'd put them back on the pallet, and
 21 I'd go back to my office and download the photographs.
 22 Q. Now, you told us yesterday about a conversation you had
 23 with Mr Roper about the ruby panels on the rig, and we
 24 covered that yesterday, based on your recollection of
 25 that conversation at paragraph 269 of your statement at

5

1 page 66 {BRE00005768/66}, which I'm not going to go back
 2 to.
 3 My question is this: when Mr Roper told you that the
 4 Marley Eternit ruby panels were used because of
 5 a shortage of white panels, did you go and check the
 6 delivery notes you signed to see what it was that had
 7 been delivered?
 8 A. No, I would say not.
 9 Q. Why was that?
 10 A. Because I had no reason to. It's just a — to my
 11 understanding, it was the same panel but just in
 12 a different colour.
 13 Q. Right.
 14 A. He didn't indicate at any point that he was using
 15 8-millimetre boards. My assumption was they were all
 16 a pack of 12 millimetres and that's why the question
 17 didn't come up.
 18 Q. But you had signed the delivery note, which we've just
 19 seen, identifying the ruby Eternit panels as
 20 8 millimetres; yes?
 21 A. Yes, I did, but what you need to understand is that that
 22 pallet could be offloaded, the panels could be at the
 23 bottom. These panels are two-person handling
 24 requirement, and it wasn't common practice for BRE to
 25 offload and manhandle clients' material in that way.

6

1 Q. When you signed the delivery note for the ruby
 2 8-millimetre panels, did you make any enquiries as to
 3 why those panels had been ordered and what their
 4 proposed use was?
 5 A. No.
 6 Q. Why not?
 7 A. Because I had — didn't — I didn't check the delivery
 8 note to say, "Oh, hang on, this is — you've got an 8
 9 and a 12, two 12s, why is that?" It would have been:
 10 the driver would have turned up, we would have offloaded
 11 it, signed the delivery note, put the material by the
 12 test facility for the client, and gone about the rest of
 13 the work we had to do in that day.
 14 Q. Was there no system in place at the BRE whereby somebody
 15 would assemble the delivery notes, identify what had
 16 been delivered and check against what was going up on
 17 the rig?
 18 A. Not in that formal way, no, because ultimately the — as
 19 I said just now, the material is the client's material.
 20 Q. Yes, but it's being used in your test.
 21 A. It is, yes, but, as I say, we — yes —
 22 Q. And it was — sorry, I don't want to overspeak. Yes.
 23 And it was invariable practice of the BRE when
 24 producing a test report or a classification report to
 25 state with precision exactly what had gone up onto the

7

1 rig, wasn't it?
 2 A. Yes, yes.
 3 Q. And, therefore, would it have not been the practice of
 4 the BRE at the time to identify precisely what the rig
 5 was comprised of in those reports by reference to the
 6 delivery notes identifying the materials?
 7 A. Yes, I agree, yes.
 8 Q. Yes.
 9 A. And in this case, this was an oversight that the
 10 distinction between the 8 and 12 wasn't made, and
 11 I think I admitted that yesterday.
 12 Q. Yes, and I'm just trying to work out how that lapse
 13 could have come about. Can you tell us?
 14 A. As I say, the — what you need to understand is that the
 15 Burn Hall was a very busy place. We would have
 16 something in the order of maybe ten people in on any
 17 one day. We could have four or five deliveries from
 18 drivers directly to the hall, we could have stuff coming
 19 in from goods—in, we could have people testing,
 20 preparing, so it was a very busy place, and it wasn't
 21 the position that we were there every single minute
 22 checking everything that the client did minute to
 23 minute. It was a very fluid and dynamic hall.
 24 Q. You told us yesterday — and indeed it's in your
 25 statement, as I've said — that you had a specific

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1 conversation with Mr Roper about why there was a band of
2 Marley Eternit ruby—coloured panels there. So you did
3 have a specific conversation about it.

4 Given that you had a specific conversation about it,
5 can you explain why you neither checked the delivery
6 note you signed only the previous month, a few weeks
7 before, nor identified the band of Marley Eternit ruby
8 panels in either of your reports?

9 A. The short answer is no, I can't.

10 Q. You see, the suggestion I feel bound to make to you is
11 that you knew very well not only, as you accept, that
12 the ruby panels were present, but that they were
13 8 millimetres.

14 A. No, I've — until it was pointed out to me that that was
15 there, and then subsequently checked the delivery note,
16 it was — wasn't discovered.

17 Q. And —

18 A. And I'm not wanting to push blame onto other people, but
19 the process at BRE was that these test reports and the
20 file were checked by other people, three other people
21 had seen this, and again, nobody else had spotted that,
22 and as I said, had I seen that, I would have immediately
23 stopped the test.

24 Q. Was it your practice — I think you confirmed it was —
25 invariably to take photographs of the components of

9

1 a rig and, if possible, their packaging?

2 A. Yes, yes.

3 Q. Is there a photograph of the ruby Eternit panels?

4 A. I can't recall seeing one, no.

5 Q. Again, another departure?

6 A. Well, this would have been — if this was done while
7 I was out of the office, then it would have probably —
8 I would have done it as they were putting the system
9 together. So if I wasn't there, one of the problems was
10 that I wasn't always able to rely on people to do things
11 if I wasn't there. It's something I was aware of.
12 So —

13 Q. You see — sorry, do you want to continue?

14 A. So what you need to understand is that the system goes
15 up in layers, essentially. So if — say, for example,
16 they had come in on the Monday to start the
17 construction, on the Monday they would have probably got
18 most of the metal frame up; on the Tuesday they would
19 have probably got the sheathing boards and the
20 insulation up; and on the Wednesday they would have put
21 the rainscreen up onto the wall, and two of those days
22 were the days I wasn't in the office.

23 Q. You haven't been able, though, have you, in all your
24 researches, such as they are, to identify the precise
25 two days that you were out of the office on your course

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1 and check it against the progress of the construction of
2 the rig during those two days?

3 A. I have, yes. I think the letter was sent to say that
4 was confirmed that I was on the first aid course for the
5 Tuesday and Wednesday, as far as I'm aware.

6 Q. Certainly, we have the dates you were on the course, but
7 what is it that tells you that it was during those
8 critical two days that the rig was erected?

9 A. So the practice would be that we would say to the client
10 that we need to have the rig completed by at least one
11 clear day before the test, so the rig would have needed
12 to be handed over on the Wednesday, as I think the test
13 was on a Friday morning. So they would have completed
14 the rig by Wednesday afternoon, we would have
15 instrumented it on Thursday morning, and test — on
16 Thursday, throughout the day on Thursday, and tested it
17 on Friday morning. So that's the way I would have seen
18 it was going.

19 Q. Yes. My question was: have you actually checked what
20 you say would have happened against any contemporaneous
21 documents?

22 A. I don't think there's anything that says that was the
23 exact timings, but having done this for a number of
24 years, that was very, very common practice and I can't
25 see why it would have been different on this day.

11

1 Q. Now, given you signed for the 8—millimetre

2 Marley Eternit ruby panels, when you looked up, having
3 had the conversation specifically about those panels
4 with Mr Roper and asked him why they were there, didn't
5 you notice that there was no indent in the façade where
6 those panels were, but they were at least flush and
7 in fact had an overhang?

8 A. No, the only comment that we made was (a) the difference
9 between the colour and the potential reaction to fire
10 classification they may have, and some comment about how
11 it wasn't a very good build. It was very poorly put
12 together, I thought.

13 Q. You see, if there was nothing behind the 8—millimetre
14 ribbon of ruby panels at the second—level thermocouples
15 and at the top of the rig, then there would have been
16 a differential, wouldn't there, between the
17 12—millimetre panels, the white ones, and the
18 8—millimetre ruby ones by 4 millimetres, wouldn't there?

19 A. There would, but as I said to you yesterday, you can't
20 see that from the floor. Unless you go up on access
21 platform, you wouldn't be able to see that from that
22 distance.

23 Q. You would have noticed, surely, that there was
24 a 4—millimetre indent going in where the Marley Eternit
25 ruby panels were?

12

1 A. I think had I had reason to go up there, then probably,
 2 yes, but if I'm in a position where I'm running around
 3 getting the test ready for the next day, it's something
 4 that obviously wasn't seen at the time and I — because
 5 I wasn't aware that there was this differential
 6 thickness between the panels, it wasn't a question that
 7 would have come to my mind.
 8 Q. Well, somebody at the BRE, if not you, would have
 9 noticed that there would have been this 4-millimetre
 10 indent had there been nothing behind the 8-millimetre
 11 panel. Somebody would have noticed that and brought it
 12 to your attention; is that not right?
 13 A. I think they would have done, but nobody did, there
 14 was —
 15 SIR MARTIN MOORE-BICK: Can I just interrupt for a second?
 16 It occurs to me that Mr Clark has said that the
 17 instrumentation would have been fitted on the Thursday.
 18 Is that right, Mr Clark?
 19 A. That was the usual practice, yes.
 20 SIR MARTIN MOORE-BICK: Would it be necessary for someone to
 21 be up at that level in order to fit the instrumentation?
 22 A. There would have been, but in that case it more than
 23 likely at that stage wasn't me.
 24 SIR MARTIN MOORE-BICK: All right. Thank you.
 25 Yes, I'm sorry, Mr Millett.

13

1 MR MILLETT: Who would it have been?
 2 A. We had an apprentice who was quite new, so he was
 3 working with my colleague, I think, on this project was
 4 a gentleman called Simon Barrow.
 5 Q. Sorry, was your colleague Simon Barrow or was that the
 6 name of the apprentice?
 7 A. No, the apprentice was Harry Granados, and the —
 8 I think the person we were using at that time was a
 9 gentleman called Simon Barrow, who worked in the
 10 fire resistance hall.
 11 Q. Have you any reason to think that either of those people
 12 would not have reported to you the fact that there was
 13 something behind the 8-millimetre ruby panels?
 14 A. I think they may not necessarily have understood, even
 15 if they had seen it.
 16 Q. Well, would you not have expected Simon Barrow to have
 17 reported to you that, unlike everywhere else on the rig,
 18 there were two places on the rig, namely behind the
 19 thermocouples and at the top layer, where there was
 20 an extra layer of magnesium oxide overtopped with
 21 an 8-millimetre ruby board?
 22 A. I would have expected them to point it out to me, yes,
 23 yes.
 24 Q. Can you explain why they didn't?
 25 A. As I say, maybe they didn't see the significance of it.

14

1 I can't answer for other people. No, I don't know that.
 2 Q. But you can answer for other people, because they were
 3 answerable to you and you were responsible. So did you
 4 not supervise them and ask for a report, at least
 5 an oral report, as to how the rig build has gone and
 6 whether there was anything that you should have brought
 7 to your attention?
 8 A. I may have done, but it would be at the — "How did
 9 everything go yesterday? Was everything okay?", and if
 10 they say no, then I would, to a certain extent, have
 11 trusted them to use their judgement, yes.
 12 Q. At this point, through this two-day absence, you say,
 13 during which the rig, you say, was built, you know
 14 you're going to be signing — unless there is a complete
 15 failure, of course — a test report and a classification
 16 report which identifies with precision the components of
 17 the rig.
 18 My question really is: why are you not at least
 19 curious enough to have a full report given to you as to
 20 precisely what has gone onto that test rig?
 21 A. I think in a way, like was said yesterday, we're
 22 probably too trusting in what the client has told us is
 23 going up, I think.
 24 Q. Yes.
 25 You said in your evidence just this morning that

15

1 this was a very poorly put together rig. Did that not
 2 concern you?
 3 A. Not necessarily. The client ultimately is the person
 4 who puts together their rig. If they're not controlling
 5 the quality of the construction from their
 6 subcontractors, then that's down to them.
 7 Q. Given that the BS 8414 test, if it's passed, is only
 8 a test result which can be used for a cladding structure
 9 which is exactly the same as that tested, were you not
 10 concerned that this was a very poorly put together rig?
 11 A. I think I did comment that it didn't look very neat.
 12 Q. Coming back to the 8 millimetres point, I feel bound to
 13 put to you this: you knew that the Marley Eternit ruby
 14 coloured boards were 8 millimetres because you signed
 15 for the delivery report, and knowing that fact, unless
 16 you had known there was something behind the
 17 8 millimetres, you would have noticed that there was
 18 a 4-millimetre indent at those two layers on the rig.
 19 A. You mistake signing for a delivery note with actually
 20 going through the packaging and checking everything is
 21 there. As I'd stated earlier, once that is on — we
 22 signed for it because we're clearly the person there,
 23 and on the day it just happened to be me. It could have
 24 been any other person in the hall, and to a certain
 25 extent even people who weren't working on the cladding

16

1 would sign for that, and it was for the client to check
 2 their material. It wasn't my job to check that in. And
 3 as I'd said earlier, it was missed that that was
 4 an 8—mil.
 5 So as I didn't know that it was an 8—mil at the
 6 time, I didn't think, "Well, hang on, why have they got
 7 an 8—mil?", because my understanding was that the whole
 8 thing was 12—mil overall, not with this 8—mil
 9 ruby—coloured board.
 10 Q. Now, let's move to after the test.
 11 Mr Roper says in his evidence — and this is
 12 {Day71/128:4—6}, but we don't need to go to it — that
 13 after the second test, generally there is a period of
 14 two or three weeks where the rig is deconstructed.
 15 That's right, isn't it, I think?
 16 A. We normally try to get them to do it very quickly, but
 17 I think for some reason he couldn't get Simco to come
 18 back straight way.
 19 Q. Although you were away at a first—aid course, as you
 20 told us, while the rig was being installed, you would
 21 have seen it being dismantled; yes?
 22 A. Again, I can't recall what ... I think you're under the
 23 impression that I was there all the time and this was
 24 all I ever did, and it wasn't all I ever did. I was
 25 running on other projects, we were working I think at

17

1 the time on some other projects for the Government, and
 2 I worked with other colleagues. So I may have been
 3 there, but I don't recall being there.
 4 Q. How many rigs does the Burn Hall accommodate?
 5 A. Four.
 6 Q. And therefore one of those four was the Celotex rig;
 7 yes?
 8 A. It was, yes, yes. So the other three may have had other
 9 people on there. At the time, I think, in around that
 10 sort of time we were doing other projects for the MCHLG,
 11 so there was a lot going on in the hall, and I wasn't
 12 specifically concentrating just on one project. So ...
 13 Q. Let's look at {CEL00000950}, please. This is
 14 a photograph sent by Patrick or Patch Jones of Simco to
 15 Mr Roper. Mr Jones was responsible for the strip—down
 16 of the rig.
 17 Now, we can see from this photograph that it was
 18 clearly taken during the strip—down, because we can see
 19 the fire damage.
 20 A. Yes.
 21 Q. Yes. There is an email dated 19 May 2014 — the test
 22 was on 2 May — whereby Patch Jones sends Mr Roper this
 23 photograph. The reference for that email is
 24 {CEL00000947}. We had better just have that there so
 25 you can have that confirmed to you. That's all it is.

18

1 Patch Jones, 19 May 2014, to Jon Roper, "bre":
 2 "John,
 3 "Regards,
 4 "Patch."
 5 And although the attachment isn't identified in the
 6 email, take it from me that this photograph is what was
 7 sent.
 8 So we can know that the date of the photograph was
 9 at some point before or on 19 May. No later than 19 May
 10 at any rate.
 11 Now, go back to the photograph, please
 12 {CEL00000950}. We can see the white boards there, the
 13 magnesium oxide boards, clearly visible at the level 2
 14 thermocouple layer level and the top of the rig; yes?
 15 A. Yes, yes, that is obvious.
 16 Q. And we can see that they are barely burnt; yes?
 17 A. Yes, I can see that.
 18 Q. Are you saying that you never saw the rig in this state?
 19 A. No.
 20 Q. No?
 21 A. I think the photograph that was subsequently put in the
 22 report, the two boards to the left on the lower layer
 23 had been removed, and my understanding is that the — it
 24 looks like a partial board which is on the right—hand
 25 side and the section at the top was all that was in

19

1 place.
 2 Q. You can clearly see from this photograph the silver
 3 Celotex insulation material between the lower and the
 4 upper white bands, can't you?
 5 A. Indeed you can, yes.
 6 Q. So do you accept that if you had been standing there
 7 looking at the rig at the moment this photograph was
 8 taken, you would have seen the magnesium oxide layers at
 9 the level 2 thermocouples and the top of the rig
 10 affixed (?) over the insulation?
 11 A. Without a doubt, yes, yes.
 12 Q. Without a doubt, yes. But you're saying you never saw
 13 that?
 14 A. No. So to clarify, and I think I sort of said yesterday
 15 in terms of building the rig, what we would do is we
 16 would take drawings of the damage on the outer façade
 17 from ground level showing where the damage was done,
 18 where the board had broken or split or whatever, and
 19 then we would say to the client or the contractor,
 20 "Right, we're finished now, can you take the façade off
 21 and let us know when you've done that". So we wouldn't
 22 sit there and watch them take it down. So it obviously
 23 just happened to be that whoever went down to take the
 24 photograph which ultimately went into the report just
 25 happened to go down after this photograph was taken

20

1 while those other four bits of board were still on the
 2 rig. So had it been left any longer, then this would
 3 have never been identified.
 4 Q. Let's go to {BRE00005548}, please. That's the first
 5 page of the email run. I'd like page 6 of this document
 6 {BRE00005548/6}, please. Here is an email, the second
 7 email down, on 15 May 2014 —
 8 A. Can I just stop you, Mr Millett, is that okay? Is it
 9 supposed to be like that at the bottom with all that
 10 green and ...
 11 Q. You're quite right, it isn't. Indeed, it's like that on
 12 our system.
 13 I think in fact all I need from this is the passage
 14 in the text we can see.
 15 A. Okay, that's fine.
 16 Q. Well, in fact we can't see it. We can see the first
 17 sense.
 18 Mr Roper sends you an email on 15 May and he says —
 19 and I will see if we can get a better copy of this, to
 20 be fair:
 21 "I've spoken to Simco who are struggling to carry
 22 out a strip down of the rig Thursday or Friday next
 23 week. If I instruct Patch (installer) to strip down on
 24 Monday without me attending, would this be ok and can we
 25 prevent as much as possible our competitors being in

21

1 hall at that time? Also, would it be possible for you
 2 to [something] a couple of images once the guys have
 3 removed the façade so we have something on file which
 4 shows insulation ..."
 5 Now, the critical words are omitted, I'm afraid,
 6 because of the green smudge, but they are "below and
 7 above firebreak". Take it from me that the email says,
 8 "something on file which shows insulation below and
 9 above firebreak". Now, let's proceed on that basis.
 10 During the course of the day we'll get a better version
 11 of this and be able to show you that.
 12 A. That's fine, I'm happy if that's what it says.
 13 Q. Okay, well, thank you.
 14 Then we can see your reply on 15 May to Jon Roper:
 15 "Hi Jon, this would be Ok and I will put a camera up
 16 and get some good photos for the system coming down.
 17 I have also asked our other client to not be on site on
 18 Monday until after lunch, to allow you time to get your
 19 system back to a state where your IP is not compromised.
 20 I hope that is ok and if you could confirm Simco's
 21 attendance I will let our reception know to expect
 22 them."
 23 Did you take any such photographs?
 24 A. I probably would have instructed somebody to. I can't
 25 recall.

22

1 Q. You would have instructed someone to do it? You say
 2 there, "I will put a camera up and get some good
 3 photos". That rather indicates to Mr Roper that you're
 4 going to be the photographer. Was that not —
 5 A. No, "I" means I will do it or I will ask the apprentice
 6 to do it. I didn't ...
 7 Q. Okay. So you say you probably would have instructed
 8 somebody to, you can't recall. Were such photographs
 9 taken?
 10 A. They would have been taken as part of the requirement
 11 for the test report, yes, but as I said earlier, we
 12 tended to do them in batches. So as the external
 13 rainscreen came off, the pictures would be taken prior
 14 to that, and then we would take the insulation layer
 15 after that, and then we would then take the cement
 16 particle board. So they would be done in a specific
 17 way, but they wouldn't be, like, every single time
 18 somebody took a board off, we would take a photograph.
 19 They'd be done —
 20 Q. Yes, so there would be photographs of what was
 21 underneath the external rainscreen once it came off,
 22 wouldn't there?
 23 A. Indeed, yes, yes.
 24 Q. Where are those photographs? Have you seen them?
 25 A. I haven't seen them, no.

23

1 Q. Given that this was the process that you would have, you
 2 say, undertaken, either yourself or through somebody
 3 else on your instruction, can you account for the
 4 absence of those photographs?
 5 A. When I say I haven't seen them, they weren't given to me
 6 as part of this exercise, I don't think. One of the
 7 problems, and I think I said yesterday, was straight
 8 after the fire at the Grenfell Tower, for some reason
 9 all of the data pertaining to the whole of the cladding
 10 locked down and I understand moved into another area on
 11 the BRE server. So from there I've never — from that
 12 day, I've never had access to anything other than what
 13 I was provided by the BRE or the Inquiry.
 14 Q. At the time, though, you were asked by Mr Roper to take
 15 photographs, and you said you would or you'd arrange for
 16 those photographs to be taken, and you've explained the
 17 process. Why didn't you take steps to ensure that the
 18 photographs that you intended to be taken were taken and
 19 then you looked at them?
 20 A. I think they must be on the BRE system. As I say,
 21 I haven't had access to that since 2017 and, as far as
 22 I'm aware, I wasn't provided them as part of the
 23 exercise for this Inquiry.
 24 Q. Did you not check at the time to make sure that you had
 25 in your hands the photographs that Mr Roper wanted?

24

1 A. I can't recall. I probably — more than likely did, but
 2 I can't recall. But it's —
 3 Q. We will come later to photographs that found their way
 4 into the draft report.
 5 Let's go back to Mr Roper's evidence. Can we go,
 6 please, to {Day71/128}. I want to show you line 1:
 7 "Question: Did you think that they'd not referred
 8 to it in their draft because they hadn't been told about
 9 it, or because Phil Clark had kept it a secret, or some
 10 other reason?"
 11 Just pausing there, that's a question relating to
 12 something later on. His answer was this:
 13 "Answer: So after the second test, generally
 14 there's a period of two or three weeks where the rig is
 15 deconstructed. Jamie [Hayes], who wasn't present at the
 16 second test, came down to the BRE with me and spoke to
 17 Phil Clark, and we looked at it during deconstruction,
 18 and it was Phil Clark's view that the 6-mil magnesium
 19 oxide wouldn't have made any difference, and the reason
 20 for the test passing was the increase in the cladding
 21 panel from 8-mil to 12-mil. So I can only assume that
 22 he omitted that detail because of his view on that day."
 23 That was his evidence to the Inquiry when asked.
 24 Let me show you what he says in his(sic) witness
 25 statement, please. This is {CEL00010154/22} [Witness

25

1 statement of Jamie Hayes], paragraph 67 on that page.
 2 He says in that paragraph, I'll read the whole paragraph
 3 to you:
 4 "At a visit to the rig after the Second Test,
 5 I recall a conversation between PC [Phil Clark] at the
 6 BRE and JR [Jon Roper] where, when asked by JR, PC
 7 agreed that the rig had passed the Second Test so easily
 8 that he suspected that it would have passed even without
 9 the Additional Material, just using the thicker
 10 cladding."
 11 Pausing there, the additional material is or
 12 includes the 6-millimetre layer of magnesium oxide.
 13 He goes on:
 14 "My recollection of the conversation is that it was
 15 led by JR and PC's opinion in this regard was expressed
 16 in agreement with JR. We were on the second floor in an
 17 office looking down at the Second Test rig; we all got
 18 on well with PC and he was telling us about what it was
 19 like to work at the BRE, including that they had dealt
 20 with the burning of the cows when the mad cow outbreak
 21 occurred."
 22 Do you recall this conversation?
 23 A. No, I don't.
 24 Q. Do you deny it happened or do you simply not recall one
 25 way or the other?

26

1 A. I don't ever remember meeting Mr Hayes, Jamie Hayes,
 2 after the first test, to such an extent that, a bit like
 3 Mr Evans, I had to go back and re-watch the video to
 4 actually even find out who he was, and I can't recall
 5 ever meeting him other than at that first test.
 6 The other thing is that in that statement there are
 7 at least three things which are incorrect.
 8 Q. Let's identify those then.
 9 A. Could you bring the ...
 10 Q. Of course, paragraph 65 on page 22 {CEL00010154/22}.
 11 A. So, the first one would be, from my point of view,
 12 I didn't even know who Jamie Hayes was, so I don't
 13 understand why I would have had a conversation that he
 14 alleges with somebody I didn't even know who he was, if
 15 I was trying to keep something secret.
 16 It was at that time very rare that we took people
 17 upstairs, and where he says we were on the second floor
 18 of the office looking down on the test rig, well, we
 19 didn't have an office on there, and the building is only
 20 a single-storey building, so I don't understand where he
 21 thinks he would be on a second-storey floor looking down
 22 at a test rig. The only room that you could see that
 23 from was a tearoom, not an office.
 24 The only thing he's got right there is that I may
 25 have mentioned at — not necessarily to him, it might

27

1 have been in the first test, about the mad cow, and he's
 2 just remembered that and used it as a prop to keep his
 3 argument up.
 4 Q. Do you deny ever having a conversation with Mr Roper
 5 after the test about the use of a magnesium oxide panel
 6 at the level 2 thermocouples and at the top of the rig?
 7 A. Yes, I do, yes, categorically.
 8 Q. Do you say that Mr Roper is lying about this
 9 conversation, or is it that you simply can't remember?
 10 A. I would say he was lying. I cannot ever remember
 11 meeting Jamie Hayes other than at the first test.
 12 Q. You can't remember meeting him, but do you deny meeting
 13 him?
 14 A. As much as not remembering is a denial, yes, I do deny
 15 meeting him.
 16 Q. It's not, there is a difference.
 17 A. Sorry, say again?
 18 Q. It's not the same. Can you swear you never met him?
 19 A. On that day, I would swear I never met him, no. I have
 20 absolutely no recollection of that conversation or
 21 meeting him.
 22 SIR MARTIN MOORE—BICK: Mr Millett, I think we'd just better
 23 clarify one thing, because the witness has referred more
 24 than once to meeting and having a conversation with
 25 Mr Hayes. I think I'm right in saying that what is

28

1 referred to in that paragraph is a conversation with
 2 Mr Roper.
 3 MR MILLETT: Indeed.
 4 SIR MARTIN MOORE—BICK: So, Mr Clark, what Mr Roper(sic) is
 5 saying in that paragraph of his statement is that you
 6 had a conversation with him, Mr Roper, after the second
 7 test at the BRE Burn Hall. I just want to clarify that.
 8 A. Yes, yes. Again, I don't ever recall and I deny that
 9 that conversation took place.
 10 SIR MARTIN MOORE—BICK: Right. Thank you.
 11 MR MILLETT: Mr Chairman, to be fair to the witness,
 12 Mr Roper's oral evidence was that Mr Hayes was present
 13 during such a conversation. So, we have that evidence.
 14 Let me just put it to you, then, squarely on the
 15 basis of Mr Roper's evidence, {Day71/98:19}, please. At
 16 line 19 he's asked the question:
 17 "Question: Do you recall having a conversation with
 18 Phil Clark about the use of 6—millimetre magnesium oxide
 19 in those two locations on the rig?
 20 "Answer: Yes.
 21 "Question: Do you remember when those conversations
 22 were?
 23 "Answer: Initially when we were talking to the BRE
 24 about re—testing —
 25 "Question: Yes.

29

1 "Answer: — following the meeting with Jamie, Paul
 2 and Rob, I think I put a phone call in to Phil to
 3 suggest that we were looking to re—test. We'd taken on
 4 board obviously what we had learned from the first test
 5 and we were going to look to increase the cladding panel
 6 to 12—mil, and use magnesium oxide at fire barrier
 7 level 2.
 8 "Question: What about the top of the rig?
 9 "Answer: I don't know whether I mentioned to him
 10 about the top of the rig or not, but ...
 11 "Question: Looking back on it, are you in any doubt
 12 that, at least as at the date of the test, Phil Clark
 13 was well aware that the rig included a 6—millimetre
 14 magnesium oxide panel at the level 2 thermocouples and
 15 at the top of the rig?
 16 "Answer: Yes.
 17 "Question: You say yes; are you in any doubt?
 18 "Answer: Oh, sorry, no.
 19 "Question: You're not in any doubt at all?
 20 "Answer: Not in any doubt, no."
 21 Now, I put that to you. Do you accept that
 22 evidence?
 23 A. No.
 24 Q. Do you say that Mr Roper is lying, or just that his
 25 recollection is faulty?

30

1 A. I have absolutely no recollection of that conversation
 2 ever happening, so I would say he was both lying and his
 3 recollection is faulty.
 4 Q. I'm not sure it can be both, but never mind.
 5 Now, can we go to your head cam footage, please, at
 6 {BRE00005700}. I'm going to do rather the same exercise
 7 as we did together, Mr Clark, with the February test:
 8 we're going to look at some of the extracts from the
 9 head cam of the May test and compare it with the
 10 transcript. Yes?
 11 A. Yes, yes.
 12 Q. Can I just ask you, before we get into the detail, was
 13 the use of a head cam standard operating procedure at
 14 the BRE at this time?
 15 A. It wasn't standard operating procedure, but I thought it
 16 was prudent to do it, and I think you'll sort of —
 17 you'll look at it when we visit the Kingspan test.
 18 Because one of the problems we had was if we were in
 19 a position where a decision was made, we had had
 20 incidents where clients had then subsequently questioned
 21 something, and I just thought this was a useful — (a)
 22 a useful aide memoire for myself, and also it just was
 23 a useful thing to have. So it wasn't standard operating
 24 procedure, but it was something I had personally
 25 adopted.

31

1 Q. I see. Why had you personally adopted it?
 2 A. There were on occasions where, if a test, for example,
 3 was in a position where the fire growth was quite rapid,
 4 it wasn't always easy to type and watch at the same
 5 time, so it gave me the ability to view what I was
 6 seeing in real time as I was making notes as well, so it
 7 gave me almost like a head—on view of what I was seeing
 8 as things were happening.
 9 Q. Yes, I see. So this was really a personal record for
 10 you yourself?
 11 A. No, it was always put onto the file, as far as I'm
 12 aware. So we would download all of the video from the
 13 fixed tests and all of the video from these helmet
 14 cameras would go on there as well, and there would
 15 always be a file which said — identified which wall the
 16 view was and there would also be a head camera file on
 17 the system.
 18 Q. Let's go to the footage, {BRE00005700}, which is the
 19 first extract we need to look at together. I would like
 20 to have played, please, the extract from 04.10, and
 21 listen out for the quote or the statement that starts
 22 five seconds later at 04.15, and it will run to 04.35.
 23 Can we please play that and have the audio up as
 24 loud as possible, please, Mr Operator.
 25 (Video played)

32

1 Now, let's look at the transcript of that, please,
 2 at {INQ00014218/3}.

3 Again, I take it you have had an opportunity to
 4 cross-check this transcript with the video footage,
 5 Mr Clark; yes?

6 A. I have indeed, yes.

7 Q. Can you confirm you are male speaker 1?

8 A. Yes, from, "The advantage you have", yes, I would.

9 Q. Let's look at that.

10 You can just about hear it on the audio, but it's
 11 very clear from the transcript, you say:

12 "The advantage you have as well, it seems strange
 13 but see how that flame seems to have ceased now that the
 14 board is there, because you're losing a lot of the
 15 energy from behind it. The other thing as well is it's
 16 something that's quite big behind the board coz it
 17 extends the flame vents it's not (inaudible) the board
 18 away."

19 Now, you have provided some comments on this, and
 20 we'll come to those, but I just want to ask you some
 21 questions about this first, if I may, please.

22 Can we look at Mr Roper's statement at
 23 {CEL00012300/3}, paragraph 4.2, please. This is
 24 a statement of Mr Roper's which I should just tell you
 25 he provided to the Inquiry after he had given oral

33

1 evidence to the Inquiry in November, and it's
 2 a statement that you can see from page 6
 3 {CEL00012300/6} — if you just go to that, so everyone
 4 can see it — is dated 14 January of this year, 2021.

5 If we go back to page 3 {CEL00012300/3}, please, we
 6 will see paragraph 4.2, and he says:

7 "In regard to {BRE00005700} — it is my view that the
 8 statement made by Mr Clark at paragraph 17 (the
 9 penultimate paragraph of 'male speaker 1' [which is what
 10 I showed you]) is a reference to the 6mm magnesium oxide
 11 board. This is because he refers to 'the advantage you
 12 have as well, it seems strange but see how that flame
 13 seems to have ceased now that the board is there' —
 14 clearly, whatever is being referred to was not installed
 15 on the rig at the first test, but it is present for this
 16 second test. As a result, given the context, this leads
 17 me to conclude this was a reference to the 6mm magnesium
 18 oxide board."

19 Now, I just want, before I put this further to you,
 20 to just explain his references in his statement.

21 {BRE00005700} is the video, and the transcript is the
 22 one we've just been looking at, {INQ00014218}. Just for
 23 the record, the next video we're going to look at,
 24 {BRE00005701}, has an associated transcript at
 25 {INQ00014219}, and the third one, third video clip

34

1 {BRE00005702}, is the video with the transcript
 2 associated with it at {INQ00014220}.

3 Now, I've read all that into the record so that
 4 people can see that for themselves.

5 I've shown you paragraph 4.2 there on the screen,
 6 and he says that he understands that the comment about
 7 "now that the board is there" refers to something that
 8 wasn't present at the first test, and in its context,
 9 his conclusion, looking back on the conversation at
 10 which he was present, was that that was a reference to
 11 the magnesium oxide layer. Do you agree?

12 A. No, I don't.

13 Q. Let's go back to the transcript, then, so you can think
 14 about it before you answer. {INQ00014218/3}.

15 (Pause)

16 A. Do you want me to answer a question, sorry?

17 Q. Yes, I'm inviting you to tell us why you don't agree
 18 with what Mr Roper has told us in his second witness
 19 statement by way of his conclusion.

20 A. Oh, right, because I was talking about the small amount
 21 of flaming which was still visible between the — on the
 22 video you can see there the lower white board and the
 23 board above it, and how that flame was dying down, so
 24 I don't see how he can get that from that layer where
 25 the board — the magnesium board was an extra 1.5,

35

1 2 metres above where the flame was that I was talking
 2 about.

3 Q. But what is the "something that's quite big behind the
 4 board", what's that a reference to?

5 A. Flaming. That was ... this was a way of explaining how
 6 flame lengths changed when it got behind the board. But
 7 obviously if you've lost the board in front of it, then
 8 that energy is dissipated to the local environment as
 9 opposed to heating up the material which still has the
 10 board in front of it. So that was the discussion there.

11 It was in no way to do with that layer where the ruby
 12 board was, because the fire wasn't even at that level.

13 Q. So you say, do you, that the reference to the "something
 14 that's quite big behind the board" is a reference to
 15 flaming vents or flame lengths; is that right?

16 A. Flame lengths, yes, flame lengths.

17 Q. And to be clear, we have seen a letter from your
 18 solicitors, BRE's solicitors — which is at
 19 {BRE00035419} for the record — which has comments on
 20 the transcript.

21 Cutting straight to the point, you're telling us,
 22 are you, that what you were saying was that "something
 23 that's quite big behind the board" refers to flames,
 24 does it?

25 A. Yes, yes. Is it possible you could just bring the still

36

1 of the video back?

2 MR MILLETT: Yes. Let's bring the video back, then —

3 SIR MARTIN MOORE—BICK: I'm sorry to interrupt again, but

4 can you just clarify for my benefit, Mr Clark. Can we

5 have the transcript back up on the screen, please.

6 Thank you very much.

7 You can see in the second line the words "now that

8 the board is there". When you refer to the board, can

9 you just make it clear what you're referring to?

10 A. Yes, sir, that's the rainscreen façade board that is

11 still visible. Maybe it's ... probably not the most

12 eloquent conversation I've ever had, but — so it's

13 referring to the rainscreen board, sir.

14 SIR MARTIN MOORE—BICK: And why did you say "now that the

15 board is there", can you recall?

16 A. I don't know, it's just speaking — a general

17 conversation.

18 SIR MARTIN MOORE—BICK: Yes, all right, thank you very much.

19 Yes, I'm sorry, Mr Millett, on you go.

20 MR MILLETT: Yes, thank you, Mr Chairman.

21 Well, let's then go forward —

22 A. Sorry, would you like me to just explain the still of

23 the video? I think that's what we were going to quickly

24 do.

25 Q. You're quite right. Yes, it's a video. I'm not sure

37

1 we've got the still of it.

2 A. No, if it's paused, that's fine.

3 Q. You tell us where you want to pause. The video is

4 {BRE00005700}. We can start it at the beginning, but

5 you tell us where you want to pause and then tell us

6 what you would like to show us on it, please.

7 I'm afraid, my fault, I should have given a trigger

8 warning earlier on that there are flames or at least

9 smoke.

10 (Video played)

11 A. If you could just play it to the end, it should be fine.

12 There it's fine, there.

13 So if you can go back about two or three frames, so

14 we can see the whole of the rig. There, that's perfect,

15 yes. Sorry.

16 Q. I think we have to go back a little bit more.

17 A. Just a little bit back.

18 Q. Go from the beginning and shout "stop".

19 A. Stop. That's fine.

20 So if you can see the lower board which is still

21 intact but is split right down the middle, there's the

22 board above it where it's clearly fallen away, and to

23 the right there's a bit of residual flaming, and then

24 round to the left, just where my helmet starts, there's

25 some more flaming on the wing wall. So I was talking

38

1 about that area there, and how the flame had died down

2 where the board was no longer in place but was still

3 burning where the board was still in place on the wing

4 wall. And as you can see, that is in the region of

5 1.2 metres away from the lower edge of the ruby board.

6 So it's — the conversation is in no way to do with the

7 magnesium oxide board.

8 Q. Why did you say "now that the board is there"?

9 A. I think it was just a poor discussion, really. "Now" —

10 there was no reference in the word "now", just a general

11 conversation with a misuse of a word, I suppose.

12 Q. Right.

13 Let's go on to the next video, then, {BRE00005701}

14 and let's play from the beginning to 30 seconds in.

15 (Video played)

16 I think you could hear that quite clearly, but if we

17 need to replay it, we can.

18 Can we please go to {INQ00014219/2}, which is the

19 transcript. You can see male speaker 1, and again

20 that's you, isn't it?

21 A. Yes.

22 Q. You say:

23 "... to try it out it's done all right in terms of

24 going up to that second height isn't it? Nothing in the

25 standard that says you actually have to test the barrier

39

1 in terms of um that level so if it's not got there then,

2 an advantage."

3 Now, do you accept that that's a fair transcription

4 of what you could be heard saying on the audio?

5 A. I do, yes, yes, I agree with that.

6 Q. Let's go to Mr Roper's second statement again,

7 {CEL00012300/4}, and I'm just going to show you what he

8 says at paragraphs 4.6 and 4.7. He says, in relation to

9 this audio, paragraph 4.6:

10 "I understand his references to 'that second height'

11 and 'level' to refer to the level two fire barrier and

12 his assessment that the fire had not reached the point

13 on the rig at which the 6mm magnesium oxide board was

14 present."

15 Do you agree with that?

16 A. Yes.

17 Q. Paragraph 4.7:

18 "I interpreted this as an indication from Mr Clark

19 that he considered that the 6mm magnesium oxide board

20 had not made an impact on the test and, had it not been

21 present on the rig, the result of the test would have

22 been the same."

23 Do you agree with that?

24 A. No.

25 Q. Why not?

40

1 A. Because I was talking about the barrier. It hadn't
2 affected the barrier, from what I could see. So I think
3 this refers back to the first test, where the board that
4 sat over the intumescent barrier had pulled away, and it
5 was basically saying it didn't even get to that level,
6 so it didn't even impact on that, and I think we —
7 yeah, so it was that.

8 Q. Just while we're on this point, do you accept that you
9 are giving advice as we go through the test, a sort of
10 running commentary about how the test is going, from
11 your professional viewpoint, to your client?

12 A. I don't understand how — advice in what way?

13 Q. You're giving them the benefit of your professional
14 opinion about how the test is going, for example by
15 saying that there is "nothing in the standard that says
16 you actually have to test the barrier".

17 A. It was a general conversation post-test. Not advice,
18 no.

19 Q. Right.

20 Let's go to the last of the video clips, please,
21 {BRE00005702}. Now, the audio quality, I'm afraid, is
22 not very good, but let's play from 30 seconds to
23 50 seconds. The quote or section I want to ask you
24 about is at 36 seconds, so 6 seconds into the clip. Can
25 we please show that.

41

1 (Video played)

2 Now, let's look at the transcript of that,
3 {INQ00014220/2}. Let's look at the first comment by
4 male speaker 2, and male speaker 2, I should say, is
5 Mr Roper.

6 A. That is correct, yes.

7 Q. We can see he's gesturing towards the rig, we saw that,
8 and he says:

9 "You can see behind that rose—coloured panel that
10 the insulation below the barrier and above the barrier
11 (inaudible) charred (inaudible) other side of the
12 barrier."

13 Then you say:

14 "Yea yea, same you've got, managed to ignite it um I
15 think through this second gap up actually on this board
16 without the board really doing much, but it's only at
17 the side ..."

18 Et cetera.

19 Can you remember why Mr Roper was drawing your
20 attention to a rose—coloured panel?

21 A. I think he was concerned about how the intumescent had
22 fired off. So he was talking primarily about the
23 barrier, the firebreak at that point, and he then
24 obviously says how it's charred above and below the
25 barrier, which to a certain extent would be

42

1 an indication of how well it performed at that level.
2 Other than that, no, there's ... we were talking about
3 the intumescent fire barrier, as far as I was concerned.

4 Q. Are you sure he wasn't commenting on the effect of the
5 6—millimetre magnesium oxide barrier or layer?

6 A. No, we were talking about a fire barrier, as far as
7 I was concerned.

8 Q. Let's go back to the video, and play from 01.30 to
9 02.00, and the quote I want to ask you about is at
10 01.49. Can we please play that.

11 (Video played)

12 Now, it's not very clear, I accept, but let's look
13 at the transcript. If we stay on this transcript,
14 please, and go to halfway down page 2 {INQ00014220/2},
15 we can see male speaker 1, that's you, and you say:

16 "MALE SPEAKER 1: Yea yea. So those have been
17 effective, pretty good. But it shows in a way that if
18 you can keep that there, then the barriers are quite
19 effective, and hopefully with that intumescent fibre
20 you've got that gap slightly smaller and obviously the
21 your board doesn't appear to have deformed in any way
22 (inaudible) so hopefully that's um."

23 "MALE SPEAKER 2 [Mr Roper]: Like I say it's a shame
24 commercially.

25 "MALE SPEAKER 1 [you]: Yea that potentially,

43

1 potentially one other thing is about having the board
2 flaming ..."

3 Now, again, was the board not deforming a reference
4 to the magnesium oxide board?

5 A. No, it was a reference to how the 12—millimetre board
6 had performed overall, the fact that the second board up
7 was still — primarily still in place on the wing,
8 I think on the first test that had fallen away and
9 distorted very badly, and in the first test the board at
10 the barrier level had distorted badly, so it was
11 a reference to that specifically.

12 You may come to it, but that comment there has
13 actually missed out some important pieces as well
14 which ... which Mr Roper hasn't picked up in his
15 statement.

16 Q. Okay, we will come back to that in a moment.

17 Can I just put to you what Mr Roper says about this
18 in his second statement, {CEL00012300/4} at
19 paragraph 4.8 and 4.9. This is Mr Roper at 4.8, I'll
20 just show you that, he says:

21 "In regard to {BRE00005702} — a key indirect
22 reference to the 6mm magnesium oxide board is at
23 paragraph 3 where I directed the conversation towards
24 'that rose—coloured panel'. Whilst this will be
25 explored further in section D, the reason I referred to

44

1 that panel was because the 6mm magnesium oxide board was
 2 located behind the rose—coloured panels on the rig.”
 3 Then at 4.9 he says:
 4 “From paragraph 8 the conversation focuses almost
 5 exclusively on the 6mm magnesium oxide board. In
 6 particular, Mr Clark says ...”
 7 Then we can see the quote that I put to you. In the
 8 last sentence he says:
 9 “The 6mm magnesium oxide board sat behind the rose
 10 coloured panel and so was not clearly visible from the
 11 ground.”
 12 You’ll notice that he has highlighted the word
 13 “appear” in bold there, but he says at the end there
 14 that the 6—millimetre magnesium oxide board sat behind
 15 the rose—coloured panel, et cetera.
 16 Now, if he is wrong — well, first of all, do you
 17 accept what he says in paragraph 4.8?
 18 A. That he directed us towards the magnesium oxide boards,
 19 or — sorry, the rose—coloured panel? Yeah, I accept he
 20 directed to the rose—coloured panel, but the
 21 conversation was a continuation of the conversation
 22 about how the fire barrier had performed.
 23 Q. Why was he pointing at the rose—coloured panel
 24 particularly at that point during the test?
 25 A. Because that’s where the fire — intumescent

45

1 fire barrier sat.
 2 Q. The fire hadn’t got up that far yet, had it?
 3 A. No, exactly, that’s what ...
 4 Q. And you were having a conversation with him about the
 5 performance of the rainscreen, so to speak, lower down
 6 the rig where the fire had attacked it; yes?
 7 A. Yes, yes. And one of the things with the intumescent is
 8 that if the flame has gone up the back of the panel,
 9 what it does, as it reacts, it fills in the gap. So we
 10 were talking about — to my understanding of that
 11 conversation, we were talking about how that gap had
 12 been filled, and the fact that none of the boards had
 13 distorted meant that that was effective in that area and
 14 hopefully would be effective in that area and the char
 15 levels would show that.
 16 Q. Can we go back to the text, please, then, at
 17 {INQ00014220/2}, the text of the transcript. In the
 18 first reference I showed you at the top of that page,
 19 male speaker 2, Mr Roper, he points to the rose—coloured
 20 panel but doesn’t say anything about the intumescent,
 21 does he, the intumescent strips?
 22 A. Sorry, which paragraph, sorry?
 23 Q. Third paragraph down, male speaker 2, “You can see
 24 behind that” — sorry, my fault, you need the top of the
 25 page.

46

1 A. Oh, right, sorry.
 2 Q. He doesn’t actually say anything about the intumescent
 3 strips there, does he?
 4 A. He says “above the barrier ... charred ... [either] side
 5 of the barrier”.
 6 Q. He’s not saying, “Look at the rose—coloured panels,
 7 isn’t it interesting how the intumescent strips have
 8 worked”, is he?
 9 A. No, but that was the conversation we were having earlier
 10 about how they, yeah —
 11 Q. And in the next part you don’t say anything which would
 12 indicate that you’re talking about the intumescent
 13 barriers, do you?
 14 A. No, because I think that conversation then moves on and
 15 I’m talking about the wing wall there.
 16 Q. Yes. And then —
 17 A. So I’m not talking about the rose—coloured barrier. So
 18 the next section, for some reason I’ve moved on to
 19 a different section and I’m talking about how it’s
 20 caught on the wing wall and only gone up 2.5 metres on
 21 the wing wall, I think. That’s ... and then we start
 22 talking about how it’s not burned across. So that has
 23 come away from the discussion of the rose—coloured
 24 barrier.
 25 Q. I see.

47

1 Now, can we then go to your solicitors’ letter at
 2 {BRE00035419}. I think this is what you wanted to refer
 3 to when you said that there were other comments, and
 4 tell me if that’s wrong, but page 6 {BRE00035419/6},
 5 I think, is where you deal with this transcript. You’ve
 6 got some corrections there and some comments.
 7 There is a correction where Mr Roper says “It’s
 8 a shame we put calcium silicate behind it”, and you say
 9 that’s not currently recorded in the transcript but can
 10 be heard clearly from the audio. Your comment is:
 11 “... this comment assists to explain what Mr Roper
 12 was likely talking about in the subsequent partially
 13 inaudible comment currently recorded as ‘It’s a shame
 14 commercially ...’, and also potentially Mr Roper’s
 15 comment at paragraph 13 ‘(inaudible) we were and 9 being
 16 overcautious to begin with’.
 17 “Mr Clark understands that the potential cost of
 18 using calcium silicate for the sheathing board may make
 19 the system less commercially competitive to one which
 20 used cheaper magnesium oxide board or cement particle
 21 board as the sheathing board.”
 22 So are you saying that this is actually a reference
 23 to the sheathing board and not the magnesium oxide
 24 board?
 25 A. Yes. Standing in — and having that conversation, the

48

1 way he was looking and said that, it — to my mind it
 2 meant he was talking about the sheathing board, yes.
 3 Q. But in fact it's correct, isn't it, that BRE have
 4 recorded the sheathing board as being magnesium oxide?
 5 A. It is, yes, but I think in my first draft there was
 6 something that later got corrected where it was calcium
 7 silicate board, I think. At some point we may have had
 8 a conversation that ... thought that was it.
 9 Q. Why would he be saying that it was a shame they'd used
 10 calcium silicate instead of magnesium oxide as
 11 a sheathing board when in fact the sheathing board was,
 12 we know, magnesium oxide?
 13 A. Like anything, in a conversation you'll have
 14 a conversation with someone and you sometimes
 15 occasionally misspeak, and reading that, maybe he
 16 misspoke, but at the time, and listening back to it, my
 17 understanding was that's what he was saying, "It's
 18 a shame we put it behind ['it', as in the insulation]
 19 because it's ... to us it's not very commercial".
 20 Q. Isn't it a reference to the magnesium oxide layer behind
 21 the panels?
 22 A. I don't understand how that would be not commercial.
 23 MR MILLETT: Mr Chairman, I note the time, it's 11.20.
 24 SIR MARTIN MOORE-BICK: Yes.
 25 MR MILLETT: We haven't quite finished this transcript

49

1 exercise. I'm not far from the end, but it's probably
 2 wise to have a break now if it's convenient to you.
 3 SIR MARTIN MOORE-BICK: I think that would be sensible, yes.
 4 Now, I have had a little message suggesting that we
 5 may need to break for a little longer than usual for
 6 technical reasons.
 7 Mr Clark, what I'll say is we will take the break
 8 now. I will say we will come back at 11.35, but you and
 9 everyone else listening should be aware that we might
 10 have to put that back a little depending on the
 11 resolution of the technical issues. So we will get back
 12 to you either at 11.35 or as soon as we can after that.
 13 THE WITNESS: Okay, sir, thank you very much.
 14 SIR MARTIN MOORE-BICK: Please remember not to talk to
 15 anyone about your evidence during the break.
 16 THE WITNESS: Indeed, thank you, yes.
 17 SIR MARTIN MOORE-BICK: All right, thank you very much.
 18 (11.21 am)
 19 (A short break)
 20 (11.35 am)
 21 SIR MARTIN MOORE-BICK: Welcome back, everyone. We're going
 22 to continue now hearing from Mr Clark.
 23 Hello, Mr Clark, are you there? Can you see me and
 24 hear me all right?
 25 THE WITNESS: I am here, sir, yes, I can see you and hear

50

1 you.
 2 SIR MARTIN MOORE-BICK: Thank you very much.
 3 When you're ready, Mr Millett.
 4 MR MILLETT: Yes, thank you, Mr Chairman.
 5 Can we then go to the video and play from 3 minutes
 6 to the end. This is the video we had before,
 7 {BRE00005703}.
 8 (Video played)
 9 Right. I think that was a good deal longer than we
 10 needed but I don't think it matters.
 11 Can we go to the transcript, please, for the piece
 12 I want to ask you about, {INQ00014220/2}, please. At
 13 the bottom of that page, you can see male speaker 1 —
 14 that's you, I think — and you say:
 15 "If it has, then you might find that the barrier's
 16 actually fired up and it's been effective. But if you
 17 look at (inaudible) you can see it's charred all the way
 18 through that level and it's, you've charred the wall,
 19 it's been pretty hot up there. Really good to see what
 20 it looks like when they take it down. It's the trouble
 21 in a way sometimes is if you wanted to get things done,
 22 but with the view I don't want to then spend a
 23 (inaudible) fortune doing every single iteration of it.
 24 So sometimes changing two things at the same time
 25 doesn't always give you a, an advantage but obviously

51

1 for the cost of tests certainly just to see build ups,
 2 just to see what happens."
 3 Now, why were you talking about changing two things
 4 at the same time?
 5 A. This is the scientific principle that if you change two
 6 key items, two key variables, you don't know which one
 7 has had a positive effect. So what I was saying is that
 8 this shows why you only change one, which would be the
 9 thickness of the panel, and by changing two you don't
 10 get — you don't always get what you think you're going
 11 to get, because then you don't know which one's had the
 12 effect.
 13 Q. What were the two things that were being changed to
 14 which you were referring there?
 15 A. No, I didn't say that you changed two things, I meant:
 16 this is why you don't change two things at once.
 17 Q. You say:
 18 "So sometimes changing two things at the same time
 19 doesn't always give you ... an advantage ..."
 20 What were the two things that were being changed?
 21 A. I wasn't talking about two things that had been changed,
 22 I was saying that this is why you don't change two
 23 things. My understanding was only one thing had been
 24 changed.
 25 Q. So why did you say, "So sometimes changing two things at

52

1 the same time doesn't always give you ... an advantage"?
 2 A. Because it doesn't. I think this — in light of what we
 3 know now, then it implies that I was of the
 4 understanding two things were changed, but that is
 5 a basic scientific principle that changing two things in
 6 an experiment or a test is not advisable.
 7 Q. Well, if you hadn't thought that two things had changed,
 8 what was the point of mentioning changing two things?
 9 A. I think we — it's this thing about ... the problem is,
 10 when clients do things, they want to get as much as they
 11 can out of a test, and sometimes they would say, "Can we
 12 do this and do that and do this", and the advice would
 13 always be: no, you change one thing, you see how that
 14 has an effect and you move on from there, and it was
 15 just like a — one of the things you probably have to
 16 remember is, to my mind, this was only the second test
 17 that Jamie Roper — sorry, Jonathan Roper had ever seen.
 18 It was a conversation between myself and somebody who —
 19 having a bit more experience, I was just trying to sort
 20 of say, "Look, scientifically you don't change two
 21 things at once because you don't know what's had
 22 an impact", and that was the conversation.
 23 Q. Why would you have needed to say anything about changing
 24 two things at once if you thought that only one thing
 25 had been changed, namely the thickness of the

53

1 Marley Eternit white panels acting as the rainscreen?
 2 A. Because it's — I'm not saying two things were changed,
 3 I'm saying the scientific principle is that you don't
 4 change two things at once.
 5 SIR MARTIN MOORE-BICK: Mr Millett, forgive me if I come in
 6 at this point.
 7 Mr Clark, just help me with this: it looks as though
 8 there had been some discussion about two things that
 9 might be changed. Do you know what those two things
 10 were?
 11 A. No, it's not a reference to that, sir, it's — the
 12 conversation is the fact that clients try to get as much
 13 as they can for their money out of a test, and they
 14 would, given the chance, change five things to suit
 15 themselves and to get as many answers as they can, but
 16 that, to a certain extent, doesn't give you necessarily
 17 the answers you want, and the scientific principle —
 18 and what you need to understand is my background has
 19 always been the science side of it as well as the
 20 testing, and as a very — my — the comment for that was
 21 to a young person who's fairly inexperienced —
 22 SIR MARTIN MOORE-BICK: I do understand the principle,
 23 and —
 24 A. And that was the only reason —
 25 SIR MARTIN MOORE-BICK: — what you're saying is it was

54

1 simply a statement of principle and nothing else?
 2 A. Yes, exactly, sir, that's what I —
 3 SIR MARTIN MOORE-BICK: Okay, thank you very much.
 4 Yes, Mr Millett.
 5 MR MILLETT: Mr Clark, why would the statement of principle
 6 that you don't change two things be applicable or
 7 relevant if you had thought at the time that only one
 8 thing had been changed?
 9 A. Because it's a scientific principle that you don't
 10 change two things at once, it's ... yeah.
 11 Q. $E=MC^2$ is also a scientific principle, but it wouldn't be
 12 relevant. Why was this principle relevant?
 13 A. It was just a general conversation between a client and
 14 myself post-test and it's just something that came into
 15 my head, nothing more than that.
 16 Q. What was in your head, I have to suggest to you, is your
 17 knowledge that in fact two things had been changed, and
 18 the scientific principle you were imparting to your
 19 client here reflected that.
 20 A. No, I disagree.
 21 Q. You disagree.
 22 A. It's easy to say that in hindsight because you know what
 23 was there, but in the post-test conversation, you talk
 24 about what comes into your head, and if — I've always
 25 been one of these people who has been very keen to share

55

1 knowledge with people, and I just thought it was
 2 something that would be useful to say. Had I known so
 3 many years later it would be twisted in that way, then
 4 maybe I would have thought twice about what I said. But
 5 that wasn't the context of the conversation, and that
 6 wasn't what I meant.
 7 Q. This, whatever else it was, was certainly advice you
 8 were giving to your client, wasn't it? It was the —
 9 A. Erm —
 10 Q. — imparting of a scientific principle.
 11 A. No, it's not advice.
 12 Q. What is it then?
 13 A. It's good science, I would say, and imparting a little
 14 bit of knowledge. Advice to that would be, yeah — no,
 15 it's not. I refute that.
 16 Q. You don't think that that's giving a science lesson to
 17 Mr Roper about —
 18 A. There's nothing in the — sorry, sir?
 19 Q. You don't think that's the giving of advice to Mr Roper
 20 about the application of the double change principle?
 21 A. Erm ... no. It —
 22 Q. Right.
 23 A. There's nothing in any of the standards that say you
 24 can't have a general conversation with your client at
 25 the end of a test.

56

1 Q. I'm going to put it to you squarely, Mr Clark: the
2 reason you said "Sometimes changing two things at the
3 same time" was not just the imparting of a scientific
4 principle, but was a clear reflection of the fact that
5 you knew that two things had been changed: the
6 thickening of the outer panel and the installation of
7 the 6-millimetre magnesium oxide layer behind the two
8 places on the rig.
9 A. No, no, that's — I'm sure I've had that conversation
10 with other people as well, and, no, I refute that.
11 Q. Can we go to page 66 of your witness statement
12 {BRE00005768/66} — I'm so sorry, I need to put
13 Mr Roper's version of this to you. Forgive me.
14 Can we go back to Mr Roper's second witness
15 statement, {CEL00012300/5} and look at paragraph 4.11.
16 You can see that he says there:
17 "In paragraph 12, Mr Clark then says 'it's been
18 pretty hot up there. Really good to see what it looks
19 like when they take it down'. This was a reference to
20 the 6mm magnesium oxide board; every other relevant
21 component could be seen clearly, apart from that board."
22 Pausing there, do you accept that?
23 A. No, this was ... no, it was to do with — my
24 understanding was that he'd already discussed about how
25 the insulation layer was charred and he wanted to see

57

1 what it looked like below and above the barrier, so that
2 was my understanding of what he said there.
3 Q. Then he goes on:
4 "Mr Clark further states, towards the end of the
5 same paragraph, 'So sometimes changing two things at the
6 same time doesn't always give you a, an advantage'. The
7 principal two things that were changed between the first
8 test and the second, and the 'two things' I understood
9 him to be referring to, were the thicker cladding panels
10 (12mm instead of 8mm) and the additional 6mm layer of
11 magnesium oxide board."
12 Now, I've already put this to you, but for
13 completeness, Mr Clark, do you accept what Mr Roper says
14 there?
15 A. No, I don't.
16 Q. Now, can we then go to your statement, please, at
17 page 66 {BRE00005768/66} and look together at
18 paragraph 273. You are answering a question at 10(k) as
19 follows, as you can see on the screen:
20 "Were you present during the test? Who else from
21 the BRE was present? If you were present, what, if any,
22 discussions do you recall taking place during the course
23 of the test? Between which individuals?"
24 In paragraph 273, you say in the third line:
25 "I do recall having a conversation with

58

1 Jonathan Roper and another person, whose name I cannot
2 recall, at the end of the test and commenting on the
3 comparative performance of the system when compared to
4 the previous system."
5 Now, you don't mention or say what those comments
6 were in your statement.
7 A. I thought I did.
8 Q. Well, you go on to say:
9 "Having reviewed the test footage and head camera
10 footage, I note ..."
11 Tell us, what was the content of that conversation?
12 A. It's what you've just seen.
13 Q. I see. That again would be advice, wouldn't it? You
14 would be giving them your professional opinion about the
15 differences between the February test and the May test;
16 is that right?
17 A. No, I don't agree.
18 Q. What was the point of the conversation that you refer
19 to, then, about the comparative performances of each of
20 the tests?
21 A. Erm ... there were some references about the comparative
22 performance, but that's not giving advice. The advice
23 that you refer to would be how you — what do you need
24 to do to pass a test. What we're talking about is
25 statement of fact, the direct comparison between two

59

1 tests which — for the same client, which are directly
2 comparable. There's no advice in that.
3 Q. Is there no professional judgement brought to bear when
4 you were making the comparison?
5 A. No, no. Saying a board has distorted and fallen away
6 and saying a board hasn't distorted and fallen away is
7 stating two facts.
8 Q. Yes, let's go over the page, shall we. You say at the
9 bottom there: {BRE00005768/66}
10 "Having reviewed the test footage, and the head
11 camera footage, I note that I made [turn the page
12 {BRE00005768/67}] a comment about the decorative facing
13 along the lines of 'there is nothing stopping you making
14 a decorative finish' and I clarified that saying
15 'something like brick slips'."
16 That's advice, isn't it?
17 A. It was — it was a continuation of the conversation
18 where Mr Roper had said it didn't look very pretty.
19 Q. Yes —
20 A. Yes.
21 Q. — what he could use?
22 A. Potentially, that piece probably was, yes. I would say
23 the rest wasn't.
24 Q. I'm going to turn, then, back to a topic we covered
25 a little bit earlier before we started looking at the

60

1 audio and the video, which was subsequent conversations
2 with Celotex about the magnesium oxide board, just to
3 finish that off.

4 Mr Hayes said in his evidence that he witnessed the
5 conversation between you and Mr Roper about the
6 magnesium oxide board after this test, and I want to
7 show you what he says.

8 Please can we have up {Day74/146}. I asked him at
9 line 1 on that page:

10 "Question: So far as you know, was Phil Clark aware
11 that 6 millimetres of magnesium oxide was to be used in
12 this test in the way you have described?

13 "Answer: Yes.

14 "Question: How do you know that?

15 "Answer: Because of the conversation that I heard
16 between Jon and Phil Clark, but also, in a more general
17 sense, the Burn Hall was a facility which had three test
18 rigs and then a couple of offices attached to it, and
19 I think that Phil ran it and was based there, so his
20 main office was in the same building, and I think that
21 they did lots of tests of different types, and I think
22 that he would have been constantly — because of the
23 layout of it, I think he would have been constantly
24 walking past that rig and looking at it every single day
25 from its initial day one of construction to its last day

61

1 of dismantling."

2 Now, that's the reason he gives, particularly "the
3 conversation I heard between Jon and Phil Clark",
4 specifically. Is he wrong about that, do you think?

5 A. As I said earlier, I have absolutely no recollection of
6 meeting Jamie Hayes other than at the first test.

7 Q. Right. You see, he recalls witnessing the conversation,
8 as you can see that he says there in his evidence.

9 A. Yes, but again, that statement has ... we have four rigs
10 in the — so that's incorrect. He's making assumptions
11 that — from meeting me once, and I would say everything
12 in there is his assumption and interpretation, which are
13 incorrect. I wasn't in the lab every single day,
14 I didn't walk past every single rig every day, I was
15 working on other projects away, I was writing test
16 reports, so everything there I think from him is
17 supposition from his — on his part.

18 Q. Well, looking at what he says at lines 6 to 8, he says,
19 "Because of the conversation that I heard between Jon
20 and Phil Clark". Just focusing on that, do you say that
21 he has misremembered something or that he's making it
22 up?

23 A. I would say he's making it up.

24 Q. Why would you say he's making it up?

25 A. As I said earlier, I have absolutely no recollection of

62

1 him ever coming to the Burn Hall other than at the first
2 test.

3 Q. Why would he make it up?

4 A. Because it suits their argument.

5 Q. Why would Mr Roper make it up?

6 A. Because it suits their argument.

7 Q. What argument?

8 A. That the BRE knew so it was okay. I don't understand
9 why an organisation which has clearly lied to its own
10 internal employees would tell a third party who doesn't
11 work for that organisation about a deception that
12 they're intending to undertake when there's no benefit
13 for me. What is the benefit for me for hiding this?
14 Absolutely none at all. And it's clear — I've watched
15 evidence — that this was a systematic deception and
16 they've kept it to themselves and a very, very limited
17 number of people, and I would be the last person you
18 would want to tell something like that, because
19 I wouldn't let it go, I wouldn't. It's not my nature at
20 all.

21 Q. Now, both Mr Hayes and Mr Roper have said very clearly
22 that you knew about the presence of the 6—millimetre
23 magnesium oxide. We've heard your evidence about all of
24 that. But do you accept at least this much: that you
25 personally and BRE more generally had very clearly the

63

1 means to knowledge of the existence of the 6—millimetre
2 magnesium oxide on that rig?

3 A. Yes, I agree, I think it's a failing that, as I said
4 yesterday, has played on my mind ever since it was drawn
5 to my attention, and I think what has happened, and
6 I can't say what was in their mind, but I think they've
7 taken that advantage that I wasn't in the office, that
8 they were hoping to get it up on the rig and taken down
9 before it was spotted, and that's my take on it.

10 Q. Your take.

11 Let's look at some evidence, then.

12 Moving on in time, can we go to {CEL00003177}. This
13 is a report, a draft report, sent by you on
14 19 June 2014, under cover of this email which we now
15 see, to Mr Roper, "Draft report for comment", and you
16 say:

17 "Jon, please find attached a draft report for
18 comment only. This is not the final version and as such
19 is liable to change and has not been through the BRE
20 quality system. If you have any changes you wish to
21 include please let me know and I will endeavour to
22 include them in the final version."

23 Why did it take so long to issue a draft?

24 A. Erm ... I've no idea.

25 Q. Well, I mean, it was your draft, the test took place on

64

1 2 May, and here's a draft coming on 19 June; can you
 2 explain the lapse of some six weeks or so between the
 3 test and the draft report?
 4 A. As I said, I — this wasn't my only project I worked on.
 5 I was running probably something in the order of —
 6 well, I was running four test walls, I was also working
 7 on other projects as well which took my time, I had
 8 other test reports which I had to complete and conclude,
 9 so it was just generally that's how long things took.
 10 Q. Can we go to {CEL00001350}, please. We have to go to
 11 the bottom of page 1 and over to the top of page 2. You
 12 can see it's an email from Jon Roper to you,
 13 1 July 2014, copied to Paul Evans and Jamie Hayes, "Test
 14 Report Comments".
 15 "Phil", it says, and if you go over the page to
 16 page 2 {CEL00001350/2}, it says:
 17 "As discussed, please find attached our first draft
 18 comments for our BR 135 test report."
 19 Just focusing on that, you can see he says "As
 20 discussed"; do you remember a discussion before this
 21 date with Mr Roper?
 22 A. I don't directly, no.
 23 Q. Therefore you don't remember what you discussed?
 24 A. No, no.
 25 Q. Now, Mr Roper attached three photographs to this email,

65

1 and I just want to show you the rest of the email. He
 2 says:
 3 "Annotations are highlighted throughout the document
 4 and we will send through the revised drawings to replace
 5 figures 4,5 & 6 once we receive updated details from
 6 Simco this week.
 7 "As previously discussed, could you also replace
 8 figure 18 with the attached photographs as we want to
 9 show a close up of the condition of our insulation below
 10 and above fire break with the intumescent fired off. If
 11 you feel you also have a suitable photograph, then
 12 please include."
 13 Then the last paragraph is about the drawings.
 14 Now, the photographs are at {CEL00001353},
 15 {CEL00001354} and {CEL00001355}. Just have those up
 16 very briefly. That's the first one. I'll show you the
 17 second one, 1354, and then the third one, 1355.
 18 I know I'm showing you those quickly, but can you
 19 confirm that none of those show the 6-millimetre
 20 magnesium oxide layer?
 21 A. Yes, I can confirm that.
 22 Q. Yes.
 23 Now, let's look at the draft report, first of all,
 24 that you sent Mr Roper on 19 June, {CEL00001352}. So
 25 we're going back in time.

66

1 Here is the draft, and you can see it carries the
 2 number, "Report Number: 295369 Issue: 1", and the date
 3 is 2 June 2014.
 4 Do you know why it took from 2 June to 19 June for
 5 you to send this document to Mr Roper?
 6 A. No. As I said, I was very, very busy.
 7 Q. Right.
 8 If we go to page 35 {CEL00001352/35}, let's see that
 9 page. You will see a photograph on it as figure 18, and
 10 the title to figure 18 is:
 11 "Photograph showing the condition of the cladding
 12 system post-test (Insulation layer)."
 13 This is a picture of the rig being dismantled, isn't
 14 it?
 15 A. It is, yes. It appears to be a continuation of the one
 16 you showed this morning where I explained that those
 17 three boards had been removed. This was clearly taken
 18 not long after that, probably half an hour or so, maybe.
 19 Q. This shows on the right-hand side, doesn't it, a layer
 20 of white material on the top of the insulation, just
 21 above the level 2 thermocouples?
 22 A. It does indeed, yes.
 23 Q. Yes. Did you look at this photograph when you were
 24 compiling the report?
 25 A. Yeah, I must have done, because I would have put it in.

67

1 Q. Yes, so you chose this photograph, did you?
 2 A. Yes, I did indeed.
 3 Q. Yes. Did you study it?
 4 A. Not specifically. In terms of — you mean — I would
 5 have looked at it, yes, and decided it showed everything
 6 that it needed to show, indeed, yes, yeah.
 7 Q. Did you wonder what the white board was, the single
 8 white board on the right of the rig at the second layer
 9 and the white ribbon of board around the top of the rig?
 10 A. The short answer is no, I didn't, no.
 11 Q. Did you not notice that during the test at those two
 12 layers there was a rose-coloured or ruby-coloured panel
 13 over the top?
 14 A. No, I didn't. No, I didn't.
 15 Q. You didn't?
 16 A. No, no.
 17 Q. You accept from our earlier exchanges, at least I'm
 18 going to put to you that you ought to accept the fact
 19 that you knew during the test that there was a set of
 20 ruby-coloured panels at those two locations on the rig
 21 during the test; yes?
 22 A. Yes, without a doubt, yes, there was —
 23 Q. Without a doubt?
 24 A. Yes.
 25 Q. And here is a photograph you studied for the purposes of

68

1 putting it into the report which shows that now at those
 2 two locations you can see a white layer. Are you saying
 3 you didn't notice that?
 4 A. No, I didn't notice it, not to the — to make me
 5 question what it was there, it was just a photograph
 6 that I looked at and thought: this is suitable. Ideally
 7 I would have preferred it without those boards in there,
 8 because it — to my mind it was not fully deconstructed,
 9 but my recollection of the rig at the time wasn't such
 10 that I — it dawned on me that there was — should have
 11 been a pink board and there's now a white board, no.
 12 Q. Let's backtrack a little bit. You had had a specific
 13 conversation with Mr Roper about why there was
 14 a rose-coloured or ruby-coloured board in those
 15 locations, and giving you the answer: shortage of
 16 material; yes?
 17 A. Yes.
 18 Q. You knew, because you had signed the order form,
 19 delivery form, that there had been a delivery of
 20 Marley Eternit 8-millimetre ruby boards, and we've seen
 21 from the video that you had had pointed out to you, for
 22 whatever purpose, during the test the rose-coloured
 23 panels.
 24 So can we take it that, by the time you came to view
 25 this photograph for the purposes of sending it in the

69

1 draft report, you had in your mind the fact that at
 2 those locations previously there had been rose-coloured
 3 or ruby-coloured panels?
 4 A. Erm ... in hindsight, probably, yes, I would — I should
 5 have picked up on it, but what you need to appreciate is
 6 at any one time I could have had seven or eight projects
 7 I was working on on my desk to write reports for,
 8 I would have potentially three or four new walls coming
 9 in at any point of time, so this wasn't my only thing
 10 I was doing day to day, and to remember from
 11 a conversation six weeks prior, when you look at it in
 12 this — the light of day, yes, then it's true, but in
 13 the day-to-day running around in the real world, it's
 14 difficult always to remember these things.
 15 Q. So you're saying you picked the photograph but made no
 16 connection at all between the presence of the white
 17 panels on the photographs in exactly the same locations
 18 as you had seen the ruby-coloured panels during the
 19 test?
 20 A. No, none at all.
 21 Q. That's not credible, is it, really?
 22 A. Why would it not be credible? As I say, I'm working for
 23 numerous clients with various different systems, we're
 24 having — I could have — on any day I could have, as
 25 I said earlier, five people working on different rigs.

70

1 It was a very busy, high—pressured job, and to be honest
 2 with limited staffing levels, and it was something that
 3 was missed.
 4 Q. Do you accept you should have spotted it?
 5 A. Sorry, say again?
 6 Q. Do you accept you should have spotted it when selecting
 7 this photograph for inclusion in the draft report?
 8 A. Yes, knowing now what I know now, yes, without a doubt,
 9 I've already accepted that, yes.
 10 Q. Now, Mr Roper's request was to remove this photograph,
 11 as we've seen.
 12 Did you look at the photograph after he'd made that
 13 request on 1 July and ask yourself why he wanted it
 14 removed?
 15 A. No, because I — from reading his email, he just said,
 16 "and add these drawings". One of the things is what we
 17 don't do is we don't remove stuff at clients' request.
 18 Had he said particularly anything, then I might have
 19 asked the question. But it's not up to him to tell me
 20 what photographs I put in or not.
 21 Q. Having received that request, and thought to yourself,
 22 "Well, I'm not going to do that, it's not up to him to
 23 tell me", did you not then go back to the report and
 24 study the photograph again, just to work out what it was
 25 he was up to?

71

1 A. No, because I had no reason to doubt that there was any
 2 ill intention in having it removed.
 3 Q. Well, you said a moment ago that it wasn't up to him to
 4 tell you what photographs to put in and not to put in.
 5 Would it not have been the natural thing to go back to
 6 the report and say, "I wonder what photograph that is",
 7 and look at it and ask yourself the question, "I wonder
 8 why he wants me to take that out"? Was that not your
 9 thought process?
 10 A. No, no, no, it's a pretty standard photograph that's in
 11 there. I just thought that he wanted to highlight the
 12 fact how the barrier had worked, and to me it didn't
 13 seem relevant to put that in specifically and then take
 14 that photograph out because ... so I saw no reasoning
 15 behind his request, and it didn't make me think, "Why
 16 has he asked that?", no.
 17 Q. Just go back two pages, if you would, then, please, in
 18 the draft report and let's look at figure 16
 19 {CEL00001352/33}. You presumably also selected this
 20 photograph for inclusion in the draft report.
 21 A. I did, yes.
 22 Q. And you can see the rose-coloured panels there in both
 23 locations; yes?
 24 A. Yes, yes.
 25 Q. Presumably when you were compiling the draft report, you

72

1 would have had figure 16 and figure 18 on your desk or
 2 on the screen somewhere and you would have chosen them
 3 for selection; yes?
 4 A. Yes, yes.
 5 Q. During that process, did it not occur to you the
 6 question, "I wonder why there are rose—coloured panels
 7 there during the test, and I wonder what those white
 8 panels are during the deconstruction"?
 9 A. No, it didn't occur to me, no.
 10 Q. Can you explain how that could possibly be the case?
 11 A. It was an error on my part, but, no, I can't, no.
 12 Q. You see, this doesn't really work, because you actually
 13 looked at the photographs, looking at figure 16, and
 14 decided to describe them:
 15 "Figure 16. Photograph showing the condition of the
 16 cladding system post—test ..."
 17 Ruby panels present, and then if we flip down,
 18 please, two pages to figure 18 {CEL00001352/35}, you
 19 have a description at the bottom:
 20 "Photograph showing the condition of the cladding
 21 system post—test (Insulation layer)."
 22 A. Yes.
 23 Q. And you had presumably intended that the reader of this
 24 report should look at those photographs and follow them
 25 through; yes?

73

1 A. Yes, indeed, yes.
 2 Q. Can you explain why you didn't go through that same
 3 process and spot the fact that the test rig as tested
 4 had ruby panels on it, but during the deconstruction
 5 post—test there were those mysterious white panels in
 6 exactly the same place?
 7 A. Because I had no reason to think anything was untoward,
 8 and it just — it was a case of stick — put the
 9 photograph in, and I hadn't put two and two together, in
 10 the fact that not knowing that it was there, why would
 11 it flag anything up to me? It was just — to me,
 12 looking at that, "Oh, they hadn't finished taking it
 13 down properly", and I just didn't spot the difference
 14 between the ruby and the white.
 15 Q. Mr Clark, you knew very well that those magnesium oxide
 16 panels were there. They sat behind the rose panel.
 17 Those two photographs, only two photographs apart from
 18 your own draft report, showed exactly that.
 19 A. Right, so if that's the case, why would I leave the
 20 photograph in, which is now what you're accusing me of?
 21 Surely if I was in a position where I was hiding this,
 22 and I knew full well what was there, I would remove it
 23 as requested, which I didn't do, and — yeah, no,
 24 I don't accept your — what you say. And the other
 25 thing as well with this is —

74

1 Q. Mr Clark —
 2 A. — no other — nobody else has said to me, "What are
 3 these boards here?" Three other people have read this
 4 report in draft form in its entirety and nobody else has
 5 seen that either.
 6 Q. Mr Clark, your missing it, as you would have it, I have
 7 to put to you is not credible, and I'm suggesting to you
 8 that you put this report together knowing very well, and
 9 seeing it from these photographs, that there was
 10 a magnesium oxide layer at these two places sitting
 11 behind the rose panels because it's crystal clear from
 12 these photographs; do you accept that?
 13 A. No, I don't accept that.
 14 Q. You don't accept that?
 15 A. No.
 16 Q. We will come to the removal question now.
 17 Let's look back, please, at page 8 of this report
 18 {CEL00001352/8}. We can see within section 3.2 in the
 19 draft, "Description of product":
 20 "Figure 1 shows the system during construction. The
 21 system prior to test is shown in Figure 2. Full details
 22 of the system specification and installation details
 23 have been provided by the client and are summarised in
 24 the following section. The system, as built comprised
 25 of ..."

75

1 And you can see what's set out there.
 2 We can see there is no reference to the 8—millimetre
 3 Marley Eternit, is there?
 4 A. Not the rose—coloured one, no.
 5 Q. Nor to the 6—millimetre layer of magnesium oxide board.
 6 A. No, there isn't, no.
 7 Q. What was the reason for those omissions?
 8 A. You can't refer to something that you don't know was
 9 there.
 10 Q. I see. Then —
 11 SIR MARTIN MOORE—BICK: Well, I'm sorry, Mr Clark — I'm
 12 sorry to intervene again, Mr Millett — but is it not
 13 right that you did know that the 8—millimetre board was
 14 there?
 15 A. No, I didn't, sir, no.
 16 SIR MARTIN MOORE—BICK: That was the ruby board, wasn't it?
 17 A. Yes, but my understanding, sir, was that it was
 18 a 12—millimetre —
 19 SIR MARTIN MOORE—BICK: I see, all right, thank you very
 20 much.
 21 Yes, I'm sorry, Mr Millett.
 22 MR MILLETT: Yes, I'm just studying the list.
 23 If we go over the page to page 10 {CEL00001352/10},
 24 paragraph 3.3.4, "Rain screen", it says:
 25 "An array of vertical carrier rails were fixed to

76

1 the helping hand brackets with both L and T aluminium
 2 brackets used. A single layer of Eternit board was
 3 mechanically attached to the carrier rails with
 4 self-tapping stainless steel screws and washers.”
 5 Now, that wasn't true, was it? That's not the whole
 6 truth, at least, because in parts it was an 8-millimetre
 7 board with a 6-millimetre magnesium oxide backing.
 8 A. My understanding at the time was it was a single layer,
 9 yes. Now, obviously, with what we know now, that
 10 statement — that line is incorrect. But at the time,
 11 it was to my mind a 12 — a single layer 12-mil uniform
 12 throughout.
 13 Q. Yes, I'm just taking it in stages. Do you accept that
 14 the statement, “A single layer of Eternit board”, is
 15 false?
 16 A. In hindsight, yes, but at the time, no.
 17 Q. As a statement, do you accept that it's false?
 18 A. A statement in what timeframe?
 19 Q. Do you accept when it says, “A single layer of Eternit
 20 board”, that's false, because it's not true? In parts
 21 it was an 8-millimetre board with a 6-millimetre
 22 magnesium oxide backing.
 23 A. Yeah, as I said earlier, the assumption is from that —
 24 you're taking that in hindsight, in that when I wrote
 25 this, my understanding was it was a single,

77

1 uniform-thickness layer throughout.
 2 Q. Now, we've seen the list on the previous page, we've
 3 seen this statement here; can you explain why you didn't
 4 give an accurate description of the system in this
 5 draft?
 6 A. No, not exactly, but this wasn't unusual with drafts,
 7 that — this is why it went back to the client, to just
 8 sort of make sure we've not missed anything, and this
 9 was an initial draft for ... Jon Roper — sorry, forgot
 10 his name then — Jon Roper to look at before it went to
 11 Steve Howard to have a look at, I think.
 12 Q. Can we just go back a page, then, to page 8
 13 {CEL00001352/8}, paragraph 3.2, “Description of
 14 product”. You can see the list of bullet points there.
 15 When you sat down and drafted this, what information
 16 were you using?
 17 A. There's the drawings, I think, so I think possibly at
 18 the time the drawings still showed the — because we
 19 were using the old versions of the drawings, because the
 20 new ones hadn't been issued, I think at the time it
 21 still said the 8-millimetre board on there, so it was
 22 possibly a mistyping of old information.
 23 Q. Well, I was going to ask you that. You see, the
 24 “8mm Marley Eternit decorative rain screen board” is not
 25 a reference to the ruby, is it, it's a reference to the

78

1 February 8-millimetre white Marley Eternit decorative
 2 rainscreen board?
 3 A. It is, yes, yes, that's correct.
 4 Q. And you knew, because you had had a conversation about
 5 it, that there was a different coloured board at the
 6 very least, so that at least had changed.
 7 Why were you using the February ingredients and not
 8 doing your best, at least, to set out the May
 9 ingredients, or components?
 10 A. I think at the time I — as I said, I'd probably taken
 11 that from the drawings that we had and it was just
 12 a continuation across —
 13 Q. I see.
 14 A. — of that un-updated drawing.
 15 Q. I see. So can we do it like this: at least this text in
 16 draft would be, you expected, subject to change when you
 17 finally got the updated list of components for the May
 18 test?
 19 A. Indeed, yes, that's correct, yes.
 20 Q. Now, was it not obvious to you, given that this draft
 21 contained no reference at all to the magnesium oxide
 22 layer, that the reason that Celotex wanted figure 18 to
 23 be removed, when they asked for it on 1 July, was
 24 because there was something about that photograph they
 25 didn't want in the report?

79

1 A. Not at the time, no, definitely not.
 2 Q. Did you ask yourself the question: why do they want to
 3 remove that photograph?
 4 A. No, I think it went back to the conversation that we'd
 5 had with Jonathan about the above and below the
 6 fire barrier, and I think I just got the impression
 7 that's what they wanted to show as opposed to the
 8 overall damage to the insulation layer. So that was my
 9 only take on it.
 10 Q. Can we go to Mr Roper's email again, please, which is at
 11 {CEL00001350/2}, his 1 July email. I think we'll need
 12 the top of page 2 of that email run, because he says
 13 there in the third paragraph:
 14 “We expect to receive the updated drawings from
 15 Simco this week which will be checked in my absence by
 16 my colleagues Paul & Jamie who will then forward these
 17 onto you for inclusion in the final report.”
 18 Did Mr Roper tell you why these new drawings were
 19 required?
 20 A. My understanding at this point was they were quite keen
 21 to get the report finished because they were looking to
 22 launch the product, I think.
 23 Q. Did he tell you that the NHBC had insisted that the
 24 drawings were updated following a visit that they had
 25 made to Celotex on 19 June?

80

1 A. He — I've never ever had a conversation with
 2 Jonathan Roper about any aspect of NHBC, no.
 3 Q. As you told us before, I think, the drawings you used
 4 for this draft at the very least were those same
 5 drawings that had been used for the February test; yes?
 6 A. That is correct, yes, as far as I'm aware, yes.
 7 Q. Even though you knew there had been changes to the
 8 design.
 9 A. Yes, that's correct, yes, yes.
 10 Q. Why did you not require updated drawings to take in the
 11 fact that, instead of 8-millimetre Marley Eternit panels
 12 being used for the most part on the rig, they were now
 13 12 millimetres?
 14 A. I think they had been requested probably, and the idea
 15 of the draft report was to sort of show the client what
 16 the basis of the report would be and, to a certain
 17 extent, show them what needed changing as well. So,
 18 yeah, it was implicit in the fact that we sent it there
 19 that the drawings needed changing.
 20 Q. Now, if we go to {CEL00003200}, please, we can see what
 21 happens next.
 22 On 4 July, Mr Evans writes to you, copying
 23 Jon Roper, and he says:
 24 "Hi Phil,
 25 "Just tried to call but you were away from your

81

1 phone.
 2 "Jon Roper has asked me in his absence to forward
 3 you a revised drawing (please see attached) in place of
 4 Figures 4, 5 & 6 of our test report.
 5 "Could you please update the test report and pass to
 6 Steve Howard for approval. I understand that you are
 7 away from 10th July so could I please ask you to confirm
 8 back to me once this has been passed to Steve as this
 9 forms an important part of our pre-launch activities for
 10 us to meet a launch date of early August."
 11 In fact it's right, isn't it, that the drawing was
 12 changed in the BRE test report, the next version?
 13 A. They were, yes, as far as I'm aware, yes.
 14 Q. Let's have the drawings. Let's see them.
 15 Let's have them both on the screen at the same time,
 16 {CEL00003194} and {CEL00003201}, if we can display those
 17 at the same time.
 18 Now, this is drawing reference 1311-CB-04, and
 19 I just want to identify with you the key changes.
 20 First of all, do you remember seeing the revised
 21 drawing?
 22 A. I recognise these drawings, yes, and from the list of
 23 amendments, that appears to be the fourth amendment,
 24 yes.
 25 Q. To be clear, the original one is on the left, that's

82

1 from the February test, and the revised version is on
 2 the right of the screen, that's for the May test.
 3 A. Right.
 4 Q. You can't see, but do you accept that one of the key
 5 revisions was the change of the Marley Eternit cladding
 6 board from 8 millimetres to 12 millimetres?
 7 A. I can't actually read any of the text.
 8 Q. No, all right. Well, I wonder if it can be blown up so
 9 that we can see the bottom left-hand box.
 10 A. Yeah, I can read that now, that's fine.
 11 Q. You can see on the right-hand box as well — I think
 12 this is a key change, actually — it's now
 13 12 millimetres. Do you see? Second item down.
 14 A. I can see that, yes, yes.
 15 Q. Yes. There's also, I think, the addition of
 16 a 10-millimetre vertical joint introduced where the main
 17 face meets the return wing. It's not very obvious, but
 18 it is a red screw and it's just above the red screw.
 19 A. I can't see that on my version.
 20 Q. Let's not bother with that, then.
 21 A. That's fine.
 22 Q. Did you yourself carry out any checks to make sure that
 23 these changes accurately reflected what had actually
 24 been built?
 25 A. I would have done, yes, I think so, yes.

83

1 Q. What checks did you make?
 2 A. I think I would have done a quick check to see if it
 3 covers everything. Not every single item would have
 4 been checked in terms of if every measurement was
 5 correct, but as long as it covered the main items, then
 6 yes.
 7 Q. What would you have done a check against?
 8 A. Against the original drawing and what I understood to be
 9 on the rig.
 10 Q. And what documents were you looking at, or what material
 11 were you looking at to tell you what was on the rig?
 12 A. I think my — the notes that would have been on the
 13 file, which ... and the photographs.
 14 Q. But not the actual rig itself?
 15 A. No, because one of the photographs we always took was
 16 like a — should have been a through test build-up of
 17 the system, normally taken at low level. I think we saw
 18 one yesterday which had the markings where the
 19 thermocouples would go. So it would normally be
 20 compared to something like that as well.
 21 Q. Did you not seek to compare the revised drawing that
 22 Mr Evans was sending you on 4 July with the photographs
 23 in the draft report that you had sent on 19 June?
 24 A. Sorry, could you repeat that question?
 25 Q. Yes. Did you not seek to compare the revised drawing

84

1 that Mr Evans sent to you on 4 July with the photographs
 2 in the draft report that you —
 3 A. The photographs of the rig after the test, do you mean,
 4 sorry?
 5 Q. Yes —
 6 A. Yes, so —
 7 Q. — the photographs.
 8 A. No, because the photographs — the drawings you're
 9 showing there are a plan view of the — a cut-through of
 10 the system as a whole, so it's only one layer, so it's
 11 a representation of the whole of the rig, not a specific
 12 part of the rig, no.
 13 Q. So I just want to be very clear about what the sources
 14 of your understanding of what was on the rig were.
 15 You say that there were the photographs; yes?
 16 A. Yes, yes.
 17 Q. What else?
 18 A. There would be a — if necessary, we would consult with
 19 the — any — yeah, photographs, any notes that we had,
 20 and to a certain extent as well this drawing as well.
 21 Q. Did you seek to compare this newly arrived drawing which
 22 had been revised with the rest of the data that you had
 23 at the time, including particularly the photographs of
 24 the test rig?
 25 A. Probably, yes, I would have thought so. To what level,

85

1 I can't — at this point I can't say that I compared A
 2 with B and this and this. But in general terms, yes.
 3 Q. Did you not notice that although, as you knew, there was
 4 a ring in two places of Marley Eternit ruby boards, did
 5 you not seek to compare the new drawing with the
 6 photographs which showed that and ask yourself why the
 7 drawings don't refer to the 8-millimetre Marley Eternit
 8 ruby boards in those two locations on the rig?
 9 A. No, because, as I said earlier, my understanding was
 10 that they were 12-millimetre boards, the same as the
 11 rest of the rig, and that drawing is a cut-through
 12 representative of the whole of the rig, so I had no
 13 reason to question that.
 14 Q. But you did have a reason, you see, to question it
 15 because you had yourself signed a delivery order for the
 16 ruby boards which showed that they were 8 millimetres.
 17 A. Like I said earlier, you're assuming that the contents
 18 of that delivery was checked.
 19 Q. So do we take it from that answer that when you looked
 20 at the test rig drawing as revised, you didn't check it
 21 against the materials which were delivered to the BRE
 22 for the purposes of installation on the test rig?
 23 A. I would probably say you're correct, yes, yes.
 24 Q. Why is that?
 25 A. Because mistakenly I'd assumed that every single board

86

1 that had been delivered was the same thickness and
 2 I neglected to check.
 3 Q. Do you remember whether there was in fact
 4 a 10-millimetre vertical joint where the main face met
 5 the return wing in the actual rig?
 6 A. In which place, sorry?
 7 Q. I'm asking you generally: do you remember whether there
 8 was in fact a 10-millimetre vertical joint where the
 9 main face met the return wing on the actual test rig?
 10 A. I don't recall that, no.
 11 Q. Right. It's in the report, though, isn't it?
 12 A. As in, in the drawing of the report, or is it —
 13 Q. (inaudible) report.
 14 A. Sorry, in the body text of the report or ...?
 15 Q. Do you remember — let me put it this way — well, let
 16 me show it to you. If you please go to {BRE00002497}.
 17 This is the August version. If we go down, please, to
 18 page 15 {BRE00002497/15} — I'm just scrolling down in
 19 my own version here, to get it for you — that's it, you
 20 can see that ...
 21 A. I see what you mean now, yes, yes.
 22 Q. Yes, exactly. This drawing shows a 10-millimetre
 23 vertical joint in that place. Yes?
 24 A. It does, yes, clearly does, yes.
 25 Q. Did you check that fact against the rig itself or

87

1 against any other data?
 2 A. No, because I think at the time these were issued, the
 3 rig had gone, long gone.
 4 Q. Right. Just so that people who are looking who are not
 5 very clear about it — I'm taking this a bit too
 6 quickly, perhaps, but the 10 — Mr Clark, just confirm
 7 with me — sits by the red vertical screw which points
 8 upwards in the middle of that picture.
 9 A. Yes, it's between the two blue L-shaped sections.
 10 Q. Now, did you have any concerns about the ventilation
 11 gaps in either of these tests?
 12 A. No, no.
 13 Q. Do you agree that the external surface was near to
 14 continuous for the second test, the May test?
 15 A. I suppose they were abutted as — almost as close as you
 16 could get them, yes, yes.
 17 Q. I mean, Mr Roper said in his evidence —
 18 {Day72/3:10-11} — that there was a very minimal gap.
 19 A. I would agree with that, yes.
 20 Q. So not 10 millimetres?
 21 A. Yes, that's correct, I would say.
 22 Q. Can you account for why the test rig as-built did not
 23 conform in this respect to the drawing?
 24 A. I wasn't aware that this 10 millimetres had necessarily
 25 been added. Was this what was requested by the NHBC for

88

1 them to put it in? Is that my correct understanding?
 2 Q. Well, from the drawing that was sent to you.
 3 A. Yes, it wasn't something that stood out to me as
 4 an issue.
 5 Q. Right. How closely did — sorry, do you want to
 6 continue your answer? You stopped.
 7 A. And, no, I didn't spot it, no.
 8 Q. Right.
 9 Now, did you know that the NHBC had challenged
 10 Celotex on the validity of this test because the report
 11 showed a lack of the vertical joint during the test
 12 affecting the ventilation and the growth of fire? Did
 13 you know that?
 14 A. I ... having listened to evidence I now know that, but
 15 at the time I was not even aware that Celotex were in
 16 conversation with NHBC, no.
 17 Q. Did you ever tell Celotex that the lack of a vertical
 18 joint or the lack of any appreciable ventilation gap
 19 could alter the test outcome?
 20 A. No, because that, in my mind, is erring on the — is
 21 going into the side of consultancy. That is a definite
 22 consultancy, because you're ...
 23 Q. I see. So we now, I think, have a feeling for where you
 24 might draw the line.
 25 A. Yes, yes.

89

1 Q. Right.
 2 Now, let's go to the test report itself as issued.
 3 {CEL00003215}. This is an email from you to Paul Evans,
 4 copying Mr Roper, on 8 July 2014. This is the one in
 5 the middle. You say:
 6 "Paul/Jon, just to let you know I have made your
 7 suggested changes and included the photo as requested
 8 and updated the drawings. [The] report is now on its
 9 way to Steve who will hopefully get it issued while I am
 10 away."
 11 Now, you can see in the emails just below that in
 12 the chain that, after the 4 July email from Paul Evans
 13 to you where he requested you to put in that photograph,
 14 there was further discussion, and Paul Evans had come
 15 back to you on 8 July saying:
 16 "I'm out of the office in London today but as per
 17 our phone conversation yesterday [that would be 7 July]
 18 was just emailing to see whether the test report has now
 19 been updated and passed to Steve for sign off.
 20 "Thanks for your help and look forward to hearing
 21 from you."
 22 Do you remember discussing the photograph with
 23 Mr Evans?
 24 A. I don't recall the conversation at all, no.
 25 Q. Specifically, did you discuss with Mr Evans Mr Roper's

90

1 request to remove the photograph that you had included
 2 in the draft at figure 18?
 3 A. The — other than the email request from Jonathan Roper,
 4 that's the only time there had ever been any request to
 5 remove that photograph.
 6 Q. Yes. When you had this discussion with Mr Evans on
 7 7 July or thereabouts, do you remember having any
 8 discussion at all about the request to remove figure 18?
 9 A. No, he never discussed — I don't remember the
 10 conversation, but nobody had ever, subsequent — after
 11 that email, as I said, ever discussed that drawing again
 12 at any time. That photograph, sorry.
 13 Q. Do you know or can you remember whether you had made
 14 a decision by that time, by 7 July, not to accede to
 15 Mr Roper's request but instead to leave figure 18 in the
 16 final report?
 17 A. I think in — having looked at all of the versions of
 18 the report, that photograph remained in through every
 19 version of the report and was never changed. The only
 20 thing that changed with it was its figure number,
 21 I think, it changed from 18 to 21 or something.
 22 Q. Yes, we will see that in a moment, but my question
 23 again: had you made a decision by the time you spoke to
 24 Paul Evans on 7 July not to accede to Mr Roper's request
 25 to remove the photograph, but instead to leave it in the

91

1 final report?
 2 A. I never had any intention of removing it in the first
 3 place.
 4 Q. Right. But we saw there was a request; presumably you
 5 must have seen the request and decided not to accede to
 6 it. You must have made a decision.
 7 A. Yes, yes, in that regard, yes, yeah, it was — I had
 8 made the decision probably from the first day it was
 9 asked to take out that it needed to be in there and
 10 I saw no reason to take it out, no.
 11 Q. Let's go to {BRE00002497}, please. This is a copy of
 12 the report as issued dated 1 August 2014, and again we
 13 can see the number: 295369. This is the test report.
 14 If we look at the second page {BRE00002497/2},
 15 please, we can see that you prepared it, as the senior
 16 consultant, dated 1 August, and it was authorised, just
 17 below that, by Tony Baker; yes?
 18 A. Yes, that's correct, yes.
 19 Q. Is it right that except for the substitution of new
 20 diagrams, new drawings, this isn't substantively
 21 different from the draft version we looked at earlier?
 22 A. There were a few typographical errors, I think, yes,
 23 yes, but substantively the same, yes.
 24 Q. Yes. It included the photograph — we can go to page 35
 25 {BRE00002497/35} for this — that Mr Roper had asked to

92

1 be removed. If we go to page 35, we can see that it's
 2 now become figure 19, in fact. There it is. It's now
 3 figure 19. Same photograph. Yes?
 4 A. Exactly the same, yes.
 5 Q. When you re-issued this draft, did you have another look
 6 through the photographs?
 7 A. No, because they — it had been through the process of
 8 checking up the chain through the quality system, so
 9 I had no reason to.
 10 Q. Right.
 11 You can see, if you go back to page 27
 12 {BRE00002497/27}, that there's figure 17. Again, the
 13 rose/ruby-coloured panels on the test rig during the
 14 test; yes?
 15 A. Yes, I can see those.
 16 Q. So when this was reviewed — well, let me ask you: was
 17 this final version reviewed by Mr Baker?
 18 A. I think the initial drafts were reviewed by
 19 Stephen Howard, he would have then commented on and sent
 20 back any comments, and then my understanding is that
 21 Stephen Howard went away on holiday and it fell to
 22 Mr Baker to actually sign off the final report.
 23 Q. Did you see any written comments from Mr Howard about
 24 the draft?
 25 A. I think there were some on the file, yes, and any

93

1 changes he suggested would have been made.
 2 Q. Did you have any conversation with Mr Howard about the
 3 draft?
 4 A. I don't recall directly, no.
 5 Q. Did you see any notes from Mr Baker?
 6 A. I think on the file somewhere I've seen some, there are
 7 some — just some minor changes. I think the only thing
 8 that happened was there was a formatting error that
 9 Mr Baker had picked up, I think that was the only thing
 10 that had been picked up, something to do with the way
 11 Word had picked up some of the figures.
 12 Q. Yes, that's correct.
 13 Did you have a conversation with Mr Baker about the
 14 draft?
 15 A. Not that I'm aware of, because it had already
 16 essentially been through Stephen Howard and Stephen
 17 had — Steve had requested him to sign it and send it
 18 out. So to my understanding he was content with the
 19 contents and he was happy for it to go.
 20 Q. Is one of the reasons that you left figure 18 and what
 21 became figure 19 in that final version of the report
 22 that it would be difficult to justify to Tony Baker why
 23 you were removing it?
 24 A. No, because I would be surprised if there wasn't
 25 a different drawing. No. It's a pretty standard

94

1 picture that we would put in, so I had no reason not to
 2 take it out, because one of the things that you want to
 3 be able to show in the report is the overall damage to
 4 the insulation layer, and had that been not in there,
 5 then it didn't really give a true picture of how the
 6 insulation layer had performed. So it did to a certain
 7 extent need to stay in there.
 8 Q. Can we go to page 6 of this report {BRE00002497/6},
 9 please. Here we see section 3, "Description of the
 10 System", and if you read with me under 3.2, "Description
 11 of product", we can see the now familiar bullet point
 12 list of the components of the May test rig, and at the
 13 bottom now you can see that it says, instead of
 14 8-millimetre, 12-millimetre Marley Eternit Natura
 15 decorative rainscreen board; yes?
 16 A. Yes, indeed.
 17 Q. Was it you who made that change from the draft to this
 18 final version?
 19 A. It more than likely would have been, yes.
 20 Q. What was the material which prompted you to make that
 21 change which you had seen?
 22 A. The comments and probably the updated drawings and
 23 checking what was on the file, I think.
 24 Q. Now, we can see from that list that there is no
 25 reference there either to the 6-millimetre layer of

95

1 magnesium oxide board at the level 2 thermocouples at
 2 the top of the rig or the ruby-coloured Marley Eternit
 3 rainscreen boards at the same location, is there?
 4 A. No, there isn't, no.
 5 Q. Do you accept as a fact that that list is materially
 6 incomplete?
 7 A. Now, knowing what I know, that this was — the board was
 8 hidden between a — behind a thinner board, then yes,
 9 you're correct, yes.
 10 Q. And that it would be, given that it was materially
 11 incomplete, materially misleading to anybody who wanted
 12 to know what the components of the test rig were?
 13 A. Yes, it would be, yes, yes. That does presuppose,
 14 though, that the boards at level 2 actually had any
 15 effect. But you are right, it is misleading, yes.
 16 Q. And that anybody seeking to use this test report as the
 17 basis for building a test rig which exactly replicated
 18 it in order to have a compliant rainscreen system would
 19 fail because, in replicating the components listed in
 20 that bullet point list, they were not replicating the
 21 test rig as built.
 22 A. If you're — if you wanted to recreate the exact test,
 23 then you're correct, yes, if they used that as their
 24 shopping list of what to buy, and I think the Inquiry
 25 are aware and my understanding is that the — this —

96

1 following the acceptance from Celotex that there were
 2 material changes to the — this test that didn't comply
 3 with their quality, they undertook the test without the
 4 magnesium oxide board, and my understanding is it passed
 5 and performed in exactly the same way as this system did
 6 and was subsequently issued a BR 135. That is my
 7 understanding from documents I've seen. So I would say
 8 while it is misleading, it wouldn't lead to a failure in
 9 the way you implied.

10 Q. Well, I'm not putting to you the question of actual
 11 failure in another test. What I'm putting to you is
 12 that if a builder wished to build a compliant test,
 13 using this BS 8414 test, meeting the BR 135 criteria,
 14 and replicated the system in accordance with the
 15 components that you have listed here, they would be
 16 building a system which was different from the test,
 17 and —

18 A. Yes, it is different from the test, yes, but that
 19 doesn't mean that it would have failed the test, and
 20 I think —

21 Q. A different rig might, could have passed, we don't know.
 22 My point is that in replicating the system as described,
 23 they would be building a system which hadn't been
 24 tested, and therefore was not covered by the test.

25 A. Yes, in that regard, yes, you're correct, yes.

97

1 Q. Thank you.

2 Now, do you accept that you were responsible for the
 3 materially misleading omissions in the list of
 4 components set out under paragraph 3.2?

5 A. In terms of, I wrote and drafted the report, then, yes,
 6 without a doubt, but the BRE system is such that I write
 7 the report and it goes up through a quality checking
 8 system, so other people have read and checked this, what
 9 I have written, and they have signed in their own right
 10 to say what I have said is correct.

11 Q. Would those other people up the chain in the system have
 12 checked the underlying data that you checked?

13 A. They should have checked exactly the same stuff that
 14 I had checked, yes.

15 Q. So in the system being operated by the BRE, was the
 16 peer review system carried out by Stephen Howard and
 17 Tony Baker —

18 A. It would have been, yes. Sorry.

19 Q. — the same material that you had used to draft the
 20 report?

21 A. They had access to everything that was on the system,
 22 yes, that is correct.

23 Q. I see. Including the delivery notes?

24 A. Including the delivery notes and — yes, yes.

25 Q. And including all the photographs we have been looking

98

1 at?

2 A. Including everything that you've shown, yes.

3 Q. Now, Mr Roper told the Inquiry in his evidence —
 4 {Day71/130:10–14}, and I'll summarise it, but we can
 5 look at it if you like — that it was you who made the
 6 decision not to refer to the 6 millimetres of magnesium
 7 oxide in the test report; is that correct?

8 A. No, it's not correct, no.

9 Q. How else can you account for the fact that the test
 10 report contains no reference to the 6 millimetres of
 11 magnesium oxide or the 8 millimetres of Marley Eternit
 12 ruby boards?

13 A. Because, as I've said, you can't refer to something that
 14 you don't know is there, and my understanding was that
 15 it was a 12-millimetre thickness throughout the whole of
 16 the rainscreen façade, and that's my understanding.

17 MR MILLETT: I'm going to turn now to Kingspan. I may have
 18 some further questions on the Celotex test for you,
 19 Mr Clark, after the break.

20 Mr Chairman, I'm looking at my watch. We have
 21 five minutes in hand. We can either break now and come
 22 back a little earlier at 1.55 or 2 o'clock, or we can
 23 have five minutes now. I'm happy to take five minutes
 24 now.

25 SIR MARTIN MOORE-BICK: Well, if you can use the

99

1 five minutes, do so.

2 MR MILLETT: Very well, I will.

3 I want to turn to Kingspan and start scrolling back
 4 a decade now to 2004. Cast your mind back to November
 5 of that year.

6 Do you remember that Kingspan carried out
 7 an indicative or naked test under BS 8414–1 in the
 8 November of that year, 2004?

9 A. Having seen some photographs of the system, I do now
 10 remember it, yes.

11 Q. And you describe this test, I think, at paragraph 77 of
 12 your statement {BRE00005768/18}, and you say that your
 13 recollection is that it was carried out with no
 14 rainscreen façade attached; is that right?

15 A. That is correct, yes, and I had noticed recently, which
 16 I hadn't noticed before, that it appears to have had
 17 a glass fibre mesh as opposed to an aluminium foil face,
 18 which was slightly different, I think.

19 Q. Now, were you present at that test, do you think?

20 A. I don't specifically recall, no. I possibly — given
 21 what I was doing at the time, I probably was in some
 22 form or other, but I don't specifically recall it, no.

23 Q. Let's see if I can prompt your memory. {BRE00003278},
 24 please. This is an email from Ivor Meredith to you on
 25 3 November 2005.

100

1 A. I think this one is referring to the second test.
 2 Q. Well, I just want to look at the email with you. You
 3 can see that Ivor Meredith refers in the blue text —
 4 you can see that he says, just beyond halfway down the
 5 screen, towards the end of the email:
 6 "Regards the video I have a copy of the most recent
 7 test it's the 'naked' indicative we did on the
 8 3rd November 04 that I'm looking for. If you could get
 9 me a copy of this or run another copy off I would be
 10 very grateful."
 11 It seems from this that at least he is thinking that
 12 you would know what he was talking about. Does that
 13 indicate that you probably were at that test?
 14 A. Yes, I think that's correct. When I say I don't
 15 remember, I've got a vague recollection of what it was.
 16 Given what I was doing at the time, a very high
 17 likelihood I was there, yes.
 18 Q. What was your understanding of why Kingspan were
 19 carrying out a naked test?
 20 A. To be honest, I had very little. Given what I was doing
 21 probably in that sort of period, I was more sort of
 22 along the lines of more technical help in terms of
 23 setting the test rig up and instrumenting it and
 24 preparing it and running it as opposed to understanding
 25 any reasoning behind what was being done.

101

1 Q. So is the answer you don't know?
 2 A. I don't know, yes, that's probably — yes.
 3 Q. Do you know whether indicative or naked tests were
 4 offered to or done by other manufacturers, other than
 5 Kingspan?
 6 A. I do recall doing some sort of part-scale tests for
 7 a company called Dryvit on some of their boards.
 8 I think they were looking to do a very quick comparative
 9 test. But it was unusual, I would say.
 10 Q. Did Kingspan seek any advice or guidance from you or
 11 anyone else at the BRE in relation to carrying out
 12 a full test?
 13 A. At that time, I wasn't aware, because it wasn't my job
 14 to be having those conversations, so I don't think they
 15 did from me, definitely not. I don't know from others,
 16 I can't answer for them.
 17 Q. I see. Whose job would it have been at that time to
 18 have had those conversations? Would it be Tony Baker?
 19 A. No, Tony Baker wasn't involved in that period, I think.
 20 Primarily most things were put through Dr Sarah Colwell,
 21 Richard Colwell, David Hoare, were the primary contacts
 22 in that. But I think probably Sarah was probably the
 23 most senior person.
 24 Q. Right.
 25 Now, we know that no test report was issued in

102

1 relation to this November 2004 naked test. Do you know
 2 why that was?
 3 A. I think they just wanted it for the test, the
 4 thermocouple data, as far as I'm aware.
 5 MR MILLETT: Right.
 6 Mr Chairman, is that a convenient moment?
 7 SIR MARTIN MOORE—BICK: Yes, I think it is, Mr Millett,
 8 thank you very much.
 9 Right, Mr Clark, we're going to have a break there
 10 so we can all have some lunch. We'll come back at
 11 2 o'clock, please, and again, please don't talk to
 12 anyone about your evidence or anything relating to it
 13 over the break. All right?
 14 THE WITNESS: Yes, thank you, sir, and I'll see you at
 15 2 o'clock.
 16 SIR MARTIN MOORE—BICK: Thank you very much.
 17 2 o'clock, thank you.
 18 (1.00 pm)
 19 (The short adjournment)
 20 (2.00 pm)
 21 SIR MARTIN MOORE—BICK: Welcome back, everyone. We're going
 22 to carry on hearing evidence from Mr Clark this
 23 afternoon.
 24 Mr Clark, good afternoon. Are you there? Can you
 25 see me and hear me?

103

1 THE WITNESS: Yes, I'm here, sir, I can see and hear you.
 2 SIR MARTIN MOORE—BICK: Good, thank you very much, and
 3 you're ready to carry on, I hope?
 4 THE WITNESS: I am indeed, yes.
 5 SIR MARTIN MOORE—BICK: Thank you very much.
 6 In that case, Mr Millett, when you're ready.
 7 MR MILLETT: Thank you, Mr Chairman.
 8 Mr Clark, I want to backtrack a little bit and just
 9 ask you about your access to documents at the BRE before
 10 you made your witness statement, and then we'll come
 11 back to Kingspan.
 12 Can I ask you please to be shown Day 95 of your
 13 transcript, which was your evidence yesterday, and
 14 I would like to go to {Day95/75} in your evidence there.
 15 In the middle of the page, I was actually asking you
 16 questions about the test file, and at line 15 I ask you,
 17 as you can see:
 18 "Question: Can you explain why you didn't provide
 19 copies of the documents from which you got this
 20 information when you provided your statement?"
 21 That's a reference to paragraphs 148 and 149 about
 22 what information you had available to you. You say at
 23 line 18:
 24 "Answer: I believe they are. I'd be very surprised
 25 if they're not in there. So everything that you had was

104

1 what was issued to me by the Inquiry ..."
 2 Then at line 22 you say:
 3 " ... I'm ... no longer a BRE employee, so I was
 4 reliant on what was being sent to me."
 5 Then if you go over the page, please, to line 20
 6 {Day95/76:20}, you say, and I'm asking you again about
 7 documents:
 8 "I can't recall. I understood they came from
 9 the Inquiry. I was issued a packet of stuff, maybe.
 10 I'm not certain who they came from."
 11 Then over the next page at lines 3 and 4
 12 {Day95/77:3-4}, when I'm asking you where you got the
 13 documents you used to compile the paragraph in your
 14 statement about what documents you had, you say:
 15 "I thought they'd been disclosed from the Inquiry."
 16 Then if I can ask you to go on, please, to page 182
 17 of the transcript from yesterday, I would like to show
 18 you line 14 {Day95/182:14}:
 19 "Question: Can you explain where they were filed or
 20 where they were kept, or at least why they weren't on
 21 the test file?
 22 "Answer: No, and one of the things you need to be
 23 aware of is that post the fire at the tower, all of the
 24 systems that — both paper and electronic, were locked
 25 down at BRE, so I had no access to any files on any of

105

1 the systems. So anything that I was given, I was
 2 reliant on BRE to provide me."
 3 That was your evidence yesterday.
 4 Now, Mr Clark, we received today a letter from the
 5 BRE's solicitors, Fieldfisher, which may be made
 6 available to core participants in due course. But
 7 I just want to put to you what they say. They say this:
 8 "First of all, at the time that Mr Clark prepared
 9 his statement ..."
 10 And that was in July 2019 — it's right, isn't it,
 11 that the BRE was represented by a different firm?
 12 A. I understand they were, yes, that's correct.
 13 Q. Is it right — they say that it is — that to allow you
 14 to prepare your witness statement, you attended the
 15 BRE's site; yes?
 16 A. I did for about one or two days, maybe.
 17 Q. They say it was a three-day period.
 18 A. Yes, that's probably right, yes.
 19 Q. They also say that you were unaccompanied by BRE's legal
 20 representatives.
 21 A. That is correct, yes.
 22 Q. Were you accompanied by anybody?
 23 A. Yes, my ex-colleague Angela Richards came in
 24 occasionally, but I was ... yes, I was given access to
 25 what I needed predominantly.

106

1 Q. Right. Who arranged the access? Was it BRE's lawyers
 2 or did you arrange it?
 3 A. I think it was BRE themselves, I think.
 4 Q. Who was the main contact point at the BRE who afforded
 5 you that access?
 6 A. Dr Debbie Smith.
 7 Q. Right.
 8 Fieldfisher tell us that you were provided with
 9 access to any hard copy and electronic material held by
 10 the BRE that you considered was potentially relevant to
 11 your witness statement and you wished to review. Is
 12 that correct?
 13 A. That is correct, yes, but as I alluded to, I think this
 14 morning, what had happened was for some reason — and
 15 I don't know who made the decision — they moved a lot
 16 of the files from their original positions and, in doing
 17 so, made searching extremely difficult. So
 18 I essentially got what I could in that period, and may
 19 not have necessarily picked everything up, because it
 20 wasn't necessarily in the places I thought it would be.
 21 Q. Just to be clear, when you told us yesterday in your
 22 evidence that you were reliant on what was sent to you,
 23 you were issued a packet of stuff, material was
 24 disclosed by the Inquiry, and you had no access to files
 25 after the fire on any of the systems, that's not true,

107

1 is it, if Fieldfisher's letter this morning is correct,
 2 as you've confirmed?
 3 A. Yes, no, I'd neglected to — I forgot that I —
 4 I understood that I went down there, but what I meant
 5 was I had — because I was only there — I could only
 6 review a certain amount of stuff. I think while I was
 7 there I looked at some of the test videos and basically
 8 used them to answer the questions the Inquiry had put to
 9 me in that regard.
 10 Q. Mr Clark, the impression you gave from your evidence
 11 yesterday, which I read out to you in detail from the
 12 transcript, gave the impression that you were responsive
 13 only to the material that the BRE had pulled together
 14 and sent to you. Now, that's not true, is it? In fact,
 15 you went to the BRE yourself and was afforded full
 16 access to whatever you asked for.
 17 A. Yes, in that I was very reliant on them trying to find
 18 things for me.
 19 Q. That's different to being sent a package of material.
 20 A. No. I was originally sent a package of material, sir.
 21 Q. When answering my questions yesterday about the source
 22 of the documents that you used to compile your
 23 statement, why didn't you tell us that, so far from
 24 simply being sent a pack of material and being reliant
 25 on documents disclosed to you, in fact you had had

108

1 a three-day access at the BRE to any documents that you
 2 wanted to see? Why didn't you tell us that?
 3 A. Because you hadn't asked the question of that, and I'm
 4 being asked questions that span almost
 5 a decade—and—a-half of complex and very detailed
 6 material, which in reality three days is scratching the
 7 surface.
 8 Q. When you told the Inquiry yesterday, on oath, at
 9 page 182 of the transcript {Day95/182}, that you had no
 10 access to any files or any of the systems, that's not
 11 correct, is it? You were afforded three days roving
 12 access, unsupervised by any lawyer, at the BRE.
 13 A. That's not wholly correct, because the point is — yes,
 14 I had access, I don't disagree with what you say, I had
 15 access to it, but not wholly access, because what had
 16 happened was every time I went to a place where
 17 I thought the information would — should be, because it
 18 had been moved, it was no longer there, and it was —
 19 the BRE had to search for documents that I thought were
 20 relevant, and on occasions they couldn't find them in
 21 the time I was there.
 22 Q. Why didn't you just tell us all of that yesterday rather
 23 than giving us the impression that you were sent
 24 documents?
 25 A. Erm ...

109

1 Q. That's what you said, "I was sent documents".
 2 A. Yeah, I just forgot I'd gone there. I've never been in
 3 this situation. I don't know what's relevant. I'm here
 4 sitting answering questions that you're asking, and ...
 5 Q. Had you forgotten the fact that you had made a three-day
 6 visit to the BRE at a time when you were no longer
 7 employed there?
 8 A. No, I hadn't forgotten, but it didn't come up in the
 9 questions you're asking, so it's — I'm reliant on the
 10 questions you ask me, sir. It wasn't for any malicious
 11 reason other than it didn't come up in the way we were
 12 talking and I didn't see it as relevant.
 13 Q. I'll put it one more time: when you told the Inquiry
 14 that, "post the fire ... all of the systems ... were
 15 locked down ... [and] I had no access to any files on
 16 any of the systems", that was false, wasn't it?
 17 A. Probably when I said that, I meant while I was still
 18 working for BRE, I think, I didn't necessarily mean when
 19 I was preparing my statement, maybe I misspoke there.
 20 Q. No, that's not the case, because the next sentence that
 21 I read you is:
 22 "So anything that I was given, I was reliant on the
 23 BRE to provide me."
 24 This is in the context of me asking you about the
 25 material that you used to collate your statement.

110

1 I'm putting it to you that you have given false
 2 evidence to the Inquiry about this.
 3 A. It's not false evidence. I ... yeah, it was
 4 a foresight — I hadn't — something that I can't
 5 explain. I had forgot, when you were asking the
 6 question, that I had been there.
 7 Q. How could you conceivably have forgotten a three-day
 8 visit and a trawl through all the materials in order to
 9 prepare your witness statement for this Inquiry? That's
 10 not credible.
 11 A. It was — you asked me a question, I answered it as
 12 I remembered it at the time. I didn't necessarily think
 13 that was pertinent. It's not there to mislead or convey
 14 anything else other than as I answered at the time, and
 15 if I should have answered to that, then I can only
 16 apologise for not answering in that way, and it wasn't
 17 to mislead or anything other than that.
 18 Q. During this three-day visit, Mr Clark, did you see
 19 Stephen Howard?
 20 A. Only to say hello.
 21 Q. You say, "Only to say hello"; did you see Mr Howard?
 22 A. Yes, yes —
 23 Q. Did you (inaudible)?
 24 A. No, I've just — as I said, only to say hello. I said,
 25 "Hello, how are you?" and that was it.

111

1 Q. Did you discuss why you were there?
 2 A. No, I didn't discuss anything with Stephen Howard.
 3 Q. (inaudible) you were there? After all, you'd left in
 4 December 2017.
 5 A. Sorry, I missed the first part of your question.
 6 Q. Yes. Did you discuss why you were there?
 7 A. I didn't directly. I think Dr Debbie Smith may have
 8 informed him that I was coming, but I didn't discuss
 9 directly, as far as I can remember.
 10 Q. Did you talk to Debbie Smith when you were there?
 11 A. I did, yes.
 12 Q. What did you say? What was the conversation about?
 13 A. Just usual pleasantries, and she then sort of let —
 14 I had an office next to hers, they'd arranged for
 15 a computer, I think, which had limited access to the
 16 drives, and then she was — basically said, "If there's
 17 anything you need, you need to talk to Angela Richards",
 18 who was the liaison there with me.
 19 Q. So she knew why you were there.
 20 Did you discuss with her the substance of the
 21 questions that you were being asked by the Inquiry for
 22 which purpose you were there?
 23 A. No, I didn't, no.
 24 Q. Did you see Tony Baker while you were there?
 25 A. Not that I recall, no.

112

1 Q. When you were reviewing the documents over this
 2 three-day period, were you alone or were you accompanied
 3 by anybody?
 4 A. Predominantly alone.
 5 Q. Predominantly. You used the name of Angela Richards.
 6 A. So she was — if there was a document that I couldn't
 7 find, she was doing the search — or arranging the
 8 searches with IT.
 9 Q. On that point, were you reviewing the documents in
 10 electronic form or in hard copy form or —
 11 A. Yes, yes, I was, indeed, yes.
 12 Q. Electronically?
 13 A. Electronically, yes.
 14 Q. Now, Fieldfisher have also told us that it is likely
 15 that the collation exercise, the exercise of collation
 16 of all the documents that would have been needed for
 17 your exercise of review, was completed before you
 18 prepared your witness statement, which was signed on
 19 15 July 2019, as we've established. Is that right?
 20 A. I think that's correct, yes, yes. I think my
 21 understanding is they did a trawl by name and they used
 22 keywords, I think, a keyword search.
 23 Q. So by the time you came to do your review of the
 24 electronic documents, do you accept that a collation
 25 exercise had already been done by the BRE?

113

1 A. Yes, that is correct, I think, yes. And that I think
 2 was what — when I said I received a pack, I think
 3 that's what I was referring to.
 4 Q. Right.
 5 A. That I received as part of that exercise, yeah.
 6 Q. Did you review any hard copy documents?
 7 A. I think I may have seen the hard copy file of the
 8 Celotex report, the Celotex ...
 9 Q. What, the test file?
 10 A. The test file, yes, that's correct.
 11 Q. The test file we've been talking about?
 12 A. Sorry, I missed the first bit again.
 13 Q. The test file we have been talking about?
 14 A. That's correct, yes.
 15 Q. You said you had access to the drives; what does that
 16 mean?
 17 A. So the way the data was stored, we had two main drives.
 18 So predominantly the video and any data would be kept on
 19 a drive which was specific to the Burn Hall, which was
 20 called the S drive, and any files that were not video
 21 files and data, like the MSDS sheets, et cetera, were
 22 kept on what we called the V drive under a file —
 23 I think it was called Anvil or something like that. But
 24 as I said, post the fire, that seemed to have been
 25 moved, so I think it may have not necessarily brought

114

1 back as much information on the search, potentially.
 2 Q. And you were given free access to these drives, were
 3 you?
 4 A. I was given access to the drives but, as I say, all of
 5 the data didn't always seem to be there that I was
 6 expecting.
 7 Q. Let's go back to the evidence we were on before the
 8 lunch break.
 9 Do you remember that after the naked test in
 10 November 2014, Kingspan carried out a further test on
 11 K15 in May 2005, 31 May 2005?
 12 A. I remember that, yes.
 13 Q. Let's go to {KIN00020713/5}, please. This is
 14 an internal report from 7 January 2008 in which
 15 Ivor Meredith of Kingspan explained in respect of the
 16 2005 test his views, and if we go to the second
 17 paragraph —
 18 A. Sorry, Mr Millett, do you mean 2005? You said 2008.
 19 Q. Yes, it's a report of 2008.
 20 A. Okay.
 21 Q. And just to make that good, if you like, I can show you
 22 the pages in it.
 23 A. No, no, it says "MSK = Metsec", that makes sense.
 24 Q. Take it from me that I was right about that, at least.
 25 If you look at the second paragraph, it says this:

115

1 "In 2005 Kingspan tested to the new British Standard
 2 formally known as Fire Note 9 BS 8414—1 and based on the
 3 advice of BRE we used a non combustible board as
 4 cladding as the BRE stated 'if you test with
 5 a non combustible cladding then you could state [your]
 6 system works with all non combustible cladding systems.'
 7 After successfully passing this test the BRE moved the
 8 goal posts and stated that we could only say that our
 9 system works with that specific non combustible board.
 10 However the test result met the criteria of BS 8414—1
 11 and BR 135 and is a very useful document when securing
 12 specifications [for] facades above 18m where the
 13 substrata is masonry. The reason for this shift in the
 14 BRE's opinion is that they are still learning about this
 15 test and Kingspan were one of the first to test a
 16 ventilated rainscreen construction."

17 Now, I put that before you, Mr Clark. Let's now
 18 look at what Mr Meredith says about it.

19 Can we go to {Day75/58}. I'll take this quickly
 20 because it's a short question. If we go to the bottom
 21 of page 58, the question there is:

22 "Question: Did you have discussions with the BRE
 23 about how that test might be used prior to it being
 24 carried out?

25 "Answer: The BRE were learning as we were learning.

116

1 Every test we performed, they would send many people to
 2 watch it, because they were still agreeing their EXAP
 3 rules, their scope of application. So there were no
 4 firm rules to say: if you tested in this configuration,
 5 it would be acceptable for use in these scenarios.
 6 So — although the BRE had suggested that if we test
 7 with a non-combustible cladding, we will be acceptable
 8 for use with all non-combustible cladding systems.
 9 "Question: Who was it who suggested that within the
 10 BRE?
 11 "Answer: I believe it was Sarah Colwell."
 12 Et cetera, and it goes on like that, and there is
 13 also a reference to that at page 63 {Day75/63}.
 14 Were you aware at the time, May 2005 or perhaps
 15 later, of this conversation?
 16 A. No, I wasn't aware, no, no.
 17 Q. Do you agree that any suggestion that testing with one
 18 non-combustible cladding would mean that you could use
 19 any non-combustible cladding defeats the whole purpose
 20 of classification to BR 135 in the first place?
 21 A. Yes, I would agree, yes. It's something I would —
 22 I don't think Sarah would say.
 23 Q. That's because the test is intended to be
 24 system-specific, isn't it?
 25 A. It is, yes, it's a system test, definitely.

117

1 Q. Did you yourself give any advice to the effect described
 2 in the note we've just seen by —
 3 A. In 2005, no, I was primarily a technician at that point
 4 in terms of the cladding. I never had any discussions
 5 in terms of interpretation or anything along those
 6 lines.
 7 Q. Did the BRE give advice initially at least to Kingspan
 8 that the use of non-combustible boards as the putative
 9 rainscreen material meant that any non-combustible
 10 material could be used, as Ivor Meredith recorded in the
 11 note we've seen?
 12 A. That's not a conversation I've ever heard had in those
 13 regards, no, no, I wouldn't.
 14 Q. Right.
 15 Now, it's right, isn't it, that the May 2005 BS 8414
 16 test used a cementitious particle board as the outer
 17 face?
 18 A. Yes, I think — I believe that's true, yes.
 19 Q. That's recorded in the test report, isn't it?
 20 A. Yes, a UCA board.
 21 Q. Sorry, can you say that again, please?
 22 A. UCA board, I think it was described as.
 23 Q. Yes.
 24 Now, you're aware that Kingspan say that it was —
 25 or are you aware, this is a question, I should say —

118

1 are you aware that Kingspan now say that it was
 2 a cellulose fibre cement board?
 3 A. I have heard that, yes, yes. I don't know where they
 4 got that from in the light of the time that's passed.
 5 Yes, I had heard that.
 6 Q. In your answer a moment ago — and there may have been
 7 a little confusion because of overspeaking — you say
 8 "UCA board, I think it was described as"; where was it
 9 described as UCA board?
 10 A. I think that was — I've seen an email that Mr Meredith
 11 sent me to how he described it.
 12 Q. I see. So this is evidence at the time; is that right?
 13 A. Yes, there's an email which — where he describes what
 14 the board is called and the firebreak details, as far as
 15 I recall.
 16 Q. Right.
 17 Now, let's go to {KIN00005079}, please. This is
 18 a photograph of the BS 8414-1 system as tested.
 19 Are you able to remember, looking at this
 20 photograph, and particularly the grey outer boards we
 21 can see there, what you believed it was at the time?
 22 A. No. In reality, when you look at these boards, it's
 23 very difficult to tell what they are from the front,
 24 because that tends to be sort of quite homogeneous in
 25 its form. They put like a slurry of concrete, cement,

119

1 over the top. You can only really tell what they're
 2 like from either looking at the edge or the back of the
 3 board, so that doesn't really give you much indication.
 4 Sometimes with these boards you almost have to break
 5 them to see what they are.
 6 Q. Right.
 7 Can you explain how there could have been confusion,
 8 perhaps, at the time, between cementitious particle
 9 board and a cellulose fibre cement board?
 10 A. Sorry, what did you call the first board?
 11 Q. A cementitious particle board.
 12 A. So the difference between the two boards is they're both
 13 cementitious, but one will have probably something like
 14 glass fibres in, whereas the other one will have the
 15 equivalent of wood chips. I probably — at the time, in
 16 2005, was probably less aware of the difference than
 17 I am now.
 18 Q. Was a record made of what this material we can see here
 19 was when it arrived at the BRE's premises?
 20 A. I think I've seen some drawings which were done by my
 21 colleague David Hoare and he described it as
 22 non-combustible board.
 23 Q. Was there something like a delivery note from which —
 24 A. Erm —
 25 Q. — a product could be identified?

120

1 A. Not that I can recall with this passage of time, no.
 2 Q. Would that have been the system?
 3 A. Erm —
 4 Q. Would there have been a system whereby the precise
 5 product was delivered and signed for, very much in the
 6 same way that we saw in 2014 with the Celotex
 7 components?
 8 A. I think ... I would imagine there would be, but again,
 9 not a formal system.
 10 Q. Right.
 11 A. So, as before, it would have probably arrived, somebody
 12 would have signed for it and then given the delivery
 13 note to the client.
 14 Q. At that time, was there a system of retaining on a file
 15 or in some kind of record—keeping the precise identity
 16 of the material which we can see there?
 17 A. Yes, I think at that point the test files were in
 18 operation, yes.
 19 Q. What did you think this board was?
 20 A. Erm ... if I ... it's such a long time — I — my
 21 understanding was it was a non-combustible cement
 22 particle board of some type. I can't recall well enough
 23 to differentiate between whether it was a fibre or
 24 a chipboard type.
 25 Q. Do you remember there being any discussion about the

121

1 nature of this item?
 2 A. No, none at all, no.
 3 Q. Did you think this was going to be another indicative
 4 test as had been carried out in the November of 2004, or
 5 was this going to be a full BS 8414 test that anybody
 6 using it would seek to replicate when building their
 7 cladding system?
 8 A. I think at that time I wouldn't have been aware of what
 9 the ultimate end use would be. One of the things we
 10 would do, I suppose, is if the client said they wanted
 11 to do a test, if it passed, it may then turn into a full
 12 test, so we would essentially test it on the
 13 understanding that if it did pass, it could be used
 14 to — as a full test. So it would be treated in such
 15 a way that it was a full test, yes. It wasn't
 16 an indicative test, if that's what you mean.
 17 Q. Right.
 18 Now, Mr Meredith said in his evidence — and I'll
 19 just give the reference: {Day76/207:22} — that this
 20 kind of board was not traditionally suitable for the
 21 outermost layer of a cladding system; would you agree
 22 with him?
 23 A. From experience, yes, I would think it would be very
 24 unusual, yes.
 25 Q. Did it occur to you to ask yourself why it would be that

122

1 Kingspan were testing Kingspan K15 using
 2 a non-combustible cement particle board as the
 3 rainscreen material if it wasn't traditionally suitable
 4 for the outermost layer of a cladding system?
 5 A. At that point of time, no, it wouldn't have occurred to
 6 me to ask that question. My role wasn't to ask those
 7 types of questions. It was to assist and deliver the
 8 test.
 9 Q. What about Mr Hoare or Ms Colwell? Was there any
 10 discussion about that topic that you're aware of at the
 11 time?
 12 A. I don't recall such conversation, no, not at all, no.
 13 Q. Let's look at some of the correspondence surrounding the
 14 report. Can we go, please, to {BRE00003278}. This is
 15 a series of emails between you, David Hoare and
 16 Ivor Meredith at Kingspan from 3 November 2005. We
 17 looked at this one earlier on.
 18 If we can go to page 2 {BRE00003278/2}, please, at
 19 the bottom, you can see that there is an email from
 20 Ivor Meredith to David Hoare and to you, Mr Clark, on
 21 27 October 2005, and you can see from it that
 22 Ivor Meredith was chasing a test report. Do you see
 23 that?
 24 A. Yes, I can —
 25 Q. "How are you getting on with our test report"; yes?

123

1 A. Yes.
 2 Q. This was five months after the test. Do you know why
 3 a draft report had not been issued by that stage?
 4 A. No, I have absolutely no idea whatsoever.
 5 Q. It's quite a long gap, isn't it?
 6 A. Without knowing what else was going on at that period of
 7 time, I don't know. I know possibly around that time we
 8 were working on the Rose Park Care Homes thing, project,
 9 so it could have been to do with that, I think, maybe.
 10 I can't recall, it's such a long time ago.
 11 Q. At any rate, if we can go to the top of page 2, we see
 12 an email the following day, and I'm sorry, we need the
 13 bottom of page 1 just to pick up the date and the time
 14 stamp. 28 October, it's the next day, back to
 15 Ivor Meredith, copied to David Hoare. Then if we flip
 16 to the top of page 2, you can see you say:
 17 "Ivor,
 18 "The report is in [its] final iterations and should
 19 be signed off any day now, I must [apologise] for the
 20 delay getting it out to you. In terms of the video,
 21 I can do you a new copy which will come out with the
 22 report. The only outstanding info which would be of use
 23 and which should be included in the report is details
 24 for the [intumescent] fire stop that you used. If you
 25 could let me have the info I will include it."

124

1 So we can see you apologise for the delay there, and
 2 said it should be ready any day.
 3 In fact, the report wasn't issued until
 4 8 December 2005, was it?
 5 A. I think that's correct, yes.
 6 Q. So he had to wait another five weeks. Why was that?
 7 A. Again, I've no idea. At this time, this wasn't my
 8 primary role, it was a job I was doing along other
 9 things as well, and I think there were other projects
 10 going on as well. I — without seeing what I was doing
 11 at the time, I don't particularly know.
 12 Q. You can see that you ask him to provide the details of
 13 the intumescent firestop that had been used in the test.
 14 Did the BRE not have its own records of that?
 15 A. Only — as far as I was aware, it was photographic. It
 16 was really to describe what it was — what it should
 17 have been called and how — what its brand name was.
 18 Q. Right. So does that tell us that you had done a test
 19 and couldn't identify this component other than from
 20 a photograph and from the brand name?
 21 A. It wasn't — my recollection is that Mr Meredith brought
 22 it with him, and there were no identification marks on
 23 the product. It was essentially just two bits of metal
 24 with some intumescent in between. It wasn't marked up
 25 with a manufacturer or anything like that, as far as

125

1 I can remember.
 2 Q. Was there no system in place whereby the intumescent
 3 firestop was taken from Mr Meredith, logged, identified
 4 clearly, and then photographed before being used on the
 5 rig?
 6 A. At that time, probably not, no, I wouldn't have thought
 7 so.
 8 Q. So, again, is this, even then, a system whereby the
 9 client would bring their own component in and you would
 10 just use it without logging it?
 11 A. Yes, because they were reliant on delivery — we were
 12 reliant on them to deliver the sample, so to a certain
 13 extent, yes.
 14 Q. Right.
 15 Even at this stage, and what's coming across from
 16 this evidence is that you placed a great deal of trust
 17 on the client, if I can use that word, to bring in the
 18 right components and to bring to your attention any
 19 particular nature or feature of those components; is
 20 that fair?
 21 A. I think that's fair, yes, yeah.
 22 Q. Why did you place such trust in your clients, given that
 23 you were carrying out what was supposed to be
 24 a rigorous, robust and impartial test?
 25 A. At that time, I don't know, because it wasn't the thing

126

1 I was involved with necessarily, so the higher level
 2 stuff was done by other people.
 3 Q. Why wasn't the BRE sceptical of every client that
 4 crossed its threshold, given its role as a testing house
 5 to a British Standard in respect of fire safety?
 6 A. I think they were and are. It depends, when you say
 7 were sceptical, it's like ... I don't know how far down
 8 the line you go. It clearly states in the — in BRE's
 9 terms and conditions that the rig is to be provided to
 10 BRE, and we have no say in how that's put together and
 11 what they use, and it's incumbent on them to provide us
 12 with that information. I think one of the things you
 13 said earlier was: to what degree do we say to clients,
 14 "Do this, do that", and essentially, that was the thing,
 15 if you get into that stage where you're telling the
 16 client what to do, you're going into the realms of
 17 consultancy.
 18 Q. I'm not suggesting that you should be telling the client
 19 what to do. On the contrary, what I'm suggesting to
 20 you — I'm really asking, actually, I'm not suggesting
 21 anything, I'm just asking you why it was that there was
 22 so much trust between the BRE and its client, given your
 23 role as an impartial, robust and ruthlessly independent
 24 testing house.
 25 A. That's a question I can't answer, given that, at that

127

1 time, I think that's ... yes, that's probably a question
 2 for someone else.
 3 Q. Right. Very well.
 4 Going to the top of this email thread on page 1
 5 {BRE00003278/1}, please, Mr Meredith responds to your
 6 question, as you can see, on 3 November 2005, and he
 7 says:
 8 "Phil,
 9 "With regards the ventilated cavity barrier please
 10 use the descriptions below for the test report."
 11 He sets out some details there.
 12 Do you accept that it's quite a generic description
 13 of the ventilated rainscreen barrier?
 14 A. The first line, "2.5mm graphite"? Yes, it's very
 15 generic, yes.
 16 Q. Yes. Then there is a more detailed description below,
 17 identifying them as Promaseal barriers for the
 18 confidential section of the BRE report; do you see that?
 19 A. I do, yes.
 20 Q. What did you take the reference to the "confidential
 21 section" to mean?
 22 A. I didn't think there was a confidential section.
 23 I don't know what he means by that.
 24 Q. Did you go back and ask him?
 25 A. At that point, no, I had no reason to.

128

1 Q. Here was an email to you in which he is giving you
2 information to be used in what he thinks is going to be
3 a confidential section of the BRE report; why didn't you
4 go back and tell him, "There isn't a confidential
5 section, do you want me to publish this information or
6 not?" Why didn't you ask him that question?
7 A. At the time it wasn't in my remit to ask that, I was ...
8 it never occurred to me to ask that question.
9 Q. Well, if he was saying something or proceeding on
10 an assumption that you could tell was erroneous, why
11 wasn't it your job to go back and just correct him and
12 say, "Well, there isn't a confidential section, now what
13 do you want me to do with the information"?
14 A. I've no idea. It's far too long ago to even remember
15 what my thinking was at that time.
16 Q. Mr Meredith told us in his oral evidence —
17 {Day75/80:4-7} — that he meant the BRE test file when
18 he referred to the confidential section. Is that how
19 you understood it at the time?
20 A. No, I — no. That's not how I understood it.
21 Q. Did you think at the time that this rig, with its
22 cementitious particle board and these components on it
23 that he's identified even generically, would have been
24 representative of a real—life 18—metre—plus build?
25 A. At that time, I'd had — although I'd worked with the

129

1 research for the initial testing, this was probably the
2 first or — the first of few rainscreens we'd done at
3 that point. So my knowledge, my personal knowledge,
4 wasn't sufficiently well advanced to say whether it was
5 representative or not. So I couldn't answer that
6 question.
7 Q. Just taking a step back, then, in the logic, were you
8 aware at the time at the very least of the fact that
9 a test to BS 8414—1, to BR 135 criteria, was a full
10 system test which, if passed, applied only to a full
11 cladding system to exactly that build—up?
12 A. I don't know if my understanding of BR 135 at that time
13 was sufficient to make that ... the connection because,
14 as I say, I wasn't dealing with 135 and compliance to
15 that.
16 Q. Right. Then let's ask the question a bit more
17 generally: were you not aware at all that if a system on
18 a rig at the BRE passed a BS 8414—1 test, that test
19 could only be used to approve a full system which
20 corresponded exactly with the system as tested, and not
21 any system which was different from it? As a basic
22 principle, did you understand that?
23 A. I can't recall exactly at 2005. I would say probably,
24 yes, in general terms, but ...
25 Q. Did it occur to you at the time, therefore, that the

130

1 system described in the 2005 report was completely
2 unrepresentative of any rainscreen cladding façade that
3 would be typically installed on a tall building?
4 A. Probably from experience, yes, it did ... but I'm sure
5 you're going to come on to it later, but I don't think
6 this system was ever issued a BR 135, so there was no
7 other reason to treat it other than just a standard test
8 report for a client that they'd requested.
9 Q. What was the purpose of the test, then, if it wasn't —
10 A. So —
11 Q. Right, let me start again.
12 What was the purpose of the test, then, if not at
13 least to try to achieve classification to BR 135?
14 A. You can undertake an 8414 test and not necessarily
15 request a BR 135 for it. It would be ... I don't know
16 if the system changed. I have a feeling now, if you
17 undertake an 8414 test, you get — if it passes, you get
18 a BR 135 as a matter of course. I think back in 2005,
19 I don't know whether that was necessarily the case.
20 I wasn't in a position to write those, so I can't
21 definitively answer that. That's possibly, again,
22 something for somebody who — someone the likes of Tony
23 or Stephen Howard, but I think in 2005 you didn't
24 necessarily always get a BR 135.
25 Q. You say that you probably did realise that this test

131

1 configuration did not reflect a build in the real world;
2 was that, to your way of looking at it, obvious to
3 Kingspan at the time?
4 A. I think the fact that they delivered something that they
5 wanted testing, it must have related to something that
6 they were seeing in the market. The problem is I — as
7 I say, I'm not a façade engineer, I haven't been out and
8 looked at numerous buildings, and I don't — didn't at
9 the time understand what they were selling into and the
10 market they were selling into and how that system
11 represented what they were selling.
12 Q. Now, I showed you Ivor Meredith's 7 January 2008 report,
13 and I read the passage out to you, particularly about
14 whether BRE moved the goalposts and then stated you
15 "could only say that our system works with that specific
16 non combustible board". You remember that bit I read
17 you? I can go back to it if you —
18 A. I remember that, yes, yes, I've seen that statement
19 before.
20 Q. Yes. Is he right? Is he right that the BRE initially
21 told Kingspan that the test could be used in a variety
22 of systems and then, as he put it, moved the goalposts?
23 A. I can't say. As I think I said earlier, that's never
24 a conversation that I was party to. So if that was the
25 case, he would have had that with senior members of

132

1 staff, not me.
 2 Q. Right.
 3 So does it follow from that that, to your way of
 4 looking at it, Kingspan would always have known from the
 5 word go that the system test they did was all but
 6 useless on the basis that nobody built rainscreen
 7 cladding systems using cement particle boards as
 8 a rainscreen?
 9 A. If you wanted to apply for a 135 then potentially yes,
 10 I think you're correct.
 11 Q. Yes.
 12 Now, at paragraph 87 of your statement, which is at
 13 page 21 {BRE00005768/21}, you tell us that you were
 14 present at that test. Is that correct?
 15 A. I think from recollection I was, yes.
 16 Q. You also say that it's highly likely that Sarah Colwell,
 17 Richard Colwell and David Hoare would also have been
 18 present.
 19 A. Yes, that was pretty standard at the time.
 20 Q. Right. There is no written record of who was there; do
 21 you know why that is?
 22 A. I think until I introduced the — a sign-in sheet, there
 23 weren't written records necessarily at that point.
 24 Q. Right. What was it that prompted you or allowed you to
 25 remember the fact that you were present at this test?

133

1 A. Erm ...
 2 Q. Did you see a document?
 3 A. No, primarily because I think most of the tests I was
 4 there. I do recall the test.
 5 Q. Right.
 6 Let's go to {BRE00005621/61}, please. These are
 7 David Hoare's notes of the test. We can see this is
 8 a manuscript document, so let's take it slowly.
 9 You can see that he notes times down the very far
 10 left-hand column, and then other times or time marks in
 11 the second column from the left, and then some comments.
 12 You can see the date at the top right-hand corner,
 13 31/05/05.
 14 A. Can I just clarify something, if that's okay? I think
 15 the numbers on the far left-hand side appear to be my
 16 writing.
 17 Q. I see, thank you. That was a question I had.
 18 So did you add those numbers presumably after
 19 Mr Hoare had created this document?
 20 A. Yes, I think I did.
 21 Q. Right. Okay.
 22 Just help me: it's right, isn't it, that BS 8414
 23 requires records to begin at least five minutes before
 24 ignition of the fuel source?
 25 A. That is correct, yes.

134

1 Q. Is it right that the timings in the right-hand column,
 2 in other words the second column from the left, are
 3 times from the start of observation?
 4 A. So the 0 would be start of the logger, so that's
 5 minus 5, in a sense, yes.
 6 Q. Yes, and the left-hand column reflects the time from
 7 ignition?
 8 A. Yes.
 9 Q. Again, that's clear, isn't it, because the 0 at the top,
 10 "logger started", and as you get to five minutes,
 11 ignition; yes?
 12 A. Yes.
 13 Q. And then you have put 0 at that point; yes?
 14 A. That's correct, yes.
 15 Q. So these times are supposed to be exactly five minutes
 16 apart; yes?
 17 A. Yes.
 18 Q. Yes. These are the timings, do you accept, which should
 19 have been used in the report? Yes?
 20 A. Yes, that's correct.
 21 Q. Now, let's look at the report.
 22 Let's go to {BRE00005769/105}. This is a precursor
 23 to the report, some correspondence. This is an email of
 24 1 December 2005 from David Hoare to you, and we can see
 25 that — at the bottom of the page, I think we'll start

135

1 with that one:
 2 "Phil
 3 "Where is the revised report which was due to be
 4 with me today, as we discussed yesterday, Wednesday.
 5 I need it [on] my desk first thing Monday morning as
 6 Kingspan are getting very indignant about the delay. We
 7 have to get the report to them immediately if we are not
 8 to completely piss them off and [lose] their custom."
 9 Your response the next day:
 10 "Sorry Dave, I was doing a job with Steve and then
 11 went home early not feeling well. I am still at home
 12 feeling a bit better but still flu like. I will work on
 13 it from here and email it over for you to look at. If
 14 you are happy with it it can go out on Monday."
 15 Then he comes back to you on the 5th, three days
 16 later:
 17 "Phil
 18 "Sorry to push, but I'm getting my arse kicked too!
 19 "Dave."
 20 Do you know why there had been such a lengthy delay
 21 in issuing the report?
 22 A. If you look at paragraph 2, that appears to mean I was
 23 off, I think, potentially at that point. I was doing
 24 some off-site work with my colleague Steve Manchester.
 25 I used to also go off site and do — no, it wouldn't

136

1 have been with ... so I think I was doing a project with
 2 Southern Water, so I may have been off-site for a couple
 3 of weeks, I think, at that point, if that's the right
 4 time. That's the only Steve I know who I would have
 5 been working with at that period of time.
 6 Q. What would the consequences of losing Kingspan as
 7 a customer have been?
 8 A. They were quite a large customer, but not necessarily
 9 the largest customer, but like any organisations, you
 10 don't want to annoy your clients.
 11 Q. This had now been a six-month delay, hadn't it, because
 12 we're now early December, the test had been done at the
 13 end of May?
 14 A. Yes, that's correct, yes.
 15 Q. So it's not really surprising that Kingspan were getting
 16 indignant.
 17 A. Yeah, I don't necessarily think that was an unexpected
 18 delay. There were occasions where things would take
 19 a long time with other projects, and — but yeah, you're
 20 right, I suppose there were —
 21 Q. Was the report not then rushed out because of Mr Hoare's
 22 very clear signal to you about the consequences?
 23 A. I don't think rushed out would be the case, no.
 24 Q. How much preparation had you done on the report before
 25 the beginning of December and this email exchange?

137

1 A. Oh, I can't recall, it was such a long time ago. I've
 2 done thousands of reports and jobs since then,
 3 I wouldn't know.
 4 Q. Was it normal to leave a test report for six months
 5 after the test before issuing it to the client?
 6 A. Occasionally, yes. I must — I think I remember at that
 7 point I was quite heavily loaded with lots of other
 8 jobs, so I must admit I was taking on more than I should
 9 have been, really, and it was affecting some of the
 10 delivery times for stuff.
 11 Q. It looks from what we've got that you didn't do anything
 12 on the report, got a boot up the backside from your boss
 13 at the beginning of December, and then got the report
 14 together over a matter of days, issuing it on
 15 8 December. Is that what happened?
 16 A. I can't recall, and even if it was, it went through the
 17 due diligence process anyway, so regardless of if it was
 18 done in three months or two days, it still went through
 19 the same due process and was checked by others. So,
 20 again, other people had sight of it and, had they had
 21 any questions, they would have pushed them back to me to
 22 get rectified.
 23 Q. Let's go to {BRE00002511}. This is a copy of that test
 24 report. You can see from the bottom right-hand corner
 25 that it's dated 8 December 2005 and it has a test

138

1 number 220876. Important number, keep that in your
 2 mind: 220876.
 3 If you go to page 6 {BRE00002511/6}, please, we can
 4 see the description of the test build-up under the
 5 heading "Description of product", then third item down,
 6 "Fixing Details". Can you see that?
 7 A. Yes.
 8 Q. If you read down it, it refers to a number of different
 9 components. I'll start at the beginning. You can see:
 10 "60 mm thick Kooltherm K15 ... which were 1200 mm x
 11 900 mm was mechanically fixed to the blockwork
 12 substrate. 1200 mm x 900 mm x 6 mm thick cement
 13 particle boards, manufactured by UAC, were mechanically
 14 fixed at 600 mm centres to an aluminium railing system
 15 which was also mechanically fixed to the block work
 16 substrate."
 17 Et cetera. I don't think I need to read out the
 18 rest of it.
 19 You can see there the reference to the cement
 20 particle boards; yes?
 21 A. Yes.
 22 Q. Then a little bit lower down it says:
 23 "Fire stopping was provided by a ventilated
 24 rainscreen barrier system, comprising of nominal 2.5mm
 25 thick graphite based intumescent strip bonded to nominal

139

1 0.6 mm thick galvanised steel sheet, and positioned
 2 0.5 m and 4 m above the fire chamber on both the main
 3 face and the wing face (Full manufactures[sic] details
 4 are held on file)."
 5 That then repeats, therefore, doesn't it, the
 6 generic description of the fire barriers that
 7 Mr Meredith had given to you?
 8 A. It does, yes, indeed.
 9 Q. Do you know why the more detailed description
 10 identifying Promaseal as the brand or manufacturer was
 11 not used as Mr Meredith had set out in some detail in
 12 his 3 November 2005 email —
 13 A. Erm —
 14 Q. — to go to the confidential part of the report?
 15 A. No, I don't, particularly. I have seen — not
 16 specifically other 8414 reports, but I've seen other
 17 reports that have been issued even in the last sort of
 18 five years where details of what the manufacturer has —
 19 of the product is, is actually not declared. So I don't
 20 think it was necessarily unusual, and I think there are
 21 even provisions within the report where it says about
 22 details that the client classed as confidential. I may
 23 be mistaken on that, but that's my understanding.
 24 Q. Certainly so far as the manufacturers' details are
 25 concerned, you do say at the end of this paragraph, as

140

1 I've just read to you, "Full [manufacturers'] details
2 are held on file".
3 My question really is: why did the details of the
4 Promaseal have to be held on file and not put in the
5 fixing details so that someone could see it?
6 A. I don't know the answer to that question.
7 Q. Because without knowing what those were, without being
8 able to have the manufacturers' details available
9 upfront, the system can't be replicated, can it?
10 A. No, but you don't — my understanding is that the
11 8414 report isn't a — isn't the menu to how to build
12 a system.
13 Q. Well, that's an interesting way of putting it, but would
14 you accept that the list of components needs to be
15 replicated in order for the system to satisfy the
16 regulation?
17 A. Yes, I would say more in the BR 135 than — I would
18 probably say more in that, yes, I would agree, and I've
19 seen, as I say, lots of 13501 documents and small flame
20 tests where none of this information is declared, and it
21 still states even then, even today, that this
22 information is held on file. I'm not certain as to why
23 that is. Sometimes I think it's — it should be
24 declared more often, but at this time I don't understand
25 why that was asked.

141

1 Q. Right.
2 Well, let's look at BS 8414—1 from 2002 at
3 {BRE00005769}, please. This is a document you exhibit
4 yourself to your witness statement, Mr Clark.
5 A. Yes.
6 Q. Let's start with page 1, because that's what it is, and
7 you can see BS 8414—1:2002.
8 If you go to page 11 {BRE00005769/11}, clause 9,
9 "Test report", it says:
10 "The test report shall include the following
11 information: ...
12 "c) a full description of the cladding system,
13 together with details of materials and components used."
14 Do you see that?
15 A. I do, yes, yes.
16 Q. I imagine that you must have been familiar with this
17 British Standard when producing this 8 December test
18 report; no?
19 A. Yes, yes.
20 Q. Therefore you must have known that the BRE was required
21 under the British Standard to provide a full description
22 of the cladding system, together with details of
23 materials and components used; no?
24 A. Yes, although at this time there were templated
25 documents for the test report, and again ... I think,

142

1 had there been any issue from a senior member of staff
2 necessarily, they would have said, "No, hang on, you
3 need to change this and describe it more fully", and
4 that wasn't done.
5 Q. Do you accept that full details of the cavity barriers
6 required by clause 9(c) or paragraph 9(c) of this
7 British Standard were not provided in the report which
8 was to be made available to clients?
9 A. It doesn't say the name of the manufacturer, it says
10 full details "together with details of materials and
11 components used". It doesn't say you have to say who
12 the manufacturer is.
13 Q. No, but you didn't even set out the full details that
14 Mr Meredith had provided you. You summarised them.
15 A. Maybe I did, I can't recall.
16 Q. Do you accept that this report and its description of
17 the cavity barriers was not compatible with the
18 requirement of BS 8414—1?
19 A. In hindsight, probably, yes, but, as I say, it went
20 through the signing process, and if anybody in a senior
21 position had any issues, they would have sent it back
22 and made me change it.
23 Q. Can we go back to the test report, then, please, at
24 page 6 {BRE00002511/6}. You can see, as I showed you,
25 there is a reference to cement particle boards in the

143

1 third line.
2 Have you any reason to think that that was
3 a misdescription of the product actually used in the
4 test?
5 A. No, I don't think so.
6 Q. You don't think it's a mistake for cellulose fibre
7 board?
8 A. No, cement particle board. Now reading that, I would
9 say ... cement particle board to me, from my knowledge
10 now, would contain cellulose fibres, yes.
11 Q. Maybe there is nothing in it, but if there was any
12 distinction, any real and important distinction between
13 cement particle board and cellulose fibre board, if
14 there was a distinction, and in fact cellulose fibre
15 board was used and not cement particle board, then this
16 description would be wrong, wouldn't it?
17 A. I would say cellulose fibre and cement particle are the
18 same. If you had — if it had said it was cement fibre
19 board — because my understanding is there's three types
20 of board — sorry, two types of board: so cellulose
21 board and cement particle board I would say are the same
22 material; cement fibre board, which I think has glass
23 fibre binders in it, is a different material. That's my
24 understanding.
25 Q. At any rate, did Ivor Meredith ever ask you to correct

144

1 this report in that respect?
2 A. No.
3 Q. Now, going back, if we may, please, to the handwritten
4 record of the test at {BRE00005621} — that's
5 an interesting — looking document, but I'm not sure it's
6 the document I want.
7 A. This is 5621.
8 Q. Page 61 {BRE00005621/61}.
9 We've now established whose writing is whose. Which
10 are the timings that would be used in the report, or
11 which should be used in the report?
12 A. Erm ... I would say the left — hand column.
13 Q. Right. So the ones you added; yes?
14 A. Yes.
15 Q. Let's do a comparison. Can we put the report at page 10
16 {BRE00002511/10} next to this document. So keep this
17 document on the screen and have up at the same time
18 {BRE00002511/10}. Now, let's just look at it.
19 Do you accept, first of all, that this page on the
20 right — hand side of the screen is section 5.1 from the
21 test report of 8 December 2005 —
22 A. Yes, I do, yes.
23 Q. — under the heading "Visual Observations"?
24 Right, let's look at the timings and let's compare.
25 In the BRE report the tip of the flame is said to have

145

1 reached 4 metres at ten minutes. Do you see that?
2 A. Yes.
3 Q. "Tip of flames at 4 m height"; yes?
4 A. Yes.
5 Q. That's with a five — minute time delay, and the actual
6 time the flame reaches 4 metres was five minutes; yes?
7 A. Yes, yes.
8 Q. Yes. So "Flame [arrow] 4m", right.
9 What was the source of the timings in the report?
10 A. I think I had looked at this and I think this is a —
11 what appears to have happened is the first couple of —
12 from up to 4.27 was correct, I think.
13 Q. Yes.
14 A. And then the — a 10 has been transposed across.
15 Some of these as well in — it may be in the past,
16 if the timings weren't exactly correct, I think they
17 would re — watch the video on occasions, so these times
18 might change. But that's — the five and ten minutes is
19 a — appears to me to be a typographical error which has
20 then been perpetuated through the rest of the report and
21 hasn't been picked up.
22 Q. I see. So is this right: the ten minutes in the test
23 report should read five minutes?
24 A. Yes, yes.
25 Q. And then that five — minute delayed version — that

146

1 inconsistency then runs through the printed report?
2 A. It appears to be, yes.
3 Q. So the printed version is wrong to that extent?
4 A. It is, yes, I agree, yes.
5 Q. Right. That shows, doesn't it, that the flames were at
6 4 metres by five minutes, not ten minutes; yes?
7 A. According to David Hoare's record, yes, yes, that's
8 correct.
9 Q. Was that not critically important when you're doing
10 a test in order to satisfy BR 135 criteria?
11 A. No.
12 Q. No?
13 A. This test was never issued a BR 135.
14 Q. No, I appreciate that, but it was actually ten years
15 later, but we'll come to that later in the story.
16 A. Yes.
17 Q. When you're issuing a test report, is it not absolutely
18 critically important to get the timings of the progress
19 of the fire correct and not out by five minutes?
20 A. It is, yes, and clearly this hadn't been picked up by
21 myself or by the person who did the sanity check on it.
22 Q. How come?
23 A. Sorry, I missed that.
24 Q. How come?
25 A. I've no idea. It's 15 years ago. I've no idea.

147

1 Q. It is remarkable, though, isn't it? It is remarkably
2 slapdash, isn't it, that the visual observations and the
3 time, the progress of the fire up the rig, was out by
4 five minutes in the final issued version of the report?
5 A. Yes, it should have been corrected, yes, you're right.
6 Q. You say it should have been corrected; it's slapdash,
7 careless.
8 A. I wouldn't say it was careless. Yeah, it should have
9 been corrected, and nobody's ever drawn it to our
10 attention and it's not correct.
11 Q. When did you first realise it was not correct?
12 A. Erm ... when did I ... I think something was asked when
13 the — one of the BSRs had pointed something out,
14 I think that's when it was — in the opening statements.
15 Q. I see. During the opening statements for Module 2 of
16 this Inquiry?
17 A. That's correct, yes.
18 Q. Right. And you have got no explanation, sitting there
19 today or standing there today, of how this error came
20 about?
21 A. No, I reviewed it and the only conclusion was it's —
22 instead of following down the two columns, it's
23 inadvertently moved across to the right and has gone
24 that way and it's not been picked back up.
25 Q. You say it wasn't picked up on a peer review; this error

148

1 originated with you.
 2 A. Yeah, but I didn't peer review it, so it was
 3 peer reviewed by somebody else.
 4 Q. Of course, but this error originated with you?
 5 A. Well, then, yes —
 6 Q. Do you accept that this error —
 7 A. That's the whole idea of peer reviewing, is that people
 8 pick up errors that people have made.
 9 Q. Well, that may be, Mr Clark. Do you accept as a fact
 10 that this error originated with you?
 11 A. Yes, if I wrote that, then yes, yes, definitely .
 12 Q. What do you mean, "If I wrote that"? Who else —
 13 A. I mean — sorry?
 14 Q. Well, is this —
 15 A. Yes, I would say yes.
 16 Q. Now, I want to ask you some questions about your
 17 correspondence with Kingspan relating to classifying
 18 this test to BR 135 in 2005.
 19 Can we go to your witness statement, please, at
 20 page 27 {BRE00005768/27}, paragraph 111. You say
 21 there — and I'll show you the question before we look
 22 at your answer, Q5(v):
 23 "Was there any request from the test sponsor before
 24 2015 for the BRE to produce a Classification Report to
 25 BR 135 in respect of the system tested on 31 May 2005?"

149

1 When? If so, please explain, as far as you are able,
 2 why no Classification Report for this system was in fact
 3 produced until 2015."
 4 That's the question, and you say:
 5 "From Mr Meredith's email dated 25 November 2005,
 6 which I have referred to above, it appears that
 7 a discussion about classification to BR 135 was
 8 contemplated. I do not know whether any such discussion
 9 took place or, if it did, why the period of time between
 10 the test being undertaken and the formal request for a
 11 BR 135 classification report was so long."
 12 Now, you refer here to this email of
 13 25 November 2005. Let's look at that. {BRE00003282/2},
 14 please. You can see at the top of that page that
 15 Mr Meredith emails you — I'm sorry about this, I think
 16 you need the very bottom of page 1 to see that it comes
 17 from Ivor Meredith. Do you see that?
 18 A. Yes.
 19 Q. Flip back to page 2. 24 November 2005, to you, copied
 20 to David Hoare and Sarah Colwell. Is this the email
 21 you're referring to in your statement?
 22 A. I believe it is, yes.
 23 Q. The text says:
 24 "Subject: RE: BS8414—1 test data.
 25 "How are you getting on with the test report? Does

150

1 this get automatically assessed in accordance with
 2 BRE 135 or is that something we need to look at
 3 separately?
 4 "Regards
 5 "Ivor Meredith."
 6 We can see that here comes the response or internal
 7 discussion, {BRE00003282/1}, same email run, the second
 8 email on page 1, please. On 29 November at the bottom
 9 of that page, you can see that you write to
 10 Ivor Meredith and say:
 11 "Ivor,
 12 "I am very sorry for the delay in you [receiving]
 13 the report, it has been written and once signed off
 14 should be with you at the beginning of next week, I will
 15 include a new copy of the test video for you as well.
 16 In terms of your question about BRE 135, this is
 17 a question for Sarah to answer, I will speak to her and
 18 get an answer for you."
 19 He responds and says:
 20 "Thanks Phil.... it's the video of the indicative we
 21 are after not the most recent one..As soon as the report
 22 is ready could you please email me a copy (in pdf
 23 format).
 24 "We look forward to receiving the report ..."
 25 Now, you say in the email you're sending to him that

151

1 the question of classification is one for Sarah Colwell,
 2 "I will speak to her and get an answer for you"; did you
 3 speak to her?
 4 A. I think I say later on in the statement that I can't
 5 recall specifically. Sarah was quite good at — seeing
 6 she was cc'd in, she was quite good at reading her
 7 emails that she was copied into. I would be very
 8 surprised if I didn't, but I don't remember the terms of
 9 the conversation and what she said.
 10 Q. Can we go to {BRE00003280}, please. This is
 11 Sarah Colwell's message to Mr Meredith herself on
 12 29 November 2005, and she says:
 13 "Ivor
 14 "BR 135 can be considered at the same time — we will
 15 need to look at the design details to see how it can be
 16 [covered].
 17 "I'll chase the report from this end."
 18 Do you know what Sarah Colwell meant when she said
 19 "can be considered at the same time — we will need to
 20 look at the design details to see how it can be
 21 [covered]"? What did she mean by that?
 22 A. This is the first time I've seen this email, so ...
 23 Q. Let me ask it a different way then: did Sarah Colwell
 24 have a discussion with you before sending this email, do
 25 you remember?

152

1 A. No, no, she was a senior staff member, not ...
 2 Q. Right.
 3 A. I can interpret it, if you like, but ...
 4 Q. Well, it may have limited value, but what can you tell
 5 us about it?
 6 A. So if she sent that to me and said BRE — "BR 135 can be
 7 considered at the same time — we need to look at the
 8 design", so that to me would say that she would look at
 9 it and say whether she thought it complied with the
 10 requirements of BR 135. I'm not certain what she means
 11 by the second part of the sentence, but obviously it
 12 meant that she would give it some consideration.
 13 MR MILLETT: Right.
 14 Mr Chairman, I have three or four more questions on
 15 this line before it might be an appropriate moment.
 16 SIR MARTIN MOORE—BICK: All right, keep going, Mr Millett.
 17 MR MILLETT: Can we go to {KIN00005156}, please. This is
 18 an email from Ivor Meredith to Sarah Colwell on
 19 24 March 2006:
 20 "Subject: Façade Test Assessment for Kingspan/Power
 21 point slides.
 22 "Sarah,
 23 "I hope all is well. Further to our meeting last
 24 month have you progressed with the K15 assessment to BRE
 25 135. We could do with this ASAP. Please let me know

153

1 predicted time frame and costing?"
 2 Were you aware of any such discussions about
 3 assessing K15 to BR 135?
 4 A. No, no, I — again, I think this is the first time I've
 5 ever seen this email. And at that time, I didn't deal
 6 with 135, it was done by other people.
 7 Q. Right.
 8 A. Yeah.
 9 Q. Does it follow from that that you were not at the
 10 meeting to which Mr Meredith refers?
 11 A. No, no.
 12 Q. Was there any discussion between you and Sarah Colwell
 13 in relation to classification of K15 to BR 135?
 14 A. Not that I ever recall, no, no.
 15 Q. Do you know why no classification report was issued as
 16 Mr Meredith had requested in 2005/2006?
 17 A. I've absolutely no idea. As I say, it wasn't something
 18 I dealt with. I don't know who was dealing with it and
 19 who she would have passed it on to, but no, I have no
 20 idea, it came as a surprise to me.
 21 Q. In the event, do you accept as a fact that no BR 135
 22 classification was issued in respect of this test until
 23 2015?
 24 A. That is my understanding, yes. Yeah, that is correct,
 25 yes.

154

1 MR MILLETT: Mr Chairman, is that a convenient moment?
 2 SIR MARTIN MOORE—BICK: Yes, if that suits you, Mr Millett,
 3 that's a good point.
 4 We'll have a break now, Mr Clark, just a short one,
 5 until about 3.35, I think that will be about right.
 6 Please remember not to talk to anyone about your
 7 evidence while you're on the break, and we will see you
 8 in 15 minutes or so.
 9 THE WITNESS: Thank you.
 10 SIR MARTIN MOORE—BICK: Thank you very much.
 11 3.35, then, please.
 12 (3.20 pm)
 13 (A short break)
 14 (3.35 pm)
 15 SIR MARTIN MOORE—BICK: Welcome back, everyone.
 16 Mr Clark, welcome back. Are you able to see me and
 17 hear me clearly?
 18 THE WITNESS: I can see you and hear you, sir, yes.
 19 SIR MARTIN MOORE—BICK: Thank you very much.
 20 Well, then, Mr Millett, when you're ready.
 21 MR MILLETT: Thank you very much, Mr Chairman.
 22 Mr Chairman and Mr Clark together, I should just
 23 tell you that it's most unlikely that I am going to
 24 finish my questions for Mr Clark this evening, and
 25 I will have to ask you, Mr Chairman, to invite Mr Clark

155

1 to come back tomorrow, if it's not inconvenient, to
 2 finish his evidence.
 3 SIR MARTIN MOORE—BICK: Well, Mr Clark, you heard what
 4 Mr Millett says. I am sorry about that, because I know
 5 that it's inconvenient for most people who come to give
 6 evidence not to finish when they are told they are
 7 likely to finish, so I hope that's not going to make
 8 life too difficult for you.
 9 THE WITNESS: No, sir, that's no problem at all.
 10 SIR MARTIN MOORE—BICK: All right, that's good. Thank you
 11 very much indeed.
 12 All right, Mr Millett, on you go.
 13 MR MILLETT: Thank you very much, Mr Chairman, and
 14 thank you, Mr Clark.
 15 Now, can I ask you to go to {KIN00005179}. This is
 16 an email from Ivor Meredith to KIL—PB Technical Services
 17 dated Thursday, 8 June 2006, and it's entitled "What's
 18 lurking behind your façade?", and it says:
 19 "Please note the K15 'What's lurking behind your
 20 façade?' ..."
 21 Which seems to be a piece of promotional literature,
 22 and what Mr Meredith says is that it's:
 23 " ... been withdrawn by the marketing department
 24 partly because it's considered not a good sales
 25 tack tick[sic] to highlight the fact that you don't need

156

1 Class '0' below 18 metres."
 2 It also says:
 3 "The BRE have complained about the use of the word
 4 'approved' and 'certification' in our text. These are
 5 privileges that would cost us an additional 20K
 6 [£20,000].
 7 "Therefore when referring to this test method please
 8 use the following text:—
 9 "Kingspan Kooltherm K15 has been successfully tested
 10 to BS 8414—1 and when assessed in accordance with
 11 BRE 135 it is acceptable for use above 18metres in
 12 accordance with the English, Scottish and Irish
 13 Building Regulations."
 14 Now, let's look at the flyer he refers to. It's at
 15 {KIN00005134}. There it is, "What's lurking behind your
 16 façade?", and it's dated 1 January 1996(sic).
 17 Were you aware of this flyer at the time, so first
 18 part of 2006?
 19 A. I don't think I've ever seen this before, no.
 20 Q. Right.
 21 Now, the flyer says, if you scroll down, please, in
 22 the red letters :
 23 "Kingspan Kooltherm K15 Rainscreen Board has not
 24 only been tested by the Building Research Establishment
 25 (BRE) and awarded certification to BS 8414—1:2002, but

157

1 it has also been assessed and approved in accordance
 2 with BR 135."
 3 Now, that wasn't true, was it?
 4 A. Clearly not, no, that's a very incorrect statement.
 5 Q. If we go back to his email of 8 June 2006, please,
 6 {KIN00005179} — I showed you this, I'll just show it to
 7 you again — he says that:
 8 "... the BRE have complained ..."
 9 Do you see in the second sentence?
 10 A. I do, yes.
 11 Q. "... about the use of the word 'approved' and
 12 'certification' in our text."
 13 Do you know who at the BRE had issued that
 14 complaint?
 15 A. No, I don't, I'm afraid, no.
 16 Q. Were you aware of that complaint?
 17 A. I wasn't, no.
 18 Q. Was it common practice at the time for the BRE to review
 19 manufacturers' product literature?
 20 A. Erm ... I'm unsure. It was something I never got
 21 involved with, so I can't definitively answer. I would
 22 be surprised if they didn't — if they saw stuff and was
 23 picked up by people, they wouldn't refer it back to
 24 someone or other, but I don't know whether it was common
 25 practice, if we had anybody who did it particularly in

158

1 a systematic way.
 2 Q. Was it correct that the BRE would have charged another
 3 £20,000 to issue a classification report for this test?
 4 A. To BR 135?
 5 Q. Yes.
 6 A. I doubt it very much, no, I wouldn't have thought so.
 7 Q. How much would it have cost, do you think?
 8 A. Oh, I've no idea. I would expect maybe no more than
 9 a couple of thousand pounds, maybe. I've no idea, that
 10 was just a guess off the top of my head.
 11 Q. I want to turn then to the subject of Kingspan's
 12 Sotech/Metsec testing in 2007 to 2008 under BS 8414—2 of
 13 2005.
 14 Can I ask you to go to page 78 of your witness
 15 statement {BRE00005768/78}, please, and on that page you
 16 can see, towards the bottom of the page, question 12.
 17 It's quite a long question, but I'll show it to you. It
 18 says:
 19 "During the period 2005—2017, did you have any
 20 involvement with any other tests to BS 8414 or
 21 classification to BR 135 of any system incorporating
 22 either K15 and/or RS 5000? If so, please give full
 23 details of the nature of your involvement. Please also
 24 identify, by date and report number where possible, any
 25 such tests or BR 135 Classification Reports. In respect

159

1 of tests to BS 8414 incorporating K15 or RS 5000, please
 2 ensure that you include any and all tests in which you
 3 had any involvement, including any tests which were
 4 terminated early and/or where no test report was
 5 produced."
 6 Now, that's the question that you were asked.
 7 If we go to page 79 of your statement
 8 {BRE00005768/79}, paragraph 328, you say you were
 9 involved in numerous tests on systems incorporating K15
 10 including as follows, and then you set out five of them.
 11 Do you see that?
 12 A. Yes.
 13 Q. You can see that you set out the Sotech test report at
 14 (c); do you see that?
 15 A. Yes, I do.
 16 Q. Do you remember being involved in a test to BS 8414
 17 carried out on 20 December 2007 sponsored by Kingspan,
 18 Sotech and voestalpine Metsec?
 19 A. I do indeed, yes.
 20 Q. Can we go to {KIN00008847}. This is an internal report
 21 produced by Ivor Meredith of Kingspan dated
 22 7 January 2008, parts of which I've already shown you.
 23 Can we go to page 2 {KIN00008847/2}. Under
 24 "Executive Summary" it refers to, "Test Method:
 25 BS 8414—2", and in the third paragraph, "Project

160

1 Stakeholders", do you see that?

2 A. I do, yes.

3 Q. "... run jointly between Sotech, Metsec and Kingspan

4 with all costs split 3 ways."

5 Then under "Test Witnesses", towards the bottom of

6 the screen, it says:

7 "John Egginton Sotech, James Gallear Metsec,

8 Tony Baker LPCB, Sarah Colwell BRE, Phil Clark BRE."

9 So is it right you were there?

10 A. Yes, that's correct, yes.

11 Q. Is it right that Tony Baker, LPCB, and Sarah Colwell of

12 the BRE also attended?

13 A. I can't recall directly, but if that's what Ivor says,

14 then probably he's correct, yes.

15 Q. Right. Do you know why all three of you attended?

16 A. My — I think I ran the test. I don't know why Sarah

17 and Tony were there specifically. I think Tony may have

18 been there because I think the overall plan of the

19 project for Sotech was to get a Red Book listing, so

20 that's possibly why Tony Baker was there on — as

21 a witness for that scheme.

22 Q. And a Red Book listing, can you just explain for people

23 what that is.

24 A. So Red Book listing is run under the LPS, Loss

25 Prevention — LPCB, sorry, Loss Prevention Certification

161

1 Board. It uses essentially the 8414 test as the basis,

2 but it has additional protocols that you have to adhere

3 to, to — it's based around insurance loss as opposed to

4 life safety, so it's got some additional requirements.

5 Q. Is it right to say that in late 2007 there was

6 significant interest at the BRE for its employees or

7 executives to attend tests under BS 8414—2?

8 A. I wasn't aware of such an undertaking being given.

9 Q. Do you remember anything specific about the performance

10 of the system tested on 20 December 2007?

11 A. Yes, it failed quite catastrophically, I think.

12 Q. Failed catastrophically?

13 A. Yes.

14 Q. If we can go back to Mr Meredith's report at page 2

15 {KIN00008847/2}, you can see on page 2 it has a heading,

16 "Construction from inside to out". We can see that he

17 sets out there the components of the tested system; yes?

18 A. Yes, yeah.

19 Q. The outer cladding that's used in the test is identified

20 as a Sotech 1.5—millimetre aluminium cassette rainscreen

21 cladding; do you see that?

22 A. Yes, that's correct, yes.

23 Q. You can see that the insulation was — halfway down the

24 list — K15 100—millimetre new technology; yes?

25 A. Yes, I can see that, yes.

162

1 Q. Did you spot the fact or did you know the fact that what

2 was being used in this test was new technology?

3 A. Until the Inquiry had got the answers from Mr Meredith

4 and others, I wasn't aware of what new technology was,

5 no.

6 Q. No discussion at all at the time about what K15 was

7 going up on this test?

8 A. No, no, none at all.

9 Q. If we go further down page 2 we can see that, towards

10 the end of that page, Mr Meredith has recorded the

11 heading "Result", and then he sets out some comments

12 under it. He says:

13 "By 17minutes the top fire barrier had breached and

14 the raging inferno moved up to the top thermocouples and

15 pushed them past 600 degrees thus failing the simple

16 criteria of BR 135."

17 Do you see that?

18 A. I do, yes.

19 Q. If you go to the top of the next page, please, page 3

20 {KIN00008847/3}, you can see that he says:

21 "The Phenolic was burning on its own steam and the

22 BRE had to extinguish the test early because it was

23 endangering setting fire to the laboratory."

24 Is that a fair description of what you saw at the

25 test?

163

1 A. I agree with the fact that it was burning under its own

2 steam. I don't think it was necessarily endangering the

3 lab, but it was never in a position where it was going

4 to pass, so the decision was to terminate.

5 Q. Right. Who took that decision?

6 A. I think that was taken by me.

7 Q. Right.

8 Moving down page 3, there is a section which starts

9 "Comments". It's not in bold, you will have to go down

10 a little bit further on the screen, but there it is,

11 about a third of the way down the screen in front of

12 you, it says "Comments from the BRE", do you see that?

13 A. I can, yes, yes.

14 Q. It starts with:

15 "The official line:— It's a system failure no

16 individual component can be solely held responsible for

17 the failure.

18 "However (unofficial comments) it was apparent that

19 the insulation was fully involved in the test. Surface

20 spread of flame was apparent and the core continued to

21 burn when the flame source had been extinguished. They

22 stated they did not remember the product performing like

23 that last time."

24 Now, first question on that is: whose comments were

25 those?

164

1 A. I can't recall whether that may have come from
 2 Sarah Colwell. I may have commented on how badly it had
 3 burned over the surface, but I can't remember directly
 4 who said what.
 5 Q. Looking at "unofficial comments", which I've just read
 6 to you, do you remember who those came from?
 7 A. I don't know why he's differentiated official and
 8 unofficial, there is no such thing, it's ... but I would
 9 say again probably Sarah Colwell, Tony Baker may have
 10 made a comment, having seen some of the other tests
 11 I may have made a comment.
 12 Q. Did you have any discussions yourself with Mr Meredith
 13 after or during this test?
 14 A. Not that I'm aware of specifically, no, other than
 15 sort of general chitchat maybe, I think.
 16 Q. Well, we've heard some general chitchat before.
 17 During the general chitchat, did you say any words
 18 to him along the lines of or with the gist of the words
 19 we see after "unofficial comments" in that paragraph?
 20 A. I did actually watch the video back the other day, and
 21 one of the things that was unusual with that test is it
 22 burnt round the corner, which was unusual, so we may
 23 have pointed that out to him. But I can't recall any
 24 direct conversations on that test specifically, no. No.
 25 Q. You can't recall any conversations. My question was

165

1 a bit more precise, I think.
 2 Did you say any words to Mr Meredith along the lines
 3 of what is said in the paragraph that starts, "However
 4 (unofficial comments)"?
 5 A. I don't recall saying them, no.
 6 Q. You don't recall, but you can't rule it out, can you?
 7 A. I can't rule it out, no, but I don't recall, so ...
 8 Q. He says "official line", "unofficial comments". You say
 9 there is no such thing as official and unofficial
 10 comments. Clearly he's got that from somewhere.
 11 Can you explain why Mr Meredith would have thought
 12 that he was being given an official line and
 13 an unofficial line?
 14 A. I think that seemed to be a way — from what I've
 15 gathered of Ivor, he seemed to compartmentalise things.
 16 Q. Right. I mean, did you have an aside, an offline,
 17 a quiet one-to-one chat with him along the lines of the
 18 unofficial comments?
 19 A. No, no, that's not what we did at BRE, no, no.
 20 Q. Why would the official comment or — disregard the fact
 21 that it's official, but why would the comment there,
 22 "It's a system failure no individual component can be
 23 solely held responsible for the failure" — what was the
 24 point of the test if not to identify where the failure
 25 in the system was?

166

1 A. I wholeheartedly agree, I don't know why he's
 2 differentiated that because, as you say, it is a system
 3 test, yes. You can't separate out one individual item
 4 in that regard.
 5 Q. In the unofficial comments you can see in the last
 6 sentence that he's recorded that BRE "stated that they
 7 did not remember the product performing like that last
 8 time". Was there a discussion about the performance of
 9 the product last time, whatever product that was?
 10 A. I can't specifically recall, no.
 11 Q. Assuming that this was K15, do you not remember any
 12 discussion about a comparison between how K15 performed
 13 in this test, burning under its own steam, and how it
 14 had performed under any earlier test?
 15 A. No, because in reality this was what — did you say this
 16 was 2008, I think, did you say? The tests themselves to
 17 a certain extent were treated as individual tests.
 18 I think, from looking at the video, as I said earlier,
 19 it was probably pointed out how it had gone round the
 20 corner, which was quite unusual, and how it had
 21 continued to burn. But other than that I can't remember
 22 any other specific conversations.
 23 Q. We've seen, and you've confirmed, that as an observation
 24 of the test, the phenolic continued to burn after the
 25 fire was extinguished. Do you remember that being worse

167

1 performance than the performance of the K15 the subject
 2 of the May 2005 test, for example?
 3 A. Side by side, yes, they were completely different, yes.
 4 Q. Did you have any discussion about the comparisons
 5 between the May 2005 test and the Metsec December 2007
 6 test with Mr Meredith?
 7 A. I can't recall a direct discussion, no.
 8 Q. Right.
 9 Now, let's look at what Mr Meredith said in his
 10 evidence, please, it's {Day75/160} to {Day75/161}.
 11 I would like to pick it up with you, please, at line 15.
 12 Mr Meredith is asked by leading counsel:
 13 "Question: Was anyone at the BRE at this time aware
 14 that the product tested on 20 December 2007 was
 15 a different one from the product that had been tested in
 16 2005?
 17 "Answer: I think I might have discussed this with
 18 Phil Clark, you know, because I was looking to see —
 19 you know, I was looking to see his opinion on what he
 20 thought, really, and I needed to glean as much
 21 information from him as possible, so I was quite open
 22 with him.
 23 "Question: Right. When you say 'I might have
 24 discussed it', how sure are you that you did discuss
 25 it?"

168

1 Then there is a pause, and if we go to the next
 2 page, he says:
 3 "Answer: I'm sure I told him something about our
 4 new technology and our ovens along the way.
 5 "Question: Okay.
 6 "Answer: Yeah.
 7 "Question: But other than Phil Clark, was there
 8 anyone else at the BRE that you remember discussing or
 9 informing of that?"
 10 Then he gives his answer.
 11 He clearly records a conversation with you about the
 12 subject matter he's being asked about, and you can see
 13 his answer. Does his recollection accord with your
 14 recollection, Mr Clark?
 15 A. The only thing he ever said was that they had changed or
 16 got new ovens, but that was the only thing he ever said
 17 to me. I don't know the process that they go through,
 18 and to me it made — it didn't make any sense as to what
 19 it — or I had no understanding of what the implication
 20 was.
 21 Q. Was it right that he was looking to you for what you
 22 thought about the test?
 23 A. I don't think so, no, no.
 24 Q. Are you sure there was no discussion about the
 25 differences in performance between the 2005 and the 2007

169

1 test?
 2 A. Erm ... I think ... I think there was — something was
 3 said about how it was burning over the whole surface,
 4 that's about all I can ever recall, nothing else more
 5 than that.
 6 Q. Did Mr Meredith tell you that the product tested in
 7 December 2007 was a different product from the one that
 8 had been tested in May 2005?
 9 A. No, never, no.
 10 Q. Looking on at Day 76 of his evidence, can we please go
 11 to that, {Day76/169:12}:
 12 "Question: I want to ask you: by this time, had
 13 Kingspan discussed with anyone else at the BRE the
 14 differences between the sold product and the tested
 15 product? I think you said yesterday that Phil Clark was
 16 aware that you were trying out different products. Is
 17 that right?
 18 "Answer: I was talking to Phil about, that we were
 19 making improvements to the material, that's why I was
 20 asking for his candid answers, his on and off—record
 21 comments with regards to what he thought of the product.
 22 "Question: Was he aware that what you'd tested in
 23 2005 was not what you were selling after that?
 24 "Answer: I think he was — I notice he was —
 25 I think he might have spotted the facing was different.

170

1 And I might have confirmed that to him as well, but ...
 2 "Question: Was there anyone — sorry.
 3 "Answer: Essentially, to the untrained eye, you
 4 know, it's a pink foam with a foil facing, it's not
 5 going to be — nobody else is going to notice it's any
 6 different; it's only within the Kingspan formulation
 7 where the differences are apparent.
 8 "Question: Did you discuss that with anyone else at
 9 the BRE at any time, those differences?
 10 "Answer: The BRE would certify our ISO 9000, so
 11 they were coming into the company four times a year to
 12 look at our formulations. However, I don't think we
 13 discussed it directly with regards to the K15, no."
 14 My question is: do you remember any conversation at
 15 any stage with Mr Meredith about the changes to the K15
 16 product before and after 2006?
 17 A. No, I don't, no, no.
 18 Q. Either to the foil facer of the product or to the
 19 composition of the phenolic foam itself?
 20 A. No, no, the only thing I ever remember was one day he
 21 asked me to retain a piece to be sent up to one of the
 22 other departments of the lab, and that was the only
 23 thing he'd ever said, because I know occasionally they
 24 would do some comparative testing for them, but that was
 25 all he ever said.

171

1 Q. Right. Is this just a difference of recollection or are
 2 you positively denying the conversation along the lines
 3 that he recalls?
 4 A. I am denying it.
 5 Q. Are you saying he is making it up or he is just
 6 misrecollecting?
 7 A. I think he's misrecollecting. The only thing I've said
 8 earlier is that he mentioned they were changing the oven
 9 to do something with drying times, but that's the only
 10 thing he ever said to me.
 11 Q. Did you yourself spot the fact that the facer of the
 12 product was now different?
 13 A. Erm ... no.
 14 Q. You didn't notice at the time of the 20 December 2007
 15 test that the facer was now perforated —
 16 A. No, because the —
 17 Q. — whereas it was unperforated in the 2005 test?
 18 A. No, sorry. The tests, 2005 and this Metsec one, would
 19 be treated as wholly separate tests. There would be no
 20 comparison between the two tests, and there would have
 21 been no way that I would have known that, no.
 22 Q. Well, you say they're "wholly separate tests and no
 23 comparison between the two tests"; that would only be
 24 the case if in fact you knew that the product was
 25 different. If the product you thought was the same

172

1 product, then the tests were comparable, weren't they,
 2 at least to some degree?
 3 A. Yes, but BRE doesn't go out of their way to say, "You
 4 did a test in 2005, you've done a test now, how do they
 5 compare?" That wasn't how it worked.
 6 Q. No, but given that you could see how the performance was
 7 different, I take it that there was — was there any
 8 observation about whether or not — let me ask it this
 9 way: did you investigate why it was that the product,
 10 K15, was burning so much worse during this test than in
 11 the 2005 test?
 12 A. No, I didn't, no.
 13 Q. Why is that?
 14 A. It wasn't my job to do that.
 15 Q. Now, you see that Mr Meredith told us that he was asking
 16 for your on— and off—record comments, as we've seen,
 17 {Day76/169}. I showed you that. Do you accept that?
 18 A. I don't ever remember having any conversation about
 19 on— or off—the—record comments at all, no.
 20 Q. Right.
 21 Let's go to {KIN00003693}. This is an email of
 22 9 January 2008, it's the second email down on the screen
 23 you can see, from Ivor Meredith to Sarah Colwell and
 24 you:
 25 "Subject: Help! Test possibility indicative idea —

173

1 quick thoughts needed — thanks."
 2 Do you see that? He opens the email by saying:
 3 "Further to yesterday's viewing of the carnage could
 4 you please send the DVD to the address below ASAP. [As]
 5 you can imagine there are many senior persons in KI
 6 wishing to view it."
 7 Now, did you understand that to be a reference to
 8 the viewing of the recording of the test carried out on
 9 20 December?
 10 A. Are you okay if I carry on reading, because I don't
 11 recall this email?
 12 Q. Right, yes, of course. You can see that ...
 13 (Pause)
 14 A. Okay, yeah. Sorry? I think you had a question, sorry?
 15 Q. Well, he covers a lot of topics. My only question to
 16 you was: is this a reference to the viewing of the
 17 recording, the DVD, of the test carried out on
 18 20 December 2007?
 19 A. Given that was probably just before we closed down, then
 20 I'd probably expect it would be, yes, yeah, we wouldn't
 21 have probably tested by 9 January I doubt.
 22 Q. Yes. Now, Mr Meredith has described the viewing as
 23 "carnage", that's his word. Would you agree with the
 24 sense of that?
 25 A. Yes, yes.

174

1 Q. And the subject of the email, as I've shown you, is
 2 "Help! Test possibility indicative idea — quick
 3 thoughts needed — thanks". Did you note that that was
 4 the title of the email when you received it?
 5 A. I don't — there's nothing in here that sparks my
 6 memory. It may have been that I read it quickly and,
 7 because it was primarily to Sarah, I didn't deal with it
 8 in that regard. Because there's other things to do with
 9 the responsibility of doing SBIs, which was outside my
 10 remit.
 11 Q. Right. You clearly read the text because you spotted
 12 that it was about SBIs.
 13 A. No, I've seen it here, straight in front of me, "The
 14 other possibility is to do an SBI", I've just seen that
 15 line.
 16 Q. Yes, I see. I'm assuming that you read it when you
 17 received this email.
 18 Let's go on to the next paragraph. He says:
 19 "Having spoke to John ..."
 20 Do you see that, second paragraph?
 21 A. Yes.
 22 Q. "... he is still keen to work with us however we need to
 23 work out where we went wrong. Having cross referenced
 24 with previous tests it would seem there was more fire
 25 spread from the insulant (however please don't quote me

175

1 on that) and the cavity barrier may have failed
 2 slightly. Your 'off the record' and 'on the record'
 3 comments may prove helpful."
 4 So you could see from this email that he was saying
 5 that you had made off—the—record and on—the—record
 6 comments; yes?
 7 A. That's his terminology. I don't know why he keeps using
 8 that, there's no such thing.
 9 Q. We will come back to that in a moment.
 10 Before we come to those, what I'm going to ask you
 11 about, he says in the line before there was more
 12 fire spread from the insulant, comparing it with earlier
 13 tests. Do you agree?
 14 A. Yes, it was ... it spread across the whole of the face,
 15 yes.
 16 Q. Then let's go to the last two paragraphs of his email on
 17 this page. It finishes on the second page, but let's
 18 just go to the last two paragraphs on page 1 —
 19 A. Before you move on, could I just point something out,
 20 actually?
 21 Q. Of course.
 22 A. I think in the — as it is at the moment, the paragraph
 23 that says, "As there are several tests coming up", it
 24 says:
 25 "... it's important that I get to the bottom of

176

1 [this] ... We have just installed new ovens at Pembridge
 2 so the curing process has been greatly improved ..."
 3 That I think was the only thing he'd ever said to me
 4 in terms of my understanding about them installing new
 5 ovens. That's the only thing I can recall.
 6 Q. So the ovens point was first made in this email but not
 7 at the test itself?
 8 A. I think so, yes, potentially, yes, and the only thing he
 9 ever said was it was to do with the curing times, and as
 10 I don't know the process of how it's made, it didn't
 11 mean anything to me.
 12 Q. Then if we look at the penultimate paragraph on page 1,
 13 please, together, he says this:
 14 "In your opinions would it be possible to quickly
 15 write a couple of bullets as to your official opinion in
 16 respect of the failure."
 17 His reference to "your opinions" there is clearly
 18 an opinion from each of you and Sarah Colwell; yes?
 19 A. Yes, I would say where he said "your opinions", yes.
 20 Q. So you were clearly being asked, as you understood it at
 21 the time, for your own opinion by way of a couple of
 22 bullet points as to your official opinion in respect of
 23 the failing; is that right?
 24 A. Reading it that way, I would say that's probably what he
 25 was after, yes.

177

1 Q. Yes. Did you understand by that that he also thought
 2 that there was an unofficial opinion?
 3 A. This is — no, this is his terminology, there is no such
 4 thing as unofficial.
 5 Q. Going back to where we were a moment ago in the second
 6 paragraph, to the last sentence, he says:
 7 "Your 'off the record' and 'on the record' comments
 8 may prove helpful."
 9 Now, it's clear from this as a document that he has
 10 clearly got the idea that the BRE either had made or
 11 would make off—the-record and on—the-record comments
 12 separately; yes?
 13 A. That's his perception, but that's not what BRE does, no.
 14 Q. First of all, how do you think he came by the
 15 understanding that the BRE might give off—the-record and
 16 on—the-record comments?
 17 A. I don't know. I think, knowing Ivor the way I did, he
 18 sort of compartmentalised things in certain ways without
 19 that actually being what was said. It may be that he —
 20 the way he reported it back meant that he could say it
 21 in one way or the other. But in terms of anything that
 22 was said between Sarah or him would be official.
 23 Q. Now, we've seen no response to this email. Did you ever
 24 write to him and say, by way of response, "Well, I'm
 25 sorry, Mr Meredith, but we don't do off—the-record and

178

1 on—the-record comments"?
 2 A. I don't ever recall answering this email, and I think
 3 Sarah Colwell would have done. Giving any comments on
 4 performance was out of my remit, so I wouldn't have
 5 answered that question.
 6 Q. Did you see any email from Sarah Colwell in which she
 7 corrected his perception that the BRE was prepared to
 8 give off—the-record and on—the-record comments?
 9 A. I've never seen an email like that, no.
 10 Q. Why didn't you correct his misapprehension as to what
 11 the BRE were and were not prepared to do in this
 12 respect?
 13 A. Because at the time that wasn't my role to do that.
 14 Q. Well, you're being told here by a client for your
 15 off—the-record and on—the-record comments and your
 16 opinions in respect of these matters, he has actually
 17 asked you for that; wasn't the most obvious thing to do
 18 immediately to go back to him and say, "I'm terribly
 19 sorry, Ivor, that's not something we can do"?
 20 A. That necessarily wouldn't come from me. It was
 21 addressed to Sarah, who was a senior member of staff in
 22 the organisation, and it's — I wouldn't ever send
 23 something out without putting it past her or allowing
 24 her to clear that up, it was addressed to her.
 25 And what you need to understand is that at this time

179

1 Ivor had a tendency to use a scattergun effect in terms
 2 of who he sent emails to. It's this thing about, "Let's
 3 cc in whoever we think is pertinent", and he always
 4 seemed to just copy me into stuff, whether it was
 5 relevant to me or not.
 6 Q. You see, we've seen no response from you correcting him
 7 about his apprehension as to what the BRE were prepared
 8 to do in this respect, and we've seen no response from
 9 Sarah Colwell either to that effect.
 10 I'm bound to suggest to you, Mr Clark, that
 11 Mr Meredith's apprehension, his understanding, about the
 12 BRE's willingness to give on—the-record and
 13 off—the-record, unofficial and official views, was
 14 justified, because otherwise you would have corrected
 15 it.
 16 A. As I say, I wasn't in a position there to correct
 17 clients in that regard. He addressed the email to
 18 Sarah Colwell, who is a senior member of staff, and
 19 I would not write things — and I think you've seen in
 20 another email in my statement that I would refer things
 21 to Sarah. So the fact he'd copied her in — sorry,
 22 addressed it directly to her meant that I thought she
 23 would answer that question. It wasn't me to correct
 24 him — my job to correct him in that way.
 25 Q. Did you have a conversation with Sarah Colwell about his

180

1 request for opinions from both of you, each of you, as
 2 to your official as opposed to unofficial comments, and
 3 say to her that he should be corrected?
 4 A. Not that I recall, no.
 5 Q. No?
 6 A. No, it wasn't — at that time it wasn't in my remit to
 7 answer those type of questions, and it never has really.
 8 Q. Let's look at the last paragraph, back to the email,
 9 please, bottom of page 1 {KIN00003693}. He says there:
 10 "As we are getting some pressure from a certain
 11 manufacturer questioning the performance of our product
 12 I need to be confident that the BRE would not write it
 13 was the fault of the flame spread on the insulant. From
 14 our [discussions] I understand the official statement
 15 would 'system failure'. I will not quote you on this
 16 I just need to be confident when we say the material has
 17 the ability to pass however whether it does or not can
 18 boil down to the system."
 19 Then over the page {KIN00003693/2}:
 20 "Your help much appreciated."
 21 So you were clearly being asked, weren't you, for
 22 an unofficial line from you to him to give him the
 23 assurance that even though there might be a system
 24 failure officially, he wanted to know whether in fact
 25 K15 could still pass?

181

1 A. From reading that paragraph, then that seems to be the
 2 way he was angling it, yes. But knowing Sarah as long
 3 as I have, she would never have written an email which
 4 would confirm what he had requested.
 5 Q. What was the upshot of his request for opinions along
 6 these lines?
 7 A. I have absolutely no idea.
 8 Q. Let's move to April 2008. Another test was carried out
 9 to BS 8414—2 in early April 2008 on a system
 10 incorporating K15, wasn't it?
 11 A. Can you remind me which test that was?
 12 Q. Yes, it was the one — certainly. Do you remember it?
 13 It was the one in conjunction with Sotech and Metsec
 14 again.
 15 A. Right, another K15, sorry, with Sotech, yes.
 16 I understand there was, yes. Yes.
 17 Q. Now, do you have any records of it, or have you seen any
 18 BRE records of that test?
 19 A. I think as a consequence of something from the Inquiry
 20 I was issued some DVDs about a month ago, maybe, and
 21 I think on there it had the second test on it.
 22 Q. Let's look at Ivor Meredith's report about it, which is
 23 at {KIN00003698}.
 24 A. Can I just clarify something, actually? When this
 25 programme was put together, I think, it was — as you

182

1 say, it was a joint collaboration between Kingspan,
 2 Metsec and Sotech. So Sotech, to me, to my mind, were
 3 the client on the job. I think Ivor had agreed that
 4 Sotech would part—fund the test, and then I think
 5 after — if I recall correctly, after the first test
 6 failure, he agreed with John to do the second test. So
 7 it was outside the scope of the original test, I think.
 8 Q. Can we go to Ivor Meredith's report on this test, which
 9 is at {KIN00003698}. This is an internal Kingspan
 10 report which I don't expect you to have seen dated
 11 4 April 2008. If you have seen it, let me know.
 12 If we go to the second bullet point on page 1, we
 13 can see what Mr Meredith records there. He says this:
 14 "The 2nd attempt Metsec Sotech Kooltherm failed the
 15 BS 8414—2 test by 160 seconds. (to meet BR 135 the top
 16 level thermocouples must not exceed 600 degrees for
 17 15minutes following the first level thermocouples
 18 exceeding 200 degrees). I held a lengthy post test
 19 meeting with just Kingspan and the senior fire
 20 technicians (S Colwell, N MacDonald & P Clark) to
 21 ascertain whether a 160 second improvement is possible."
 22 Do you see that?
 23 A. I do see that, yes.
 24 Q. Were you present at this test?
 25 A. I think I was present at the test but I don't recall

183

1 a meeting. I can't ever recall having a meeting with
 2 Norman MacDonald.
 3 Q. So you were present at the test?
 4 A. Sorry, I missed that.
 5 Q. I just asked you whether you were present at the test.
 6 A. I was present at the test, yes.
 7 Q. Was Sarah Colwell present at the test?
 8 A. I can't recall directly, no.
 9 Q. Is "N MacDonald" Norman MacDonald?
 10 A. That is Norman MacDonald, yes.
 11 Q. What's his role?
 12 A. I think at the time he would undertake assessments of
 13 building products to do with fire resistance, what they
 14 call EXAP, extension of application assessments and that
 15 type of thing. I think he primarily worked for LPCB.
 16 Q. I see.
 17 Now, as you can see — I think you have already
 18 jumped to it, but let me put it to you — Mr Meredith
 19 records the fact that he held a lengthy post—test
 20 meeting with just Kingspan and the senior fire
 21 technicians, and identifies you there, "P Clark" — at
 22 least I'm assuming it's you.
 23 A. Yes.
 24 Q. There's not another P Clark, is there, who could have
 25 been relevant to this test?

184

1 A. No.
 2 Q. Do you agree that such a meeting took place?
 3 A. I don't recall it, as I say, I've — I cannot ever
 4 recall having a meeting with Norman MacDonald present.
 5 Q. Do you deny that a meeting with Mr Meredith took place
 6 after this test in April 2008?
 7 A. I can't deny it, but I can't recall it.
 8 Q. Can you explain why this wasn't referred to in your
 9 witness statement?
 10 A. Because I don't ever recall having that meeting.
 11 Q. Right.
 12 Now, if, as Mr Meredith has recorded here, it is
 13 correct that there was a lengthy post-test meeting to
 14 ascertain whether a 160-second improvement is possible,
 15 that would have been the giving of advice by the BRE to
 16 a manufacturer as to how to improve the tested system;
 17 do you agree?
 18 A. I would agree, yes, yeah. If what he said is correct
 19 I would agree, yes.
 20 Q. Can we then turn to March 2014, a later Kingspan test,
 21 some years on. You deal with this in your witness
 22 statement at paragraph 208 at page 51 {BRE00005768/51}.
 23 Can we please go there. The question you're answering
 24 is Q9(a):
 25 "Who was present during this test, both from the BRE

185

1 and from the test sponsor?"
 2 Just to help you a little bit more, this is the test
 3 done on 19 March 2014 using rainscreen comprising Trespa
 4 HPL. Do you remember that?
 5 A. I think there were two. Is this the one with the black
 6 face or the red face? I remember it, yes, yes.
 7 Q. We can go back to paragraph 206 {BRE00005768/50}, just
 8 to give you the context for this. Question 9:
 9 "Test Report 293940 ... dated 26 June ..."
 10 And at 206 you say:
 11 "This test, which took place on 19 March 2014 with
 12 Kingspan as the test sponsor, involved a 'Trespa'
 13 rainscreen and Kingspan K15 insulation material."
 14 A. Yes, I've got a feeling this was the one that was
 15 disputed, yes.
 16 Q. Right.
 17 Let's go to {BRE00003531}, please. Here is an email
 18 from Ivor Meredith to you and Stephen Howard dated
 19 20 March 2014, so the day after the test; yes?
 20 A. Yes, yes.
 21 Q. And he starts:
 22 "Gents,
 23 "I trust all is well."
 24 He asks for when the thermocouple data will be
 25 available, and if you go down to the last line of the

186

1 fourth paragraph of Mr Meredith's email, he says:
 2 "Phil, I will get Astec in on Monday to start
 3 stripping out. I would like to be [there] to witness
 4 what was going on behind the cladding. Although I
 5 assume you will be taking lots of pictures of that area?
 6 "Also can you make any unofficial comments with
 7 regards the falling debris this time compared to the
 8 previous test?"
 9 Did you provide any comments with regards to the
 10 falling debris this time in comparison to the previous
 11 test?
 12 A. Not that I'm aware of, no.
 13 Q. Again, can you help us as to how it had come about that
 14 Mr Meredith was still, in 2014, under the impression
 15 that he could ask you for unofficial comments comparing
 16 one test with an earlier one?
 17 A. No, it's — he has this recurring thing in his head. He
 18 had some very strange ideas sometimes. No, I can't.
 19 Q. Yes, it was recurring maybe because you had never
 20 corrected him. Is that a possibility?
 21 A. Yeah, I suppose so, if you look at it that way, but why
 22 would I correct him? I'm there on behalf of BRE and we
 23 don't give unofficial comments.
 24 Q. That's not something that we've ever seen you say to
 25 him, though, in response to these recurring requests.

187

1 A. It's not my job to correct him. The email here is cc'd
 2 in — copied directly to Stephen Howard, who was
 3 a senior member of staff, and to Stephen Manchester as
 4 a senior member of staff, all many grades above me, and
 5 none of them have corrected it, and if they don't deem
 6 it fit to correct him, then it's outside the remit of my
 7 job to correct him.
 8 Q. Mr Clark, this paragraph is addressing specifically to
 9 you, that's why it starts with the word "Phil".
 10 A. Yeah, yes, yes, that particular paragraph, but if
 11 Mr Howard and Mr Manchester read this, they were within
 12 their right to say, "Sorry, Mr Howard(sic), you cannot
 13 ask Phil Clark for these unofficial comments because no
 14 such things exist", if that's the way you wanted it, and
 15 it's not my place to say to a client, "You don't get
 16 unofficial comments".
 17 Q. It is when you're being asked for them, isn't it?
 18 A. Potentially in hindsight, yes, but ...
 19 Q. Did you have a conversation with Mr Howard or
 20 Mr Manchester about going back to Mr Meredith and
 21 putting him right at last?
 22 A. Not that I recall, no.
 23 Q. No. I'm going to suggest to you that these recurring
 24 requests for unofficial comments, unofficial comparisons
 25 between these tests and previous tests, occurred

188

1 precisely because they were the kinds of comments you
 2 kept giving him. He wouldn't have kept asking unless
 3 you had kept giving them.
 4 A. We'd never spoke to Ivor in that way. I don't
 5 understand why he keeps asking them. It's just his
 6 terminology, I think.
 7 Q. Why did you or anybody else that we've seen never
 8 explain to Mr Meredith that it would be inappropriate
 9 for the BRE to provide any unofficial comments?
 10 A. Because, as I've already explained — I don't know why
 11 anybody else has never done that. As I explained to
 12 you, given the role I had, it wasn't my role to correct
 13 him in that regard.
 14 Q. Did Mr Howard have anything to say about this request
 15 from Kingspan for unofficial comments?
 16 A. I'm — I've never had a conversation with him along that
 17 lines, no.
 18 Q. I see. So, to your way of thinking, he got this
 19 email — did it not surprise you that he didn't pick up
 20 the phone to you or send you an email and say, "What's
 21 all this about unofficial comments" —
 22 A. Mr Howard, do you mean?
 23 Q. Yes, Stephen Howard.
 24 A. That wasn't the way Steve worked. Steve had quite
 25 a good relationship with Kingspan, he may have spoke to

189

1 him directly about it, but it didn't surprise me that he
 2 didn't reply necessarily, no.
 3 Q. Given the subject matter of the unofficial comments, why
 4 would Steve Manchester or Stephen Howard have thought
 5 that this was their business? You ran the test, it was
 6 your business to make whatever — you would have known
 7 what comparison could be made between these tests. They
 8 would surely just have left it to you to respond to
 9 Mr Meredith, particularly since he had addressed this
 10 comment specifically to you.
 11 A. Erm ...
 12 Q. Isn't that right?
 13 A. No, because I was the tester, and you alluded earlier
 14 that some of the comments I made, you perceive them to
 15 be as giving consultancy, and in this regard I would say
 16 that potentially was giving consultancy, and it wasn't
 17 in my remit. I was only doing the testing.
 18 Q. It's right, isn't it, that this tested system couldn't
 19 be classified to BR 135, could it?
 20 A. Yeah, if it's the one I'm thinking of, it was disputed,
 21 yes, and they — BRE refused to classify it, yeah,
 22 that's correct.
 23 Q. You cover that at paragraph 237 of your statement
 24 {BRE00005768/58}. Is that right? We can see that —
 25 A. If it's the red Trespa, then yes, yes.

190

1 MR MILLETT: If we go to page 58, just to be clear. You
 2 say:
 3 "My recollection, which is supported by my review of
 4 the test video footage, is that I informed the test
 5 sponsor of the potential for flaming above the test
 6 facility having occurred at 24:11 due to excessive
 7 flaming over the surface of the wing wall. However,
 8 this flaming subsequently reduced as a note at 24:21
 9 records: 'Flames over the surface of the panels die
 10 back'."
 11 Now, I would like to take you through some of the
 12 footage of that test, but given the hour, Mr Chairman,
 13 I'm not going to be able to complete that or the other
 14 questions I have for Mr Clark tonight. I do not have
 15 very far to go with him, probably an hour or an hour and
 16 a half more, depending on how we go with the video
 17 footage.
 18 SIR MARTIN MOORE—BICK: Would it be better to do that
 19 tomorrow?
 20 MR MILLETT: I think it would, if that's convenient to you
 21 and Mr Clark.
 22 SIR MARTIN MOORE—BICK: Yes. Would it be safe to tell
 23 Mr Clark that he ought to be free by lunchtime tomorrow?
 24 MR MILLETT: Yes, I anticipate so. It will depend,
 25 I suspect, upon what further questions we find for him

191

1 overnight.
 2 SIR MARTIN MOORE—BICK: Well, of course, yes.
 3 MR MILLETT: In the normal run of these things, I doubt that
 4 that will take up too much time. So I would have
 5 thought so, yes.
 6 SIR MARTIN MOORE—BICK: Well, there you are, Mr Clark,
 7 that's the best indication I'm afraid we can give you.
 8 THE WITNESS: No, that's fine, sir. I'm here at your
 9 disposal.
 10 SIR MARTIN MOORE—BICK: Well, that's very good, thank you
 11 very much.
 12 Well, we will call a halt to the day at that point.
 13 Please remember not to talk to anyone about your
 14 evidence over the break, and we'll look forward to
 15 seeing you at 10 o'clock tomorrow, please.
 16 THE WITNESS: Okay, sir, thank you very much.
 17 SIR MARTIN MOORE—BICK: Thank you very much.
 18 10 o'clock tomorrow, then, please.
 19 (4.30 pm)
 20 (The hearing adjourned until 10 am
 21 on Thursday, 25 February 2021)
 22
 23
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 25

192

1	INDEX	
2		PAGE
3	MR PHILIP CLARK (continued)	1
4		
5	Questions from COUNSEL TO THE INQUIRY	2
6	(continued)	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
		193
		194

A					B		
		118:1,7 185:15	andor (2) 159:22 160:4	arse (1) 136:18		150:10 160:16 162:8 163:2	51:13 60:9 65:11 73:19
		advice (1) 59:22	angela (3) 106:23 112:17	asap (2) 153:25 174:4		166:12 167:25 169:12	83:9 95:13 116:20 123:19
		advisable (1) 53:6	113:5	asbuilt (1) 88:22		177:20 178:19 179:14	124:13 135:25 138:24
		affected (1) 41:2	angling (1) 182:2	ascertain (2) 183:21 185:14		181:21 188:17	150:16 151:8 159:16 161:5
		affecting (2) 89:12 138:9	annotations (1) 66:3	aside (1) 166:16	b (1) 86:2	believe (4) 104:24 117:11	176:25 181:9
		affixed (1) 20:10	annoy (1) 137:10	ask (39) 15:4 23:5 31:12	4:10,19,20,21,22 5:20,21	118:18 150:22	bound (3) 9:10 16:12 180:10
		afforded (3) 107:4 108:15	another (14) 2:2 10:5 24:10	33:20 41:23 43:9 51:12	6:1 16:12 17:18 19:11	believed (1) 119:21	box (2) 83:9,11
		109:11	59:1 93:5 97:11 101:9	71:13 72:7 78:23 80:2 82:7	22:19 25:5 27:3 30:11 34:5	below (14) 3:16 22:6,8	br (32) 65:18 97:6,13 116:11
		afraid (5) 22:5 38:7 41:21	122:3 125:6 159:2 180:20	86:6 93:16 104:9,12,16	35:9,13 37:1,2,5	42:10,24 58:1 66:9 80:5	117:20 130:9,12
		158:15 192:7	182:8,15 184:24	105:16 110:10 122:25	38:13,16,17 41:3 43:8	90:11 92:17 128:10,16	131:6,13,15,18,24 141:17
		after (41) 4:9 5:10,12	answer (48) 9:9 15:1,2	123:6,6 125:12 128:24	44:16 46:8,16 49:16	157:1 174:4	147:10,13 149:18,25
		17:10,13 20:25 22:18	25:12,13 29:20,23	129:6,7,8 130:16 144:25	50:8,10,11,21 57:14 60:24	benefit (4) 37:4 41:13	150:7,11 152:14 153:6,10
		23:15 24:8 25:13 26:4 27:2	30:1,9,16,18,20 35:14,16	149:16 152:23 155:25	66:25 71:23 72:5,17 75:17	63:12,13	154:3,13,21 158:2
		28:5 29:6 33:25 50:12 61:6	61:13,15 68:10 69:15	156:15 159:14 170:12	78:7,12 80:4 82:8 90:15	best (2) 79:8 192:7	159:4,25 163:16 183:15
		67:18 71:12 85:3 90:12	86:19 89:6 102:1,16	173:8 176:10 187:15	93:11,20 99:22 100:3,4	better (7) 1:18 18:24 21:19	190:19
		91:10 99:19 107:25 112:3	104:24 105:22 108:8	188:13	103:10,21 104:11 115:1,7	22:10 28:22 136:12 191:18	brackets (2) 77:1,2
		115:9 116:7 124:2 134:18	116:25 117:11 119:6	asked (29) 12:4 22:17 24:14	120:2 124:14 128:24	between (42) 8:10 12:9,16	bracket (3) 125:17,20 140:10
		138:5 151:21 165:13,19	127:25 130:5 131:21 141:6	25:23 26:6 29:16 61:8	129:4,11 130:7 131:18	13:6 20:3 26:5 35:21 53:18	bre (104) 1:9 4:25 6:24
		167:24 170:23 171:16	149:22 151:17,18 152:2	71:19 72:16 79:23 82:2	132:17 136:15 138:21	55:13 58:7,23 59:15,25	7:14,23 8:4 9:19 13:8 19:1
		177:25 183:5,5 185:6	158:21 168:17	92:9,25 108:16 109:3,4	143:21,23 145:3 148:24	61:5,16 62:3,19 65:2 70:16	24:11,13,20 25:16 26:6,19
		186:19	169:3,6,10,13 170:18,24	111:11 112:21 141:25	150:19 155:15,16 156:1	74:14 88:9 96:8 120:8,12	29:7,23 31:14 49:3 58:21
		afternoon (4) 2:10 11:14	171:3,10 180:23 181:7	148:12 160:6 168:12	158:5,23 162:14 165:20	121:23 123:15 125:24	63:8,25 64:19 82:12 86:21
		103:23,24	answerable (1) 15:3	169:12 171:21 177:20	176:9 178:5,20 179:18	127:22 144:12 150:9	98:6,15 102:11 104:9
		again (37) 9:21 10:5 17:22	answered (4) 111:11,14,15	179:17 181:21 184:5	181:8 186:7 188:20 191:10	154:12 161:3 167:12 168:5	105:3,25 106:2,11
		28:17 29:8 33:3 37:3 39:19	179:5	188:17	background (1) 54:18	169:25 170:14 172:20,23	107:3,4,10 108:13,15
		40:6 44:3 59:13 62:9	answering (6) 58:18 108:21	asking (14) 87:7 104:15	backing (2) 77:7,22	178:22 183:1 188:25 190:7	109:1,12,19 110:6,18,23
		71:5,24 76:12 80:10	110:4 111:16 179:2 185:23	105:6,12 110:4,9,24 111:5	backside (1) 138:12	beyond (1) 101:4	113:25 116:3,4 7,22,25
		91:11,23 92:12 93:12	answers (4) 54:15,17 163:3	127:20,21 170:20 173:15	backtrack (2) 69:12 104:8	big (4) 33:16 36:3,14,23	117:6,10 118:7 125:14
		103:11 105:6 114:12	170:20	189:2,5	badly (3) 44:9,10 165:2	binders (1) 144:23	127:3,10,22 128:18
		118:21 121:8 125:7 126:8	anticipate (1) 191:24	asks (1) 186:24	baker (15) 92:17 93:17,22	bit (19) 1:18 27:2	129:3,17 130:18 132:14,20
		131:11,21 135:9 138:20	anvil (1) 114:23	aspect (1) 81:2	94:5,9,13,22 98:17	38:16,17,23 53:19 56:14	142:20 145:25 149:24
		142:25 154:4 158:7 165:9	anybody (9) 96:11,16 106:22	assemble (1) 7:15	102:18,19 112:24	60:25 69:12 88:5 104:8	151:2,16 153:6,24
		182:14 187:13	113:3 122:5 143:20 158:25	assessed (3) 151:1 157:10	161:8,11,20 165:9	114:12 130:16 132:16	157:3,11,25 158:8,13,18
		against (10) 5:11,18 7:16	189:7,11	158:1	band (2) 9:1,7	136:12 139:22 164:10	159:2 161:8,8,12 162:6
		11:1,20 84:7,8 86:21 87:25	anyone (12) 1:19,21 50:15	assessing (1) 154:3	bands (1) 20:4	166:1 186:2	163:22 164:12 166:19
		88:1	102:11 103:12 155:6	assessment (3) 40:12	barely (1) 19:16	bits (2) 21:1 125:23	167:6 168:13 169:8 170:13
		ago (8) 72:3 119:6 124:10	168:13 169:8 170:13	153:20,24	barrier (30) 30:6 39:25 40:11	black (1) 186:5	171:9,10 173:3
		129:14 138:1 147:25 178:5	171:2,8 192:13	assessments (2) 184:12,14	41:1,2,4,16	blame (1) 9:18	178:10,13,15 179:7,11
		182:20	anything (28) 2:11 11:22	assist (1) 123:7	42:10,10,12,23,25 43:3,5,6	block (1) 139:15	180:7 181:12 182:18
		agree (23) 8:7 35:11,17	15:6 24:12 46:20 47:2,11	assists (1) 48:11	44:10 45:22 46:1	blockwork (1) 139:11	185:15,25 187:22 189:9
		40:5,15,23 59:17 64:3	49:13 53:23 71:18 74:7,11	associated (2) 34:24 35:2	47:4,5,17,24 58:1 72:12	blown (1) 83:8	190:21
		88:13,19 117:17,21 122:21	78:8 103:12 106:1 110:22	assume (2) 25:21 187:5	80:6 128:9,13 139:24	blue (4) 4:24,24 88:9 101:3	bre00002497 (2) 87:16 92:11
		141:18 147:4 164:1 167:1	111:14,17 112:2,17 118:5	assumed (1) 86:25	163:13 176:1	board (134) 14:21 17:9	bre0000249715 (1) 87:18
		174:23 176:13	125:25 127:21 138:11	assuming (4) 86:17 167:11	barriers (7) 43:18 47:13	19:24 20:18 21:1 23:16,18	bre000024972 (1) 92:14
		185:2,17,18,19	162:9 177:11 178:21	175:16 184:22	51:15 128:17 140:6	30:4 33:14,16,17	bre0000249727 (1) 93:12
		agreed (3) 26:7 183:3,6	189:14	assumption (4) 6:15 62:12	143:5,17	34:11,13,18	bre0000249735 (1) 92:25
		agreeing (1) 117:2	anyway (1) 138:17	77:23 129:10	barrow (4) 14:4,5,9,16	35:7,22,23,25,25	bre000024976 (1) 95:8
		agreement (1) 26:16	apart (3) 57:21 74:17 135:16	assumptions (1) 62:10	based (5) 5:24 61:19 116:2	36:4,6,7,10,12,14,23	bre00002511 (1) 138:23
		aid (1) 11:4	apologise (3) 111:16 124:19	assurance (1) 181:23	139:25 162:3	37:8,8,10,13,15 38:20,22	bre0000251110 (2) 138:23
		aide (1) 31:22	125:1	astec (1) 187:2	basic (2) 53:5 130:21	39:2,3,5,7,8 40:13,19 41:3	145:16,18
		akbor (2) 1:5,7	apparent (3) 164:18,20	attached (8) 61:18 64:17	basically (3) 41:5 108:7	42:15,16 43:21	bre000025116 (2) 139:3
		alleges (1) 27:14	171:7	65:17,25 66:8 77:3 82:3	112:16	44:1,3,4,5,6,9,22	143:24
		allow (2) 22:18 106:13	appear (3) 43:21 45:13	100:14	basis (6) 22:9 29:15 81:16	45:1,5,9,14	bre00003278 (2) 100:23
		allowed (1) 133:24	134:15	attachment (1) 19:5	96:17 133:6 162:1	48:18,20,21,21,23,24	123:14
		allowing (1) 179:23	appears (8) 67:15 82:23	attacked (1) 46:6	batch (1) 5:19	49:2,4,7,11,11 57:20,21	bre000032781 (1) 128:5
		alluded (2) 107:13 190:13	100:16 136:22 146:11,19	attempt (1) 183:14	batches (1) 23:12	58:11 60:5,6 61:2,6	bre000032782 (1) 123:18
		almost (5) 32:7 45:4 88:15	147:2 150:6	attend (1) 162:7	bear (1) 60:3	68:7,8 69:11,11,11,14	bre00003280 (1) 152:10
		109:4 120:4	applicable (1) 55:6	attendance (1) 22:21	became (1) 94:21	76:5,13,16 77:2,7,14,20,21	bre000032821 (1) 151:7
		alone (2) 113:2,4	application (3) 56:20 117:3	attended (3) 106:14	become (1) 93:2	78:21,24 79:2,5 83:6 86:25	bre000032822 (1) 150:13
		along (11) 60:13 101:22	184:14	161:12,15	before (36) 2:11 5:12 9:7	95:15 96:17,7,8 97:4	bre00003531 (1) 186:17
		118:5 125:8 165:18	applied (1) 130:10	attending (1) 21:24	11:11 19:9 31:12 34:19	116:3,9 118:16,20,22	bre00005548 (1) 21:4
		166:2,17 169:4 172:2	apply (1) 133:9	attention (6) 13:12 15:7	35:14 51:6 60:25 64:9	119:2,8,9,14	bre000055486 (1) 21:6
		182:5 189:16	appreciable (1) 89:18	42:20 64:5 126:18 148:10	65:20 78:10 81:3 100:16	120:3,9,9,10,11,22	bre00005621 (1) 145:4
		already (8) 57:24 58:12 71:9	appreciate (2) 70:5 147:14	audio (7) 32:23 33:10 40:4,9	104:9 113:17 115:7 116:17	121:19,22 122:20 123:2	bre0000562161 (2) 134:6
		94:15 113:25 160:22	appreciated (1) 181:20	41:21 48:10 61:1	121:11 126:4 132:19	129:22 132:16	145:8
		184:17 189:10	apprehension (2) 180:7,11	august (4) 82:10 87:17	134:23 137:24 138:5	144:7,8,9,13,13,15,15,19,20,20	bre00005700 (5) 31:6 32:18
		also (27) 1:23 2:9 22:1,17	apprentice (4) 14:2,6,7 23:5	92:12,16	149:21,23 152:24 153:15	157:19 165:16 171:16	34:7,21 38:4
		31:22 32:16 48:14 55:11	appropriate (1) 153:15	authorised (1) 92:16	157:19 165:16 171:16	boards (30) 5:17 6:15 10:19	bre00005701 (2) 34:24 39:13
		61:16 65:6 66:7,11 72:19	approval (1) 82:6	automatically (1) 151:1	174:19 176:10,11,19	16:14 19:12,13,22 45:18	bre00005702 (3) 35:1 41:21
		83:15 106:19 113:14	approve (1) 130:19	available (5) 104:22 106:6	begin (3) 1:18 48:16 134:23	46:12 67:17 69:7,20 75:3	44:21
		117:13 133:16,17 136:25	approved (3) 157:4 158:1,11	141:8 143:8 186:25	beginning (7) 38:4,18 39:14	86:4,8,10,16 96:3,14 99:12	bre00005703 (1) 51:7
		139:15 157:2 158:1 159:23	april (6) 3:2,21 182:8,9	awarded (1) 157:25	137:25 138:13 139:9	102:7 118:8 119:20,22	bre0000576818 (1) 100:12
		161:12 178:1 187:6	183:11 185:6	aware (38) 10:11 11:5 13:5	151:14	120:4,12 133:7 139:13,20	bre0000576821 (1) 133:13
		alter (1) 89:19	area (6) 4:6 24:10 39:1	24:22 30:13 32:12 50:9	behalf (1) 187:22	143:25	bre0000576827 (1) 149:20
		although (7) 17:19 19:5 86:3	46:13,14 187:5	61:10 81:6 82:13 88:24	behind (29) 12:13 13:10	body (1) 87:14	bre0000576850 (1) 186:7
		117:6 129:25 142:24 187:4	argument (4) 28:3 63:4,6,7	89:15 94:15 96:25 102:13	14:13,18 16:16 33:15,16	boil (1) 181:18	bre0000576851 (1) 185:22
		aluminium (4) 77:1 100:17	around (6) 13:2 18:9 68:				

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debris (2) 187:7,10	52:15 60:18 62:14	133:3 140:8 150:25 154:9	80:14,18,24 81:3,5,10,19	endangering (2) 163:23	exceed (1) 183:16	faulty (2) 30:25 31:3
decade (1) 100:4	68:10,14,14,15 69:3,4	169:13 178:13 181:17	82:14,22 85:8 86:7 90:8	164:2	exceeding (1) 183:18	feature (1) 126:19
decadeandahalf (1) 109:5	72:12,15 73:9 74:2,13,23	doesnt (20) 4:16 43:21 46:20	92:20 95:22 120:20	endeavour (1) 64:21	except (1) 92:19	february (8) 1:1 31:7 59:15
december (18) 112:4 125:4	76:15 78:3 79:25 86:20	47:2 51:25 52:19 53:1,2	drawn (2) 64:4 148:9	energy (2) 33:15 36:8	excessive (1) 191:6	79:1,7 81:5 83:1 192:21
135:24 137:12,25	89:7 95:5 97:2 104:18	54:16 58:6 63:10 67:19	drive (3) 114:19,20,22	engineer (1) 132:7	exchange (1) 137:25	feel (3) 9:10 16:12 66:11
138:13,15,25 142:17	108:23 109:2,22	73:12 97:19 120:3 140:5	driver (2) 4:19 7:10	english (1) 157:12	exchanges (1) 68:17	feeling (5) 89:23 131:16
145:21 160:17 162:10	110:8,11,12,18 111:12	143:9,11 147:5 173:3	drivers (1) 8:18	enough (2) 15:19 121:22	exclusively (1) 45:5	136:11,12 186:14
168:5,14 170:7 172:14	112:2,7,8,23 115:5 128:22	doing (19) 18:10 42:16 51:23	drives (5) 112:16 114:15,17	enquiries (1) 7:2	excolleague (1) 106:23	fell (1) 93:21
174:9,18	129:3,6 131:23 132:8	70:10 79:8 100:21	115:2,4	ensure (2) 24:17 160:2	executive (1) 160:24	fellow (1) 1:4
deception (2) 63:11,15	138:11 143:13 149:2 152:8	101:16,20 102:6 107:16	drying (1) 172:9	entirety (1) 75:4	executives (1) 162:7	few (3) 9:6 92:22 130:2
decided (3) 68:5 73:14 92:5	154:5 158:22 169:18	113:7 125:8,10 136:10,23	dryvit (1) 102:7	entitled (1) 156:17	exercise (9) 24:6,23 31:6	fgf (1) 3:2
decision (9) 31:19 91:14,23	172:14 173:12 175:7	137:1 147:9 175:9 190:17	due (5) 106:6 136:3	environment (1) 36:8	50:1 113:15,15,17,25	fgfs (1) 4:22
92:6,8 99:6 107:15 164:4,5	177:10 179:10 189:19	done (32) 10:6,8 11:23 13:13	138:17,19 191:6	equivalent (1) 120:15	114:5	fibre (12) 43:19 100:17
declared (3) 140:19	190:1,2	15:8 20:17,21 23:16,19	during (32) 2:8,9 11:2,7	erected (1) 11:8	174:20 183:10	119:2 120:9 121:23
141:20,24	die (1) 191:9	39:23 51:21 67:25 83:25	15:13 18:18 22:10 25:17	erm (18) 5:4 56:9,21 59:21	exist (1) 188:14	144:6,13,14,17,18,22,23
deconstructed (3) 17:14	died (1) 39:1	84:2,7 101:25 102:4	29:13 45:24 50:15	64:24 70:4 109:25 120:24	existence (1) 64:1	fibres (2) 120:14 144:10
25:15 69:8	difference (7) 12:8 25:19	113:25 120:20 125:18	58:20,22 68:11,19,21	121:3,20 134:1 140:13	expect (5) 22:21 80:14 159:8	fieldfisher (3) 106:5 107:8
deconstruction (3) 25:17	28:16 74:13 120:12,16	127:2 130:2 137:12,24	69:22 70:18 73:5,7,8 74:4	145:12 148:12 158:20	170:2 172:13 190:11	113:14
73:8 74:4	172:1	138:2,18 143:4 154:6	75:20 89:11 93:13 111:18	170:2 172:13 190:11	erring (1) 89:20	fieldfishers (1) 108:1
decorative (5) 60:12,14	differences (5) 59:15 169:25	173:4 179:3 186:3 189:11	148:15 159:19 165:13,17	error (8) 73:11 94:8 146:19	erroneous (1) 129:10	figure (21) 66:8 67:9,10
78:24 79:1 95:15	170:14 171:7,9	dont (128) 1:19,21 23:25 2:3	173:10 185:25	148:19,25 149:4,6,10	errors (2) 92:22 149:8	72:18 73:1,1,13,15,18
deem (1) 188:5	different (28) 6:12 11:25	7:22 11:22 15:1 17:12 18:3	dvd (2) 174:4,17	error (8) 73:11 94:8 146:19	essentially (8) 10:15 94:16	75:20,21 79:22
defeats (1) 117:19	47:19 61:21 70:23,25 79:5	24:6 26:23 27:1,12,20 29:8	dvds (1) 182:20	148:19,25 149:4,6,10	107:18 122:12 125:23	91:2,8,15,20 93:2,3,12
definite (1) 89:21	92:21 94:25 97:16,18,21	30:9 35:12,17,24 37:16	dying (1) 35:23	errors (2) 92:22 149:8	127:14 162:1 171:3	94:20,21
definitely (4) 80:1 102:15	100:18 106:11 108:19	41:12 47:11 49:22	dynamic (1) 8:23	essentially (8) 10:15 94:16	107:18 122:12 125:23	figures (3) 66:5 82:4 94:11
117:25 149:11	130:21 139:8 144:23	51:10,22		127:14 162:1 171:3	127:14 162:1 171:3	file (28) 5:1,2,3,5 9:20 22:3,8
definitively (2) 131:21	152:23 168:3,15	52:6,9,10,11,16,22		established (2) 113:19 145:9	166:11 185:8 189:8	32:11,15,16 84:13 93:25
158:21	170:7,16,25 171:6	53:20,21 54:3 55:6,9		establishment (1) 157:24	166:11 185:8 189:8	94:6 95:23 104:16 105:21
deformed (1) 43:21	172:12,25 173:7	56:16,19 58:15 59:5,17		et (5) 42:18 45:15 114:21	explained (5) 24:16 67:16	114:7,9,10,11,13,22
deforming (1) 44:3	differential (2) 12:16 13:5	63:8 65:22,23 71:17,17	earlier (24) 16:21 17:3 23:11	117:12 139:17	115:15 189:10,11	121:14 129:17 140:4
degree (2) 127:13 173:2	differentiate (1) 121:23	74:24 75:13,14 76:8 86:7	38:8 47:9 60:25 62:5,25	eternit (23) 6:4,19 9:2,7	explaining (1) 36:5	141:2,4,22
degrees (3) 163:15 183:16,18	differentiated (2) 165:7	87:10 90:24 91:9 94:4	68:17 70:25 77:23 86:9,17	10:3 12:2,24 16:13 54:1	explanation (1) 148:18	filed (1) 105:19
delay (8) 124:20 125:1	167:2	97:21 99:14 100:20,22	92:21 99:22 123:17 127:13	69:20 76:3 77:2,14,19	explored (1) 44:25	files (8) 105:25 107:16,24
136:6,20 137:11,18 146:5	difficult (5) 70:14 94:22	101:14 102:1,2,14,15	132:23 167:14,18 172:8	78:24 79:1 81:11 83:5	expressed (1) 26:15	109:10 110:15 114:20,21
151:12	107:17 119:23 156:8	103:11 107:15 109:14	176:12 187:16 190:13	86:4,7 95:14 96:2 99:11	extends (1) 33:17	121:17
delayed (1) 146:25	diligence (1) 138:17	110:3 117:22 119:3 123:12	early (6) 82:10 136:11	137:12 160:4 163:22 182:9	extension (1) 184:14	filled (1) 46:12
deliver (2) 123:7 126:12	direct (3) 59:25 165:24 168:7	124:7 125:11 126:25 127:7	easily (1) 26:7	evans (12) 27:3 65:13 81:22	extent (11) 15:10 16:25 27:2	fills (1) 46:9
delivered (6) 6:7 7:16 86:21	directed (3) 44:23 45:18,20	128:23 130:12 131:5,15,19	edge (2) 32:4 55:22	84:22 85:1	42:25 54:16 81:17 85:20	final (11) 64:18,22 80:17
87:1 121:5 132:4	directly (13) 8:18 60:1 65:22	132:8 137:10,17,23 139:17	easy (2) 39:5 120:2	90:3,12,14,23,25 91:6,24	95:7 126:13 147:3 167:17	91:16 92:1 93:17,22 94:21
deliveries (1) 8:17	94:4 112:7,9 161:13 165:3	140:15,19 141:6,10,24	effect (8) 43:4 52:7,12 53:14	even (22) 14:14 16:25 26:8	external (3) 23:12,21 88:13	95:18 124:18 148:4
delivery (31) 2:24 3:2,22	171:13 180:22 184:8 188:2	144:5,6 152:8 154:18	96:15 118:1 180:1,9	27:4,12,14 36:12 41:5,6	extinguish (1) 163:22	finally (1) 79:17
4:7,9,13,16,17 5:8,11	190:1	156:25 157:19 158:15,24	effective (5) 43:17,19	81:7 89:15 126:8,15	extinguished (2) 164:21	find (8) 27:4 51:15 64:17
6:6,18 7:1,7,11,15 8:6	disagree (3) 55:20,21 109:14	161:16 164:2 165:7	46:13,14 51:16	129:14,23 138:16	167:25	65:17 108:17 109:20 113:7
9:5,15 16:15,19 69:19,19	disclosed (3) 105:15 107:24	166:5,6,7 167:1 169:17,23	egginton (1) 161:7	140:17,21 141:21,21	extra (2) 14:20 35:25	191:25
86:15,18 98:23,24 120:23	108:25	171:12,17 173:18 174:10	eight (1) 70:6	143:13 181:23	extract (2) 32:19,20	fine (9) 21:15 22:12
121:12 126:11 138:10	discovered (1) 9:16	175:5,25 176:7 177:10	either (15) 5:12 9:8 14:11	evening (1) 155:24	extracts (1) 31:8	38:2,11,12,19 83:10,21
denial (1) 28:14	discuss (8) 90:25	178:17,25 179:2 183:10,25	24:2 47:4 50:12 75:5 88:11	event (1) 154:21	extremely (1) 107:17	192:8
deny (7) 26:24 28:4,12,14	112:1,2,6,8,20 168:24	185:3,10 187:23 188:5,15	95:25 99:21 120:2 159:22	ever (41) 17:24,24 27:1,5	eye (1) 171:3	finish (6) 60:14 61:3 155:24
29:8 185:5,7	171:8	189:4,10	171:18 178:10 180:9	28:4,10 29:8 31:2 37:12		156:2,6,7
denying (2) 172:2,4	discussed (12) 57:24	double (1) 56:20	electronic (5) 2:3 105:24	53:17 63:1 64:4 81:1 89:17		finished (5) 4:14 20:20 49:25
department (1) 156:23	65:17,20,23 66:7 91:9,11	doubt (14) 20:11,12	107:9 113:10,24	91:4,10,11 118:12 131:6	faade (12) 12:5 20:16,20	74:12 80:21
departments (1) 171:22	136:4 168:17,24 170:13	30:11,17,19,20 68:22,23	electronically (2) 113:12,13	144:25 148:9 154:5,14	22:3 37:10 99:16 100:14	finishes (1) 176:17
departure (1) 10:5	171:13	71:8 72:1 98:6 159:6	eloquent (1) 37:12	157:19 169:15,16 170:4	131:2 132:7 153:20 156:18	fire (39) 12:9 14:10 18:19
depend (1) 191:24	discussing (2) 90:22 169:8	174:21 192:3	else (26) 1:19 3:25 9:21	171:20,23,25 172:10	157:16	24:8 30:6 32:3 36:12
depending (2) 50:10 191:16	discussion (21) 36:10 39:9	down (49) 5:16 16:6	14:17 24:3 50:9 55:1 56:7	173:18 177:3,9 178:23	facade (1) 156:20	40:11,12 43:3,6 45:22,25
depends (1) 127:6	47:23 54:8 65:20 90:14	20:22,23,25 21:7,22,23	58:20 75:2,4 85:17 99:9	179:2,22 184:1 185:3,10	facades (1) 116:12	46:1,2,6 66:10 80:6 89:12
describe (4) 73:14 100:11	91:6,8 121:25 123:10	22:16 24:10 25:16 26:17	102:11 111:14 124:6 128:2	182:24	face (10) 83:17 87:4,9	105:23 107:25 110:16
125:16 143:3	150:7,8 151:7 152:24	27:18,21 35:23 38:21 39:1	149:3,12 169:8 170:4,13	every (15) 8:21 23:17 51:23	100:17 118:17 140:3,3	114:24 116:2 124:24 127:5
described (10) 61:12 97:22	154:12 163:6 167:8,12	43:4 46:5,23 51:20 57:19	171:5,8 189:7,11	57:20 61:24 62:13,14,14	176:14 186:6,6	139:23 140:2,6 147:19
118:1,22 119:8,9,11	168:4,7 169:24	64:8 73:17 74:13 78:15	email (69) 18:21,23 19:6	84:3,4 86:25 91:18 109:16	facer (3) 171:18 172:11,15	148:3 163:13,23 167:25
120:21 131:1 174:22	discussions (6) 58:22 116:22	83:13 87:17,18 101:4	21:5,6,7,18 22:7 64:14	117:1 127:3	facility (3) 7:12 61:17 191:6	175:24 176:12 183:19
describes (1) 119:13	118:4 154:2 165:12 181:14	105:25 108:4 110:15 127:7	65:12,25 66:1 71:15	everyone (7) 1:3,7 34:3	facing (3) 60:12 170:25	184:13,20
description (18) 3:6 73:19	dismantled (2) 17:21 67:13	134:9 139:5,8,22 148:22	90:10,11,12 90:3,12	50:9,21 103:21 155:15	fair (1) 171:4	firebreak (4) 22:7,9 42:23
75:19 78:4,13 95:9,10	dismantling (1) 62:1	157:21 162:23 163:9	91:3,11 100:24 101:2,5	17:11 25:5,23 29:12,13,15	fail (1) 96:19	119:14
128:12,16 139:4,5 140:6,9	display (1) 82:16	164:8,9,11 173:22 174:19	119:10,13 123:19 124:12	30:22 34:1 50:15 61:4 62:8	failed (5) 97:19 162:11,12	fixed (3) 42:22 51:16 66:10
142:12,21 143:16 144:16	disposal (1) 192:9	181:18 186:25	128:4 129:1 135:23 136:13	63:15,23 64:11 88:17	176:1 183:14	firestop (2) 125:13 126:3
163:24	disputed (2) 186:15 190:20	download (2) 5:21 32:12	137:25 140:12 150:5,12,20	89:14 99:3 103:12,22	failing (3) 64:3 163:15	firm (2) 106:11 117:4
descriptions (1) 128:10	disregard (1) 166:20	dr (3) 102:20 107:6 112:7	151:7,8,22,25 152:22,24	104:13,14 106:3 107:22	177:23	first (51) 2:24 11:4 21:4,16
design (4) 81:8 152:15,20	dissipated (1) 36:8	draft (38) 25:4,8 49:5	153:18 154:5 156:16 158:5	108:10 111:2,3 115:7	failure (12) 15:15 97:8,11	27:2,5,11 28:1,11 30:4
153:8	distance (1) 12:22	64:13,15,17,23,25	173:21,22 174:2,11	119:12 122:18 126:16	164:15,17 166:22,23,24	32:19 33:21 34:15 35:8
desk (3) 70:7 73:1 136:5	distinction (4) 8:10	65:1,3,17 66:23 67:1 70:1	175:1,4,17 176:4,16 177:6	129:16 155:7 156:2,6	63:15,23 64:11 88:17	41:3 42:3 44:8,9 45:16
detail (4) 25:22 31:12 108:11	144:12,12,14	71:7 72:18,20,25 74:18	178:23 179:2,6,9	168:10 170:10 192:14	89:14 99:3 103:12,22	46:18 49:5 58:7 62:6 63:1
140:11	distorted (5) 44:9,10 46:13	75:4,19 78:5,9 79:16,20	180:17,20 181:8 182:3	129:16 155:7 156:2,6	104:13,14 106:3 107:22	65:17 66:16,23 82:20
detailed (3) 109:5 128:16	60:5,6	81:4,15 84:23 85:2 91:2	186:17 187:1 188:1	168:10 170:10 192:14	108:10 111:2,3 115:7	92:2,8 106:8 112:5 114:12
140:9	document (17) 3:3,20 5:10	92:21 93:5,24 94:3,14	189:19,20	119:12 122:18 126:16	119:12 122:18 126:16	116:15 117:20 120:10
details (26) 5:19 66:5	21:5 66:3 67:5 113:6	95:17 98:19 124:3	emailing (1) 90:18	129:16 155:7 156:2,6	fallen (4) 38:22 44:8 60:5,6	128:14 130:2,2 136:5</

135:10,15 140:18 146:6,18,23 147:6,19 148:4 160:10 five minute (2) 146:5,25 fixed (5) 32:13 76:25 139:11,14,15 fixing (2) 139:6 141:5 flag (1) 74:11 flame (18) 33:13,17 34:12 35:23 36:1,6,15,16,16 39:1 46:8 141:19 145:25 146:6,8 164:20,21 181:13 flames (5) 36:23 38:8 146:3 147:5 191:9 flaming (9) 35:21 36:5,15 38:23,25 44:2 191:5,7,8 flip (3) 73:17 124:15 150:19 floor (4) 12:20 26:16 27:17,21 flu (1) 136:12 fluid (1) 8:23 flush (1) 12:6 flyer (3) 157:14,17,21 foam (2) 171:4,19 focus (1) 45:4 focusing (2) 60:20 65:19 foil (3) 100:17 171:4,18 follow (3) 73:24 133:3 154:9 following (9) 30:1 75:24 80:24 97:1 124:12 142:10 148:22 157:8 183:17 follows (2) 58:19 160:10 footage (10) 31:5 32:18 33:4 59:9,10 60:10,11 191:4,12,17 fore sight (1) 111:4 forgive (2) 54:5 57:13 forgot (4) 78:9 108:3 110:2 111:5 forgotten (3) 110:5,8 111:7 forklift (1) 4:1 form (7) 69:18,19 75:4 100:22 113:10,10 119:25 format (3) 7:18 121:9 150:10 formally (1) 116:2 format (1) 151:23 formatting (1) 94:8 formerly (1) 1:9 forms (1) 82:9 formulation (1) 171:6 formulations (1) 171:12 fortune (1) 51:23 forward (6) 37:21 80:16 82:2 90:20 151:24 192:14 found (1) 25:3 four (9) 8:17 18:5,6 21:1 62:9 65:6 70:8 153:14 171:11 fourth (2) 82:23 187:1 frame (2) 10:18 154:1 frames (1) 38:13 free (2) 115:2 191:23 friday (3) 11:13,17 21:22 front (5) 36:7,10 119:23 164:11 175:13 fuel (1) 134:24 full (20) 15:19 74:22 75:21 102:12 108:15 122:5,11,14,15 130:9,10,19 140:3 141:1 142:12,21 143:5,10,13 159:22 fully (3) 69:8 143:3 164:19 further (11) 34:19 44:25 58:4 90:14 99:18 115:10 153:23 163:9 164:10 174:3 191:25	general (11) 37:16 39:10 41:17 55:13 56:24 61:16 86:2 130:24 165:15,16,17 generally (6) 17:13 25:13 63:25 65:9 87:7 130:17 generic (3) 128:12,15 140:6 generically (1) 129:23 gentleman (2) 14:4,9 gents (1) 186:22 gesturing (1) 42:7 get (40) 5:17 17:16,17 21:19 22:10,16,18 23:2 31:12 35:24 41:5 50:11 51:21 52:10,10,11 53:10 54:12,15 64:8 80:21 87:19 88:16 90:9 101:8 127:15 131:17,17,24 135:10 136:7 138:22 147:18 151:1,18 152:2 161:19 176:25 187:2 188:15 getting (8) 13:3 123:25 124:20 136:6,18 137:15 150:25 181:10 gist (1) 165:18 give (21) 51:25 52:19 53:1 54:16 58:6 78:4 95:5 118:17 120:3 122:19 153:12 156:5 159:22 178:15 179:8 180:12 181:22 186:8 187:23 192:7 given (34) 9:4 12:1 15:19 16:7 24:1,5 33:25 34:16 38:7 54:14 79:20 96:10 100:20 101:16,20 106:1,24 110:22 111:1 115:2,4 121:12 126:22 127:4,22,25 140:7 162:8 166:12 173:6 174:19 189:12 190:3 191:12 gives (2) 62:2 169:10 giving (17) 2:12 41:9,13 56:8,16,19 59:14,22 69:15 109:23 129:1 179:3 185:15 189:2,3 190:15,16 glass (3) 100:17 120:14 144:22 glean (1) 168:20 goal (1) 116:8 goalposts (2) 132:14,22 goes (5) 10:14 26:13 58:3 98:7 117:12 going (55) 1:8,10 5:12 6:1 7:16 11:18 12:24 15:14,23 16:20 18:11 23:4 30:5 31:6,8 34:23 37:23 39:24 40:7 41:10,14 50:21 52:10 57:1 60:24 66:25 68:18 71:22 78:23 89:21 99:17 103:9,21 122:3,5 124:6 125:10 127:16 128:4 129:2 131:5 145:3 153:16 155:23 156:7 163:7 164:3 171:5,5 176:10 178:5 187:4 188:20,23 191:13 gone (14) 5:1,2,3 7:12,25 15:5,20 46:8 47:20 88:3,3 110:2 148:23 167:19 good (29) 1:3,6,7,15 2:6,14,19,20,21,22 12:11 22:16 23:2 41:22 43:17 51:9,19 56:13 57:18 103:24 104:2 115:21 152:5,6 155:3 156:10,24 189:25 192:10 goodness (1) 8:19 government (1) 18:1 grades (1) 188:4 granados (1) 14:7 graphite (2) 128:14 139:25 grateful (1) 101:10 great (1) 126:16 greatly (1) 177:2 green (2) 21:10 22:6 grenfell (1) 24:8 grey (1) 119:20 ground (2) 20:17 45:11	growth (2) 32:3 89:12 guess (1) 159:10 guidance (1) 102:10 guys (1) 22:2	H	had nt (14) 25:8 41:1 46:2 53:7 74:9,12 78:20 97:23 100:16 109:3 110:8 111:4 137:11 147:20 half (2) 67:18 191:16 halfway (3) 43:14 101:4 162:23 hall (14) 3:25 4:2 8:15,18,23 14:10 16:24 18:4,11 22:1 29:7 61:17 63:1 114:19 halt (1) 192:12 hand (2) 77:1 99:21 handed (1) 11:12 handling (1) 6:23 hands (1) 24:25 handwritten (1) 145:3 hang (3) 7:8 17:6 143:2 happen (1) 4:9 happened (11) 11:20 16:23 20:23,25 26:24 64:5 94:8 107:14 109:16 138:15 146:11 happening (2) 31:2 32:8 happens (2) 52:2 81:21 happy (5) 5:6 22:12 94:19 99:23 136:14 hard (4) 107:9 113:10 114:6,7 harry (1) 14:7 has nt (3) 44:14 60:6 146:21 haven t (6) 10:23 23:25 24:5,21 49:25 132:7 having (29) 11:23 12:2 28:4,24 29:17 44:1 46:4 47:9 48:25 53:19 58:25 59:9 60:10 70:24 71:21 72:2 89:14 91:7,17 100:9 102:14 165:10 173:18 175:19,23 184:1 185:4,10 191:6 hayes (12) 25:15 26:1 27:1,1,12 28:11,25 29:12 61:4 62:6 63:21 65:13 head (11) 31:5,9,13 32:16 55:15,16,24 59:9 60:10 159:10 187:17 heading (4) 139:5 145:23 162:15 163:11 headon (1) 32:7 hear (10) 1:11,14 33:10 39:16 50:24,25 103:25 104:1 155:17,18 heard (11) 40:4 48:10 61:15 62:3,19 63:23 118:12 119:3,5 156:3 165:16 hearing (6) 1:4,9 50:22 90:20 103:22 192:20 heating (1) 36:9 heavily (1) 138:7 hed (5) 57:24 71:12 171:23 177:3 180:21 height (3) 39:24 40:10 146:3 held (9) 107:9 140:4 141:2,4,22 164:16 166:23 183:18 184:19 hello (5) 50:23 111:20,21,24,25 helmet (2) 32:13 38:24 help (9) 54:7 90:20 101:22 134:22 173:25 175:2 181:20 186:2 187:13 helpful (2) 176:3 178:8 helping (1) 77:1 here (25) 1:4 21:6 50:25 55:19 67:1 68:25 75:3 78:3 87:19 95:9 97:15 104:1 110:3 120:18 129:1 136:13 150:12 151:6 175:5,13 179:14 185:12 186:17 188:1 192:8	heres (1) 65:1 hers (1) 112:14 herself (1) 152:11 hes (17) 27:24 28:1 29:16 42:7 47:6 62:10,21,23,24 129:23 161:14 165:7 166:10 167:1,6 169:12 172:7 hi (2) 22:15 81:24 hidden (1) 96:8 hiding (2) 63:13 74:21 high (1) 101:16 higher (1) 127:1 highlight (2) 72:11 156:25 highlighted (2) 45:12 66:3 highly (1) 133:16 high pressed (1) 71:1 hindsight (6) 55:22 70:4 77:16,24 143:19 188:18 hissic (1) 25:24 hoare (10) 102:21 120:21 123:9,15,20 124:15 133:17 134:19 135:24 150:20 hoares (3) 134:7 137:21 147:7 holiday (1) 93:21 home (2) 136:11,11 homes (1) 124:8 homogeneous (1) 119:24 honest (2) 71:1 101:20 hope (4) 22:20 104:3 153:23 156:7 hopefully (4) 43:19,22 46:14 90:9 hoping (1) 64:8 hour (4) 67:18 191:12,15,15 house (2) 127:4,24 housekeeping (1) 1:18 howard (20) 78:11 82:6 93:19,21,23 94:2,16 98:16 111:19,21 112:2 131:23 186:18 188:2,11,19 189:14,22,23 190:4 howardsic (1) 188:12 however (8) 116:10 164:18 166:3 171:12 175:22,25 181:17 191:7 hpl (1) 186:4	I	id (14) 4:1 5:19,21 16:21 17:3 21:5 79:10 86:25 104:24 108:3 110:2 129:25,25 174:20 idea (16) 64:24 81:14 124:4 125:7 129:14 147:25,25 149:7 154:17,20 159:8,9 173:25 175:2 178:10 182:7 ideally (1) 69:6 ideas (1) 187:18 identification (1) 125:22 identified (9) 5:11 9:7 19:5 21:3 32:15 120:25 126:3 129:23 162:19 identifies (2) 15:16 184:21 identify (8) 7:15 8:4 10:24 27:8 82:19 125:19 159:24 166:24 identifying (4) 6:19 8:6 128:17 140:10 identity (1) 121:15 ignite (1) 42:14 ignition (3) 134:24 135:7,11 ill (16) 2:15 26:2 44:19 50:7 66:16 72:2 99:4 103:14 110:13 116:19 122:18 139:9 149:21 152:17 158:6 159:17 im (97) 1:4,10 6:1 8:12 9:18 11:5 13:2,2,25 22:5,12 24:22 28:25 31:4,6 32:11 35:17 37:3,19,25 38:7 40:7 41:21 47:15,17,19 50:1 54:2,3 57:1,9,12 60:24 66:18 68:17 70:22 71:22 75:7 76:11,11,21,22 77:13	81:6 82:13 87:7,18 88:5 90:16 94:15 97:10,11 99:17,20,23 101:8 103:4 104:1 105:3,6,10,12 109:3 110:3,9 111:1 124:12 127:18,19,20,20,21 131:4 132:7 136:18 141:22 145:5 150:15 153:10 158:15,20 165:14 169:3 175:16 176:10 178:24 179:18 180:10 184:22 187:12,22 188:23 189:16 190:20 191:13 192:7,8 images (1) 22:2 imagine (3) 121:8 142:16 174:5 immediately (3) 9:22 136:7 179:18 impact (3) 40:20 41:6 53:22 impartial (2) 126:24 127:23 impacting (4) 55:18 56:10,13 57:3 implication (1) 169:19 implicit (1) 81:18 implied (1) 97:9 implies (1) 53:3 important (7) 44:13 82:9 139:1 144:12 147:9,18 176:25 impression (6) 17:23 80:6 108:10,12 109:23 187:14 improve (1) 185:16 improved (1) 177:2 improvement (2) 183:21 185:14 improvements (1) 170:19 inadvertently (1) 148:23 inappropriate (1) 189:8 inaudible (12) 5:5 33:17 42:11,11 43:22 48:13,15 51:17,23 87:13 111:23 112:3 incidents (1) 31:20 include (7) 64:21,22 66:12 124:25 142:10 151:15 160:2 included (5) 30:13 90:7 91:1 92:24 124:23 includes (1) 26:12 including (8) 26:19 85:23 98:23,24,25 99:2 160:3,10 inclusion (3) 71:7 72:20 80:17 incomplete (2) 96:6,11 inconsistency (1) 147:1 inconvenient (2) 156:1,5 incorporating (4) 159:21 160:1,9 182:10 incorrect (5) 27:7 62:10,13 77:10 158:4 increase (2) 25:20 30:5 incumbent (1) 127:11 indent (4) 12:5,24 13:10 16:18 independent (1) 127:23 index (1) 193:1 indicate (3) 6:14 47:12 101:13 indicates (1) 23:3 indication (4) 40:18 43:1 120:3 192:7 indicative (8) 100:7 101:7 102:3 122:3,16 151:20 173:25 175:2 indignant (2) 136:6 137:16 indirect (1) 44:21 individual (4) 164:16 166:22 167:3,17 individuals (1) 58:23 inexperienced (1) 54:21 inferno (1) 163:14 info (2) 124:22,25 information (14) 78:15,22 104:20,22 109:17 115:1 127:12 129:2,5,13 141:20,22 142:11 168:21	informed (2) 112:8 191:4 informing (1) 169:9 ingredients (2) 79:7,9 initial (4) 61:25 78:9 93:18 130:1 initially (3) 29:23 118:7 132:20 inq00014218 (1) 34:22 inq000142183 (1) 33:2 inq00014219 (1) 34:25 inq000142192 (1) 39:18 inq00014220 (1) 35:2 inq000142202 (4) 42:3 43:14 46:17 51:12 inq00142183 (1) 35:14 inquiry (22) 2:18 24:13,23 133:16 25:23 33:25 34:1 96:24 99:3 105:1,9,15 107:24 108:8 109:8 110:13 111:2,9 112:21 148:16 163:3 182:19 193:5 inside (1) 162:16 insisted (1) 80:23 installation (3) 57:6 75:22 86:22 installed (4) 17:20 34:14 131:3 177:1 installer (1) 21:23 installing (1) 177:4 instead (7) 49:10 58:10 81:11 91:15,25 95:13 148:22 instruct (1) 21:23 instructed (3) 22:24 23:1,7 instruction (1) 24:3 instrumentation (2) 13:17,21 instrumented (1) 11:15 instrumenting (1) 101:23 insulant (3) 175:25 176:12 181:13 insulation (19) 10:20 20:3,10 22:4,8 23:14 42:10 49:18 57:25 66:9 67:12,20 73:21 80:8 95:4,6 162:23 164:19 186:13 insurance (1) 162:3 intact (1) 38:21 intended (3) 24:18 73:23 117:23 intending (1) 63:12 intention (2) 72:2 92:2 interest (1) 162:6 interesting (2) 47:7 141:13 interestinglooking (1) 145:5 internal (5) 63:10 115:14 151:6 160:20 183:9 interpret (1) 153:3 interpretation (2) 62:12 118:5 interpreted (1) 40:18 interrupt (2) 13:15 37:3 intervene (1) 76:12 into (21) 5:1,2,3 20:24 24:10 25:4 31:12 35:3 41:24 55:14,24 69:1 89:21 122:11 127:15,16 132:9,10 152:7 171:11 180:4 introduced (2) 83:16 133:22 intumescent (17) 41:4 42:21 43:3,19 45:25 46:7,20,21 47:2,7 12:12 66:10 124:24 125:13,24 126:2 139:25 invariable (1) 7:23 invariably (1) 9:25 investigate (1) 173:9 invite (2) 2:15 155:25 inviting (1) 35:17 involved (7) 102:19 127:1 158:21 160:9,16 164:19 186:12 involvement (3) 159:20,23 160:3 ip (1) 22:19 irish (1) 157:12 isnt (32) 2:13 17:15 19:5 21:11 39:20,24 47:7	49:3,20 60:16 67:13 76:6 82:11 87:11 92:20 96:4 106:10 117:24 118:15,19 124:5 129:4,12 134:22 135:9 141:11,11 148:1,2 188:17 190:12,18 iso (1) 171:10 issued (20) 78:20 88:2 90:2,9 92:12 97:6 102:25 105:1,9 107:23 124:3 125:3 131:6 140:17 147:13 148:4 154:15,22 158:13 182:20 issues (2) 50:11 143:21 issuing (4) 136:21 138:5,14 147:17 istephan (2) 1:5,6 item (5) 83:13 84:3 122:1 139:5 167:3 items (2) 52:6 84:5 iteration (1) 51:23 iterations (1) 124:18 its (172) 6:10 7:20 8:24 10:11 13:3 16:7 21:11 25:2 28:16,18 33:10,15,17 34:1 35:8 37:11,12,16,25 38:2,12,22 39:6,23 40:1 42:16,24 43:12,23 47:19,22 48:7,13 49:3,17,19,19,23 50:1,2 51:16,17,18,19,20 53:9 54:2,11,11 55:9,10,14,22 56:11,13,15 57:17 59:12 61:25,25 63:9,14,19 64:3 65:12 70:12,13 71:19,22 72:10 75:4,11 77:17,20 78:25 82:11 83:12,17,18 85:10,10 87:11 88:9 90:8 91:20 93:1,2 94:25 99:8 101:7 106:10 110:9 111:3,13 115:19 116:20 117:21,25 118:15 119:22,25 121:20 124:5,10,14,18 125:14,17 127:4,4,7,11,22 128:12,14 129:14,21 130:16 134:22 137:15 138:25 141:23 143:16 144:6 145:5 147:25 148:10,21,22,24 151:20 155:23 156:1,5,17,22,24 157:14,16 159:17 162:3,4,6 163:21 164:1,9,15 165:8 166:21,22 167:13 168:10 171:4,4,5,6 173:22 176:25 177:10 178:9 179:22 180:2 184:22 187:17 188:1,6,15 189:5 190:18,20,25 itself (5) 84:14 87:25 90:2 171:19 177:7 ive (52) 8:25 9:14 21:21 24:11,12 35:3,5 37:12 47:18 55:24 57:9 58:12 63:14 64:24 71:9 81:1 94:6 97:7 99:13 101:15 110:2 111:24 118:12 119:10 120:20 125:7 129:14 132:18 138:1 140:16 141:1,18 147:25,
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necessarily (22) 14:14 16:3 27:25 54:16 88:24 107:19,20 110:18 111:12 114:25 127:1 131:14,19,24 133:23 137:8,17 140:20 143:2 164:2 179:20 190:2 necessary (2) 13:20 85:18 need (33) 6:21 8:14 10:14 11:10 17:12 21:13 32:19 39:17 46:24 50:5 54:18 57:12 59:23 70:5 80:11 95:7 105:22 112:17,17 124:12 136:5 139:17 143:3 150:16 151:2 152:15,19 153:7 156:25 175:22 179:25 181:12,16 needed (12) 11:11 51:10 53:23 68:6 81:17,19 92:9 106:25 113:16 168:20 174:1 175:3 needs (1) 141:14 neglected (2) 87:2 108:3 neither (1) 9:5 never (28) 19:18 20:12 21:3 24:11,12 28:18,19 31:4 81:1 91:9,19 92:2 110:2 118:4 129:8 132:23 147:13 158:20 164:3 170:9 179:9 181:7 182:3 187:19 189:4,7,11,16 newly (1) 85:21 next (18) 13:3 21:22 34:23 39:13 47:11,18 81:21 82:12 105:11 110:20 112:14 124:14 136:9 145:16 151:14 163:19 169:1 175:18 nhbc (5) 80:23 81:2 88:25 89:9,16 nobody (7) 9:21 13:13 75:2,4 91:10 133:6 171:5 nobodys (1) 148:9 nominal (2) 139:24,25 non (5) 116:3,5,6,9 132:16 noncombustible (9) 117:7,8,18,19 118:8,9 120:22 121:21 123:2 none (8) 46:12 63:14 66:19 70:20 122:2 141:20 163:8 188:5 nor (2) 9:7 76:5 normal (2) 138:4 192:3 normally (4) 5:16 17:16 84:17,19 norman (4) 184:2,9,10 185:4 note (22) 3:2 4:7,9,13 6:18 7:1,8,11 9:6,15 16:19 49:23 59:10 60:11 116:2 118:2,11 120:23 121:13 156:19 175:3 191:8 notes (15) 2:24 4:16,17 5:9 6:6 7:15 8:6 32:6 84:12 85:19 94:5 98:23,24 134:7,9 nothing (12) 12:13 13:10 39:24 41:15 55:1,15 56:18,23 60:13 144:11 170:4 175:5 notice (9) 12:5 45:12 68:11 69:3,4 86:3 170:24 171:5 172:14 noticed (6) 12:23 13:9,11 16:17 100:15,16 november (16) 34:1 100:4,8,25 101:8 103:1 115:10 122:4 123:16 128:6 140:12 150:5,13,19 151:8 152:12 number (11) 5:19 11:23 63:17 67:2,2 91:20 92:13 139:1,1,8 159:24 numbers (2) 134:15,18 numerous (3) 70:23 132:8 160:9	oath (1) 109:8 observation (3) 135:3 167:23 173:8 observations (2) 145:23 148:2 obvious (5) 19:15 79:20 83:17 132:2 179:17 obviously (10) 4:10 13:4 20:22 30:4 36:7 42:24 43:20 51:25 77:9 153:11 occasion (1) 4:10 occasionally (4) 49:15 106:24 138:6 171:23 occasions (4) 32:2 109:20 137:18 146:17 occur (4) 73:5,9 122:25 130:25 occurred (4) 26:21 123:5 129:8 191:6 occurs (1) 13:16 oclock (6) 99:22 103:11,15,17 192:15,18 october (2) 123:21 124:14 offered (1) 102:4 office (16) 3:24 4:20,21,22 5:21 10:7,22,25 26:17 27:18,19,23 61:20 64:7 90:16 112:14 offices (1) 61:18 official (13) 164:15 165:7 166:8,9,12,20,21 177:15,22 178:22 180:13 181:2,14 officially (1) 181:24 offline (1) 166:16 offload (1) 6:25 offloaded (4) 4:2,6 6:22 7:10 offrecord (2) 170:20 173:16 offsite (2) 136:24 137:2 offtherecord (8) 173:19 176:5 178:11,15,25 179:8,15 180:13 often (1) 141:24 oh (7) 7:8 30:18 35:20 47:1 74:12 138:1 159:8 ok (3) 21:24 22:15,20 okay (16) 15:9 21:8,15 22:13 23:7 44:16 50:13 55:3 63:8 115:20 134:14,21 169:5 174:10,14 192:16 old (2) 78:19,22 omissions (2) 76:7 98:3 omitted (2) 22:5 25:22 once (14) 5:6 16:21 22:2 23:21 28:24 52:16 53:21,24 54:4 55:10 62:11 66:5 82:8 151:13 oneas (1) 151:21 ones (5) 12:17,18 52:11 78:20 145:13 onetoone (1) 166:17 ontherecord (7) 176:5 178:11,16 179:1,8,15 180:12 onto (6) 7:25 9:18 10:21 15:20 32:11 80:17 opal (1) 3:16 open (1) 168:21 opening (2) 148:14,15 opens (1) 174:2 operated (1) 98:15 operating (3) 31:13,15,23 operation (1) 121:18 operator (1) 32:24 opinion (10) 26:15 41:14 59:14 116:14 168:19 177:15,18,21,22 178:2 opinions (6) 177:14,17,19 179:16 181:1 182:5 opportunity (1) 33:3 opposed (6) 36:9 80:7 100:17 101:24 162:3 181:2 oral (4) 15:5 29:12 33:25 129:16 order (9) 8:16 13:21 65:5 69:18 86:15 96:18 111:8	141:15 147:10 ordered (1) 7:3 organisation (3) 63:9,11 179:22 organisations (1) 137:9 original (6) 3:8,13 82:25 84:8 107:16 183:7 originally (1) 108:20 originated (3) 149:1,4,10 others (3) 102:15 138:19 163:4 otherwise (1) 180:14 ought (2) 68:18 191:23 outbreak (1) 26:20 outcome (1) 89:19 outer (5) 20:16 57:6 118:16 119:20 162:19 outermost (2) 122:21 123:4 outside (3) 175:9 183:7 188:6 outstanding (1) 124:22 oven (1) 172:8 ovens (5) 169:4,16 177:1,5,6 over (21) 11:12 20:10 41:4 60:8 65:11,15 68:13 76:23 103:13 105:5,11 113:1 120:1 136:13 138:14 165:3 170:3 181:19 191:7,9 192:14 overall (5) 17:8 44:6 80:8 95:3 161:18 overcautious (1) 48:16 overhang (1) 12:7 overnight (1) 192:1 oversight (1) 8:9 overspeak (1) 7:22 overspeaking (1) 119:7 overtopped (1) 14:20 own (10) 63:9 74:18 87:19 98:9 125:14 126:9 163:21 164:1 167:13 177:21 oxide (48) 14:20 19:13 20:8 25:19 26:12 28:5 29:18 30:6,14 34:10,18 35:11 39:7 40:13,19 43:5 44:4,22 45:1,5,9,14,18 48:20,23 49:4,10,12,20 57:7,20 58:11 61:2,6,11 63:23 64:2 66:20 74:15 75:10 76:5 77:7,22 79:21 96:1 97:4 99:7,11	p p (3) 183:20 184:21,24 pack (3) 6:16 108:24 114:2 package (3) 5:7 108:19,20 packaging (2) 10:1 16:20 packet (2) 105:9 107:23 pages (3) 72:17 73:18 115:22 pallet (2) 5:20 6:22 panel (23) 1:4 2:20 6:11 13:11 25:21 28:5 30:5,14 42:9,20 44:24 45:1,10,15,19,20,23 46:8,20 52:9 57:6 68:12 74:16 panels (41) 5:23 6:4,5,19,22,23 7:2,3 9:2,8,12 10:3 12:2,3,6,14,17,25 13:6 14:13 45:2 47:6 49:21 54:1 58:9 68:20 69:23 70:3,17,18 72:22 73:6,8,17 74:4,5,16 75:11 81:11 93:13 191:9 paper (1) 105:24 papers (1) 1:23 paragraph (57) 5:25 26:1,2,2 27:10 29:1,5 33:23 34:6,8,9 35:5 40:9,17 44:19,23 45:4,17 46:22,23 48:15 57:15,17 58:5,18,24 66:13 76:24 78:13 80:13 98:4 100:11 105:13 115:17,25 133:12 136:22 140:25 143:6 149:20	160:8,25 165:19 166:3 175:18,20 176:22 177:12 178:6 181:8 182:1 185:22 186:7 187:1 188:8,10 190:23 paragraphs (4) 40:8 104:21 176:16,18 park (1) 124:8 part (14) 23:10 24:6,22 47:11 62:17 73:11 81:12 82:9 85:12 112:5 114:5 140:14 153:11 157:18 partfund (1) 183:4 partial (1) 19:24 partially (1) 48:12 participants (1) 106:6 particle (18) 23:16 48:20 118:16 120:8,11 121:22 123:2 129:22 133:7 139:13,20 143:25 144:8,9,13,15,17,21 particular (3) 45:6 126:19 188:10 particularly (10) 45:24 62:2 71:18 85:23 119:20 125:11 132:13 140:15 158:25 190:9 partly (1) 156:24 parts (4) 4:18 77:6,20 160:22 partscale (1) 102:6 party (2) 63:10 132:24 pass (6) 59:24 82:5 122:13 164:4 181:17,25 passage (3) 21:13 121:1 132:13 passed (12) 16:7 26:7,8 82:8 90:19 97:4,21 119:4 122:11 130:10,18 154:19 passes (1) 131:17 passing (2) 25:20 116:7 past (5) 61:24 62:14 146:15 163:15 179:23 patch (5) 18:14,22 19:1,4 21:23 patrick (1) 18:14 paul (7) 30:1 65:13 80:16 90:3,12,14 91:24 pauljon (1) 90:6 pause (5) 35:15 38:3,5 169:1 174:13 paused (1) 38:2 pausing (3) 25:11 26:11 57:22 pc (3) 26:5,6,18 pcs (1) 26:15 pdf (1) 151:22 peer (5) 98:16 148:25 149:2,3,7 pembridge (1) 177:1 penultimate (2) 34:9 177:12 people (31) 8:16,19 9:18,20,20 10:10 14:11 15:1,2 16:25 18:9 27:16 35:4 55:25 56:1 57:10 63:17 70:25 75:3 88:4 98:8,11 117:1 127:2 138:20 149:7,8 154:6 156:5 158:23 161:22 per (1) 90:16 perceive (1) 190:14 perception (2) 178:13 179:7 perfect (1) 38:14 perforated (1) 172:15 performance (11) 46:5 59:3,22 162:9 167:8 168:1,1 169:25 173:6 179:4 181:11 performances (1) 59:19 performed (8) 43:1 44:6 45:22 95:6 97:5 117:1 167:12,14 performing (2) 164:22 167:7 perhaps (3) 88:6 117:14 120:8 period (11) 17:13 25:14 101:21 102:19 106:17	107:18 113:2 124:6 137:5 150:9 159:19 perpetuated (1) 146:20 person (9) 14:8 16:3,22,24 54:21 59:1 63:17 102:23 147:21 personal (2) 32:9 130:3 personally (3) 31:24 32:1 63:25 persons (1) 174:5 pertaining (1) 24:9 pertinent (2) 111:13 180:3 phenolic (3) 163:21 167:24 171:19 phil (26) 25:9,17,18 26:5 29:18 30:2,12 61:10,16,19 62:3,20 65:15 81:24 128:8 136:2,17 151:20 161:8 168:18 169:7 170:15,18 187:2 188:9,13 philip (2) 1:13 193:3 phone (5) 2:2 30:2 82:1 90:17 189:20 photo (1) 90:7 photograph (49) 5:20 10:3 18:14,17,23 19:6,8,11,21 20:2,7,24,25 23:18 66:11 67:9,11,23 68:1,25 69:5,25 70:15 71:7,10,12,24 72:6,10,14,20 73:15,20 74:9,20 79:24 80:3 90:13,22 91:1,5,12,18,25 92:24 93:3 119:18,20 125:20 photographed (1) 126:4 photographer (1) 23:4 photographic (1) 125:15 photographs (38) 5:21 9:25 22:23 23:8,20,24 24:4,15,16,18,25 25:3 65:25 66:8,14 70:17 71:20 72:4 73:13,24 74:17,17 75:9,12 84:13,15,22 85:1,3,7,8,15,19,23 86:6 93:6 98:25 100:9 photos (2) 22:16 23:3 photo (4) 124:13 149:8 168:11 189:19 picked (12) 44:14 70:5,15 94:9,10,11 107:19 146:21 147:20 148:24,25 158:23 picture (4) 67:13 88:8 95:1,5 pictures (2) 23:13 187:5 piece (4) 51:11 60:22 156:21 171:21 pieces (1) 44:13 pink (2) 69:11 171:4 piss (1) 136:8 place (24) 7:14 8:15,20 20:1 29:9 39:2,3 44:7 58:22 64:25 74:6 82:3 87:6,23 92:3 109:16 117:20 126:2,22 150:9 185:2,5 186:11 188:15 placed (2) 4:6 126:16 places (5) 14:18 57:8 75:10 86:4 107:20 plan (2) 85:9 161:18 platform (1) 12:21 play (7) 32:23 38:11 39:14 41:22 43:8,10 51:5 played (8) 32:20,25 38:10 39:15 42:1 43:11 51:8 64:4 pleasantries (1) 112:13 please (97) 1:19 2:23 18:13 19:11 21:4,6 25:6,25 29:15 31:5 32:20,23,24 33:1,21,23 34:5 37:5 38:6 39:18 41:20,25 43:10,14 46:16 50:14 51:11,12 58:16 61:8 64:17,21 65:10,17 66:12 72:17 73:18 75:17 80:10 81:20 82:3,5,7 87:16,17 92:11,15 95:9 100:24 103:11,11 104:12 105:5,16 115:13	118:21 119:17 123:14,18 128:5,9 134:6 139:3 142:3 143:23 145:3 149:19 150:1,14 151:8,22 152:10 153:17,25 155:6,11 156:19 157:7,21 158:5 159:15,22,23 160:1 163:19 168:10,11 170:10 174:4 175:25 177:13 181:9 185:23 186:17 192:13,15,18 pm (5) 103:18,20 155:12,14 192:19 pointed (5) 9:14 69:21 148:13 165:23 167:19 pointing (1) 45:23 points (4) 46:19 78:14 88:7 177:22 poor (1) 39:9 poorly (3) 12:11 16:1,10 position (9) 8:21 13:2 31:19 32:3 74:21 131:20 143:21 164:3 180:16 positioned (1) 140:1 positions (1) 107:16 positive (1) 52:7 positively (1) 172:2 possibility (4) 173:25 175:2,14 187:20 possible (10) 10:1 21:25 22:1 32:24 36:25 159:24 168:21 177:14 183:21 185:14 possibly (7) 73:10 78:17,22 100:20 124:7 131:21 161:20 post (4) 105:23 110:14 114:24 183:18 posts (1) 116:8 posttest (9) 41:17 55:14,23 67:12 73:16,21 74:5 184:19 185:13 potential (3) 12:9 48:17 191:5 potentially (13) 4:20 43:25 44:1 48:14 60:22 70:8 107:10 115:1 133:9 136:23 177:8 188:18 190:16 pounds (1) 159:9 practice (10) 4:5 6:24 7:23 8:3 9:24 11:9,24 13:19 158:18,25 precise (4) 10:24 121:4,15 166:1 precisely (3) 8:4 15:20 189:1 precision (2) 7:25 15:16 precursor (1) 135:22 predicted (1) 154:1 predominantly (4) 106:25 113:4,5 114:18 preferred (1) 69:7 prelaunch (1) 82:9 premises (1) 120:19 preparation (1) 137:24 prepare (2) 106:14 111:9 prepared (6) 92:15 106:8 113:18 179:7,11 180:7 preparing (3) 8:20 101:24 110:19 presence (2) 63:22 70:16 present (24) 9:12 25:15 29:12 34:15 35:8,10 40:14,21 58:20,21,21 73:17 100:19 133:14,18,25 183:24,25 184:3,5,6,7 185:4,25 pressure (1) 181:10 presumably (5) 72:19,25 73:23 92:4 134:18 presuppose (1) 96:13 pretty (7) 43:17 51:19 57:18 60:18 72:10 94:25 133:19 prevent (1) 21:25 prevention (2) 161:25,25 previous (7) 9:6 59:4 78:2 175:24 187:8,10 188:25 previously (2) 66:7 70:2	primarily (7) 42:22 44:7 102:20 118:3 134:3 175:7 184:15 primary (2) 102:21 125:8 principal (1) 58:7 principle (15) 52:5 53:5 54:3,17,22 55:1,5,9,11,12,18 56:10,20 57:4 130:22 printed (2) 147:1,3 prior (4) 23:13 70:11 75:21 116:23 privileges (1) 157:5 probably (50) 5:8 10:7,17,19 13:1 15:22 22:24 23:7 25:1 37:11 50:1 53:15 60:22 65:5 67:18 70:4 79:10 81:14 85:25 86:23 92:8 95:22 100:21 101:13,21 102:2,22,22 106:18 110:17 120:13,15,16 121:11 126:6 128:1 130:1,23 131:4,25 141:18 143:19 161:14 165:9 167:19 174:19,20,21 177:24 191:15 problem (3) 53:9 132:6 156:9 problems (3) 10:9 24:7 31:18 procedure (3) 31:13,15,24 proceed (1) 22:9 proceeding (1) 129:9 process (13) 9:19 24:1,17 72:9 73:5 74:3 93:7 138:17,19 143:20 169:17 177:2,10 produce (1) 149:24 produced (3) 150:3 160:5,21 producing (2) 7:24 142:17 product (31) 3:16 75:19 78:14 80:22 95:11 120:25 121:5 125:23 139:5 140:19 144:3 158:19 164:22 167:7,9,9 168:14,15 170:6,7,14,15,21 171:16,18 172:12,24,25 173:1,9 181:11 production (1) 5:19 products (2) 170:16 184:13 professional (4) 41:11,13 59:14 60:3 programme (1) 182:25 progress (3) 11:1 147:18 148:3 progressed (1) 153:24 project (7) 14:3 18:12 65:4 124:8 137:1 160:25 161:19 projects (8) 17:25 18:1,10 62:15 65:7 70:6 125:9 137:19
--	--	---	---	--	---	---	--

<p>putative (1) 118:8</p> <p>puts (1) 16:4</p> <p>putting (8) 10:8 69:1</p> <p>97:10,11 111:1 141:13</p> <p>179:23 188:21</p> <hr/> <p>Q</p> <hr/> <p>q (606) 2:23 3:6,11,16,20,24 4:3,9,15,21,23</p> <p>5:2,5,10,15,22 6:9,13,18</p> <p>7:1,6,14,20,22 8:3,8,12,24</p> <p>9:10,17,24 10:3,5,13,23</p> <p>11:6,19 12:1,13,23 13:8</p> <p>14:5,11,16,24 15:2,12,24</p> <p>16:7,12 17:10,19</p> <p>18:4,6,13,21 19:16,18,20</p> <p>20:2,6,12 21:4,11,16 22:13</p> <p>23:1,7,20,24 24:1,14,24</p> <p>25:3 26:24 27:8,10</p> <p>28:4,8,12,16,18 30:24</p> <p>31:1,12 32:1,9,18 33:7,9</p> <p>35:13,17 36:3,13,17 37:25</p> <p>38:3,16,18 39:8,12,22</p> <p>40:6,17,25 41:8,13,19 42:7</p> <p>43:4,8 44:16 45:23</p> <p>46:2,4,16,23</p> <p>47:2,6,11,16,25 49:3,9,20</p> <p>52:13,17,25 53:7,23</p> <p>55:11,16,21</p> <p>56:7,10,12,16,19,22</p> <p>57:1,11 58:3,16 59:8,13,18</p> <p>60:3,8,19,21,24 62:7,18,24</p> <p>63:3,5,7,21 64:10,25</p> <p>65:10,23,25 66:22</p> <p>67:7,19,23</p> <p>68:1,3,7,11,15,17,23,25</p> <p>69:12,18 70:15,21</p> <p>71:4,6,10,21 72:3,17,22,25</p> <p>73:5,10,12,23 74:2,15</p> <p>75:1,6,14,16 76:5,7,10</p> <p>77:13,17,19 78:2,12,23</p> <p>79:4,13,15,20 80:2,10,23</p> <p>81:3,7,10,20 82:14,25</p> <p>83:4,8,11,15,20,22</p> <p>84:1,7,10,14,21,25</p> <p>85:5,7,13,17,21</p> <p>86:3,14,19,24</p> <p>87:3,7,11,13,15,22,25</p> <p>88:4,10,13,17,20,22</p> <p>89:2,5,8,17,23 90:1,25</p> <p>91:6,13,22 92:4,11,19,24</p> <p>93:5,10,16,23 94:2,5,12,20</p> <p>95:8,17,20,24 96:5,10,16</p> <p>97:10,21</p> <p>98:1,11,15,19,23,25 99:3,9</p> <p>100:11,19,23 101:2,18</p> <p>102:1,3,10,17,24</p> <p>106:13,17,19,22</p> <p>107:1,4,7,21 108:10,19,21</p> <p>109:8,22 110:1,5,13,20</p> <p>111:7,18,21,23</p> <p>112:1,3,6,10,12,19,24</p> <p>113:1,5,9,12,14,23</p> <p>114:4,6,9,11,13,15</p> <p>115:2,7,13,19,21,24</p> <p>117:17,23</p> <p>118:1,7,14,19,21,23</p> <p>119:6,12,16</p> <p>120:6,11,18,23,25</p> <p>121:2,4,10,14,19,25</p> <p>122:3,17,25 123:9,13,25</p> <p>124:2,5,11 125:6,12,18</p> <p>126:2,8,14,22 127:3,18</p> <p>128:3,16,20,24</p> <p>129:1,9,16,21 130:7,16,25</p> <p>131:9,11,25 132:12,20</p> <p>133:2,11,16,20,24</p> <p>134:2,5,17,21</p> <p>135:1,6,9,13,15,18,21</p> <p>137:6,11,15,21,24</p> <p>138:4,11,23 139:8,22</p> <p>140:9,14,24 141:7,13</p> <p>142:1,6,16,20</p> <p>143:5,13,16,23</p> <p>144:6,11,25</p> <p>145:3,8,13,15,23</p>	<p>146:3,5,8,13,22,25</p> <p>147:3,5,9,12,14,17,22,24</p> <p>148:1,6,11,15,18,25</p> <p>149:4,6,9,12,14,16</p> <p>150:19,23 152:10,23</p> <p>153:2,4 154:7,9,12,15,21</p> <p>157:20 158:5,11,16,18</p> <p>159:2,5,7,11 160:13,16,20</p> <p>161:3,11,15,22</p> <p>162:5,9,12,14,19,23</p> <p>163:1,6,9,19 164:5,7,14</p> <p>165:5,12,16,25</p> <p>166:6,8,16,20 167:5,11,23</p> <p>168:4,8 169:21,24</p> <p>170:6,10 171:18</p> <p>172:1,5,11,14,17,22</p> <p>173:6,13,15,20</p> <p>174:12,15,22</p> <p>175:1,11,16,22</p> <p>176:9,16,21 177:6,12,20</p> <p>178:1,5,14,23 179:6,10,14</p> <p>180:6,25 181:5,8</p> <p>182:5,8,12,17,22 183:8,24</p> <p>184:3,5,7,9,11,16,28</p> <p>185:2,5,8,11,20</p> <p>186:7,16,21 187:13,19,24</p> <p>188:8,17,19,23</p> <p>189:7,14,18,23</p> <p>190:3,12,18,23</p> <p>q5v (1) 149:22</p> <p>q9a (1) 185:24</p> <p>quality (6) 16:5 41:21 64:20</p> <p>93:8 97:3 98:7</p> <p>quantity (2) 3:8,13</p> <p>question (77) 6:3,16 11:19</p> <p>13:6 15:18 25:7,11</p> <p>29:16,17,21,25</p> <p>30:8,11,17,19 35:16 58:18</p> <p>61:10,14 69:5 71:19 72:7</p> <p>73:6 75:16 80:2 84:24</p> <p>86:13,14 91:22 97:10</p> <p>104:18 105:19 109:3</p> <p>111:6,11 112:5</p> <p>116:20,21,22 117:9 118:25</p> <p>123:6 127:25 128:1,6</p> <p>129:6,8 130:6,16 134:17</p> <p>141:3,6 149:21 150:4</p> <p>151:16,17 152:1 159:16,17</p> <p>160:6 164:24 165:25</p> <p>168:13,23 169:5,7</p> <p>170:12,22 171:2,8,14</p> <p>174:14,15 179:5 180:23</p> <p>185:23 186:8</p> <p>questioned (1) 31:20</p> <p>questioning (1) 181:11</p> <p>questions (21) 2:16,18 33:21</p> <p>99:18 104:16 108:8,21</p> <p>109:4 110:4,9,10 112:21</p> <p>123:7 138:21 149:16</p> <p>153:14 155:24 181:7</p> <p>191:14,25 193:5</p> <p>quick (4) 84:2 102:8 174:1</p> <p>175:2</p> <p>quickly (7) 17:16 37:23</p> <p>66:18 88:6 116:19 175:6</p> <p>177:14</p> <p>quiet (1) 166:17</p> <p>quite (24) 14:2 21:11 32:3</p> <p>33:16 36:3,14,23 37:25</p> <p>39:16 43:18 49:25 80:20</p> <p>119:24 124:5 128:12 137:8</p> <p>138:7 152:6 159:17</p> <p>162:11 167:20 168:21</p> <p>189:24</p> <p>quote (6) 32:21 41:23 43:9</p> <p>45:7 175:25 181:15</p> <hr/> <p>R</p> <hr/> <p>raging (1) 163:14</p> <p>railing (1) 139:14</p> <p>rails (2) 76:25 77:3</p> <p>rain (2) 76:24 78:24</p> <p>rainscreen (25) 10:21</p> <p>23:13,21 37:10,13 46:5</p> <p>54:1 79:2 95:15 96:3,18</p> <p>99:16 100:14 116:16 118:9</p>	<p>123:3 128:13 131:2</p> <p>133:6,8 139:24 157:23</p> <p>162:20 186:3,13</p> <p>rainscreens (1) 130:2</p> <p>raise (1) 2:11</p> <p>ran (3) 61:19 161:16 190:5</p> <p>rapid (1) 32:3</p> <p>rare (1) 27:16</p> <p>rate (3) 19:10 124:11 144:25</p> <p>rather (3) 23:3 31:6 109:22</p> <p>re (1) 150:24</p> <p>reached (2) 40:12 146:1</p> <p>reaches (1) 146:6</p> <p>reaction (1) 12:9</p> <p>reacts (1) 46:9</p> <p>read (20) 26:2 35:3 75:3</p> <p>83:7,10 95:10 98:8 108:11</p> <p>110:21 132:13,16 139:8,17</p> <p>141:1 146:23 165:5</p> <p>175:6,11,16 188:11</p> <p>reader (1) 73:23</p> <p>reading (7) 49:15 71:15</p> <p>144:8 152:6 174:10 177:24</p> <p>182:1</p> <p>ready (7) 13:3 51:3 104:3,6</p> <p>125:2 151:22 155:20</p> <p>real (4) 32:6 70:13 132:1</p> <p>144:12</p> <p>realise (2) 131:25 148:11</p> <p>reality (3) 109:6 119:22</p> <p>167:15</p> <p>realife (1) 129:24</p> <p>really (18) 15:18 32:9 39:9</p> <p>42:16 51:19 57:18 70:21</p> <p>73:12 95:5 120:1,3 125:16</p> <p>127:20 137:15 138:9 141:3</p> <p>168:20 181:7</p> <p>realms (1) 127:16</p> <p>reason (27) 6:10 13:1 14:11</p> <p>17:17 24:8 25:10,19 44:25</p> <p>47:18 54:24 57:2 62:2 72:1</p> <p>74:7 76:7 79:22 86:13,14</p> <p>92:10 93:9 95:1 107:14</p> <p>110:11 116:13 128:25</p> <p>131:7 144:2</p> <p>reasoning (2) 72:14 101:25</p> <p>reasons (2) 50:6 94:20</p> <p>recall (60) 10:4 17:22 18:3</p> <p>22:25 23:8 25:1,2</p> <p>26:5,22,24 27:4 29:8,17</p> <p>37:15 58:22,25 59:2 87:10</p> <p>90:24 94:4 100:20,22</p> <p>102:6 105:8 112:25 119:15</p> <p>121:1,22 123:12 124:10</p> <p>130:23 134:4 138:1,16</p> <p>143:15 152:5 154:14</p> <p>161:13 165:1,23,25</p> <p>166:5,6,7 167:10 168:7</p> <p>170:4 174:11 177:5 179:2</p> <p>181:4 183:5,25 184:1,8</p> <p>185:3,4,7,10 188:22</p> <p>recalls (2) 62:7 172:3</p> <p>receive (2) 66:5 80:14</p> <p>received (6) 71:21 106:4</p> <p>114:2,5 175:4,17</p> <p>receiving (3) 2:4 151:12,24</p> <p>recent (2) 101:6 151:21</p> <p>recently (1) 100:15</p> <p>reception (1) 22:21</p> <p>recognise (1) 82:22</p> <p>recollection (17) 5:24 26:14</p> <p>28:20 30:25 31:1,3 62:5,25</p> <p>69:9 100:13 101:15 125:21</p> <p>133:15 169:13,14 172:1</p> <p>191:3</p> <p>record (12) 32:9 34:23 35:3</p> <p>36:19 120:18 133:20 145:4</p> <p>147:7 176:2,2 178:7,7</p> <p>recorded (8) 48:9,13 49:4</p> <p>118:10,19 163:10 167:6</p> <p>185:12</p> <p>recording (2) 174:8,17</p> <p>recordkeeping (1) 121:15</p> <p>records (9) 125:14 133:23</p> <p>134:23 169:11 182:17,18</p> <p>183:13 184:19 191:9</p>	<p>recreate (1) 96:22</p> <p>rectified (1) 138:22</p> <p>recurred (1) 188:25</p> <p>recurring (4) 187:17,19,25</p> <p>188:23</p> <p>red (9) 83:18,18 88:7 157:22</p> <p>161:19,22,24 186:6 190:25</p> <p>reduced (1) 191:8</p> <p>refer (12) 37:8 40:11 48:2</p> <p>59:18,23 76:8 86:7 99:6,13</p> <p>150:12 158:23 180:20</p> <p>reference (34) 8:5 18:23</p> <p>34:10,17 35:10 36:4,13,14</p> <p>39:10 44:3,5,11,22 46:18</p> <p>48:22 49:20 54:11 57:19</p> <p>76:2 78:25,25 79:21 82:18</p> <p>95:25 99:10 104:21 117:13</p> <p>122:19 128:20 139:19</p> <p>143:25 174:7,16 177:17</p> <p>referenced (1) 175:23</p> <p>references (3) 34:20 40:10</p> <p>59:21</p> <p>referred (8) 25:7 28:23 29:1</p> <p>34:14 44:25 129:18 150:6</p> <p>185:8</p> <p>referring (8) 37:9,13 52:14</p> <p>58:9 101:1 114:3 150:21</p> <p>157:7</p> <p>refers (9) 34:11 35:7 36:23</p> <p>41:3 101:3 139:8 154:10</p> <p>157:14 160:24</p> <p>reflect (1) 132:1</p> <p>reflected (2) 55:19 83:23</p> <p>reflection (1) 57:4</p> <p>reflects (1) 135:6</p> <p>refused (1) 190:21</p> <p>refute (2) 56:15 57:10</p> <p>regard (11) 26:15 34:7 44:21</p> <p>92:7 97:25 108:9 167:4</p> <p>175:8 180:17 189:13</p> <p>190:15</p> <p>regardless (1) 138:17</p> <p>regards (9) 19:3 101:6</p> <p>118:13 128:9 151:4 170:21</p> <p>171:13 187:7,9</p> <p>region (1) 39:4</p> <p>regulation (1) 141:16</p> <p>regulations (1) 157:13</p> <p>reissued (1) 93:5</p> <p>related (1) 132:5</p> <p>relating (3) 25:11 103:12</p> <p>149:17</p> <p>relation (4) 40:8 102:11</p> <p>103:1 154:13</p> <p>relationship (1) 189:25</p> <p>relevant (11) 55:7,12,12</p> <p>57:20 72:13 107:10 109:20</p> <p>110:3,12 180:5 184:25</p> <p>reliant (9) 105:4 106:2</p> <p>107:22 108:17,24 110:9,22</p> <p>126:11,12</p> <p>rely (1) 10:10</p> <p>remained (1) 91:18</p> <p>remarkable (1) 148:1</p> <p>remarkably (1) 148:1</p> <p>remember (54) 27:1</p> <p>28:9,10,12 29:21 42:19</p> <p>50:14 53:16 65:20,23</p> <p>70:10,14 82:20 87:3,7,15</p> <p>90:22 91:7,9,13 100:6,10</p> <p>101:15 112:9 115:9,12</p> <p>119:19 121:25 126:1</p> <p>129:14 132:16,18 133:25</p> <p>138:6 152:8,25 155:6</p> <p>160:16 162:9 164:22</p> <p>165:3,6 167:7,11,21,25</p> <p>169:8 171:14,20 173:18</p> <p>182:12 186:4,6 192:13</p> <p>remembered (2) 28:2 111:12</p> <p>remembering (1) 28:14</p> <p>remind (1) 182:11</p> <p>remit (6) 129:7 175:10 179:4</p> <p>181:6 188:6 190:17</p> <p>removal (1) 75:16</p> <p>remove (8) 71:10,17 74:22</p> <p>80:3 91:1,5,8,25</p>	<p>removed (7) 19:23 22:3</p> <p>67:17 71:14 72:2 79:23</p> <p>93:1</p> <p>removing (2) 92:2 94:23</p> <p>repeat (1) 84:24</p> <p>repeats (1) 140:5</p> <p>replace (2) 66:4,7</p> <p>reply (1) 39:17</p> <p>replicate (1) 122:6</p> <p>replicated (4) 96:17 97:14</p> <p>141:9,15</p> <p>replicating (3) 96:19,20</p> <p>97:22</p> <p>reply (2) 22:14 190:2</p> <p>report (141) 7:24,24</p> <p>15:4,5,15,16,19 16:15</p> <p>19:22 20:24 23:11 25:4</p> <p>64:13,13,15,17 65:3,14,18</p> <p>66:23 67:2,24 69:1 70:1</p> <p>71:7,23 72:6,18,20,25</p> <p>73:24 74:18 75:4,8,17</p> <p>79:25 80:17,21 81:15,16</p> <p>82:4,5,12 84:23 85:2</p> <p>95:3,8 96:16 98:5,7,20</p> <p>99:7,10 102:25 114:8</p> <p>115:14,19 118:19</p> <p>123:14,22,25</p> <p>124:3,18,22,23 125:3</p> <p>128:10,18 129:3 131:1,8</p> <p>132:12 135:19,21,23</p> <p>136:3,7,21 137:21,24</p> <p>138:4,12,13,24 140:14,21</p> <p>141:11 142:9,10,18,25</p> <p>143:7,16,23</p> <p>145:1,10,11,15,21,25</p> <p>146:9,20,23 147:1,17</p> <p>148:4 149:24 150:2,11,25</p> <p>151:13,21,24 152:17</p> <p>154:15 159:3,24</p> <p>160:4,13,20 162:14 182:22</p> <p>183:8,10 186:9</p> <p>reported (3) 14:12,17 178:20</p> <p>reports (10) 8:5 9:8,19 62:16</p> <p>65:8 70:7 138:2 140:16,17</p> <p>159:25</p> <p>representation (1) 85:11</p> <p>representative (3) 86:12</p> <p>129:24 130:5</p> <p>representatives (1) 106:20</p> <p>represented (2) 106:11</p> <p>132:11</p> <p>request (20) 4:13</p> <p>71:10,13,17,21 72:15</p> <p>91:1,3,4,8,15,24 92:4,5</p> <p>131:15 149:23 150:10</p> <p>181:1 182:5 189:14</p> <p>requested (10) 4:10 74:23</p> <p>81:14 88:25 90:7,13 94:17</p> <p>131:8 154:16 182:4</p> <p>requests (2) 187:25 188:24</p> <p>require (1) 81:10</p> <p>required (3) 80:19 142:20</p> <p>143:6</p> <p>requirement (3) 6:24 23:10</p> <p>143:18</p> <p>requirements (2) 153:10</p> <p>162:4</p> <p>requires (1) 134:23</p> <p>research (2) 130:1 157:24</p> <p>researches (1) 10:24</p> <p>residual (1) 38:23</p> <p>resistance (2) 14:10 184:13</p> <p>resolution (1) 50:11</p> <p>respect (12) 88:23 115:15</p> <p>127:5 145:1 149:25 154:22</p> <p>159:25 177:16,22</p> <p>179:12,16 180:8</p> <p>respond (1) 190:8</p> <p>responds (2) 128:5 151:19</p> <p>response (7) 136:9 151:6</p> <p>178:23,24 180:6,8 187:25</p> <p>responsibility (1) 175:9</p> <p>responsible (5) 15:3 18:15</p>	<p>98:2 164:16 166:23</p> <p>responsive (1) 108:12</p> <p>rest (7) 7:12 60:23 66:1</p> <p>85:22 86:11 139:18 146:20</p> <p>result (5) 16:8 34:16 40:21</p> <p>116:10 163:11</p> <p>retain (1) 171:21</p> <p>retaining (1) 121:14</p> <p>retest (1) 30:3</p> <p>retesting (1) 29:24</p> <p>return (3) 83:17 87:5,9</p> <p>review (10) 98:16 107:11</p> <p>108:6 113:17,23 114:6</p> <p>148:25 149:2 158:18 191:3</p> <p>reviewed (7) 59:9 60:10</p> <p>93:16,17,18 148:21 149:3</p> <p>reviewing (3) 113:1,9 149:7</p> <p>revised (9) 66:4 82:3,20 83:1</p> <p>84:21,25 85:22 86:20</p> <p>136:3</p> <p>revisions (1) 83:5</p> <p>rewatch (2) 27:3 146:17</p> <p>ribbon (2) 12:14 68:9</p> <p>richard (2) 102:21 133:17</p> <p>richards (3) 106:23 112:17</p> <p>113:5</p> <p>rig (95) 5:12,23 7:17 8:1,4</p> <p>10:1 11:2,8,10,11,14 12:15</p> <p>14:17,18 15:5,13,17,20</p> <p>16:1,4,10,18 17:14,20</p> <p>18:6,16 19:14,18 20:7,9,15</p> <p>21:2,22 25:14 26:4,7,17</p> <p>27:18,22 28:6 29:19</p> <p>30:8,10,13,15 34:15 38:14</p> <p>40:13,21 42:7 45:2 46:6</p> <p>57:8 61:24 62:14 64:2,8</p> <p>67:13 68:8,9,20 69:9 74:3</p> <p>81:12 84:9,11,14</p> <p>85:3,11,12,14,24</p> <p>86:8,11,12,20,22 87:5,9,25</p> <p>88:3,22 93:13 95:12</p> <p>96:2,12,17,21 97:21</p> <p>101:23 126:5 127:9 129:21</p> <p>130:18 148:3</p> <p>righthand (8) 3:3 19:24</p> <p>67:19 83:11 134:12 135:1</p> <p>138:24 145:20</p> <p>rigorous (1) 126:24</p> <p>rigs (4) 18:4 61:18 62:9</p> <p>70:25</p> <p>ring (1) 86:4</p> <p>rob (1) 30:2</p> <p>robust (2) 126:24 127:23</p> <p>robe (8) 123:6 125:8 127:4,23</p> <p>179:13 184:11 189:12,12</p> <p>room (3) 1:20 2:3 27:22</p> <p>roper (57) 5:23 6:3 9:1 12:4</p> <p>17:11 18:15,22 19:1 21:18</p> <p>22:14 23:3 24:14,25 26:6</p> <p>28:4,8 29:2,6 30:24 35:18</p> <p>42:5,19 43:23 44:14,17,19</p> <p>46:19 48:7,11 53:17,17</p> <p>56:17,19 58</p>
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37:7 39:24 40:6,10 42:15 44:6,18 53:16 57:14 58:8 66:17 68:8 83:13 88:14 92:14 101:1 115:16,25 134:11 135:2 151:7 153:11 158:9 173:22 175:20 176:17 178:5 182:21 183:6,12,21	selected (1) 72:19 selecting (1) 71:6 selection (1) 73:3 selftapping (1) 77:4 selling (4) 132:9,10,11 170:23 send (7) 66:4 67:5 94:17 117:1 174:4 179:22 189:20 sending (4) 69:25 84:22 151:25 152:24 sends (2) 18:22 21:18 senior (13) 92:15 102:23 132:25 143:1,20 153:1 174:5 179:21 180:18 183:19 184:20 188:3,4 sense (6) 21:17 61:17 115:23 135:5 169:18 174:24 sensible (1) 50:3 sent (23) 11:3 18:14 19:7 64:13 66:24 81:18 84:23 85:1 89:2 93:19 105:4 107:22 108:14,19,20,24 109:23 110:1 119:11 143:21 153:6 171:21 180:2 sentence (6) 45:8 110:20 153:11 158:9 167:6 178:6 separate (3) 167:3 172:19,22 separately (2) 151:3 178:12 series (1) 123:15 server (1) 24:11 services (1) 156:16 set (8) 68:19 76:1 79:8 98:4 140:11 143:13 160:10,13 sets (3) 128:11 162:17 163:11 setting (2) 101:23 163:23 seven (1) 70:6 several (1) 176:23 shall (2) 60:8 142:10 shame (5) 43:23 48:8,13 49:9,18 share (1) 55:25 sheathing (8) 10:19 48:18,21,23 49:2,4,11,11 sheet (5) 3:7,12 4:24 133:22 140:1 sheets (1) 114:21 shift (1) 116:13 shopping (1) 96:24 short (7) 9:9 50:19 68:10 103:19 116:20 155:4,13 shortage (2) 6:5 69:15 should (32) 15:6 33:24 38:7,11 42:4 50:9 69:10 70:4 71:4,6 73:24 84:16 98:13 109:17 111:15 118:25 124:18,23 125:2,16 127:18 135:18 138:8 141:23 145:11 146:23 148:5,6,8 151:14 155:22 181:3 shout (1) 38:18 show (24) 22:11 25:6,24 38:6 40:7 41:25 44:20 46:15 61:7 66:1,9,16,19 68:6 80:7 81:15,17 87:16 95:3 105:17 115:21 149:21 158:6 159:17 showed (13) 34:10 46:18 67:16 68:5 74:18 78:18 86:6,16 89:11 132:12 143:24 158:6 173:17 showing (6) 20:17 66:18 67:11 73:15,20 85:9 shown (6) 35:5 75:21 99:2 104:12 160:22 175:1 shows (9) 22:4,8 43:17 52:8 67:19 69:1 75:20 87:22 147:5 side (12) 3:3 19:25 42:11,17 47:4 54:19 67:19 89:21 134:15 145:20 168:3,3 sight (1) 138:20 sign (4) 17:1 90:19 93:22 94:17 signal (1) 137:22	signature (2) 3:17,18 signed (20) 3:20,24 4:2,24 6:6,18 7:1,11 9:6 12:1 16:14,22 69:18 86:15 98:9 113:18 121:5,12 124:19 151:13 significance (1) 14:25 significant (1) 162:6 signin (1) 133:22 signing (4) 4:3 15:14 16:19 143:20 silicate (4) 48:8,18 49:7,10 silver (1) 20:2 simco (5) 17:17 18:14 21:21 66:6 80:15 simcos (1) 22:20 simon (4) 14:4,5,9,16 simple (1) 163:15 since (4) 24:21 64:4 138:2 190:9 single (15) 8:21 23:17 51:23 61:24 62:13,14 68:7 77:2,8,11,14,19,25 84:3 86:25 singletorey (1) 27:20 sir (67) 1:3,8,14,15,22 2:1,6,13,14 13:15,20,24 28:22 29:4,10 37:3,10,13,14,18 49:24 50:3,13,14,17,21,25 51:2 54:5,11,22,25 55:2,3 56:18 76:11,15,16,17,19 99:25 103:7,14,16,21 104:1,2,5 108:20 110:10 153:16 155:2,10,15,18,19 156:3,9,10 191:18,22 192:2,6,8,10,16,17 sit (1) 20:22 site (3) 22:17 106:15 136:25 sits (1) 88:7 sitting (3) 75:10 110:4 148:18 situation (1) 110:3 six (3) 65:2 70:11 138:4 sixmonth (1) 137:11 slapdash (2) 148:2,6 slides (1) 153:21 slightly (3) 43:20 100:18 176:2 slips (1) 60:15 slowly (1) 134:8 slurry (1) 119:25 small (2) 35:20 141:19 smaller (1) 43:20 smith (3) 107:6 112:7,10 smoke (1) 38:9 smudge (1) 22:6 sold (1) 170:14 solely (2) 164:16 166:23 solicitors (4) 36:18,18 48:1 106:5 somebody (12) 7:14 13:8,11 22:24 23:8,18 24:2 27:14 53:18 121:11 131:22 149:3 someone (7) 13:20 23:1 49:14 128:2 131:22 141:5 158:24 something (58) 4:20 5:18 8:16 10:11 13:3 14:13 16:16 22:2,3,8 25:12 27:15 31:21,24 33:16 35:7 36:3,13,22 49:6 55:14 56:2 60:15 62:21 63:18 65:5 71:2 76:8 79:24 84:20 89:3 91:21 94:10 99:13 111:4 114:23 117:21 120:13,23 129:9 131:22 132:4,5 134:14 148:12,13 151:2 154:17 158:20 169:3 170:2 172:9 176:19 179:19,23 182:19,24 187:24 sometimes (11) 49:14 51:21,24 52:18,25 53:11 57:2 58:5 120:4 141:23 187:18 somewhere (5) 3:25 4:25	73:2 94:6 166:10 soon (2) 50:12 151:21 sort (15) 18:10 20:14 31:16 41:9 53:19 78:8 81:15 101:21,21 102:6 112:13 119:24 140:17 165:15 178:18 sotech (12) 160:13,18 161:3,7,19 162:20 182:13,15 183:2,2,4,14 sotechmetsec (1) 159:12 source (4) 108:21 134:24 146:9 164:21 sources (1) 85:13 southern (1) 137:2 span (1) 109:4 spare (1) 4:19 sparks (1) 175:5 speak (4) 46:5 151:17 152:2,3 speaker (12) 33:7 34:9 39:19 42:4,4 43:15,16,23,25 46:19,23 51:13 speaking (1) 37:16 specific (11) 8:25 9:3,4 23:16 69:12 85:11 114:19 116:9 132:15 162:9 167:22 specifically (17) 12:3 18:12 44:11 62:4 68:4 72:13 90:25 100:20,22 140:16 152:5 161:17 165:14,24 167:10 188:8 190:10 specification (1) 75:22 specifications (1) 116:12 spend (1) 51:22 split (3) 20:18 38:21 161:4 90:25 120:22 140:16 spoke (5) 25:16 91:23 175:19 189:4,25 spoken (1) 21:21 sponsor (4) 149:23 186:1,12 191:5 sponsored (1) 160:17 spot (5) 74:3,13 89:7 163:1 172:11 spotted (6) 9:21 64:9 71:4,6 170:25 175:11 spread (5) 164:20 175:25 176:12,14 181:13 squarely (2) 29:14 57:1 staff (7) 133:1 143:1 153:1 179:21 180:18 188:3,4 staffing (1) 71:2 stage (5) 13:23 124:3 126:15 127:15 171:15 stages (1) 77:13 stainless (1) 77:4 stakeholders (1) 161:1 stamp (1) 124:14 standard (15) 4:16 31:13,15,23 39:25 41:15 72:10 94:25 116:1 127:5 131:7 133:19 142:17,21 143:7 standards (1) 56:23 standing (3) 20:6 48:25 148:19 start (11) 10:16 38:4 47:21 100:3 131:11 135:3,4,25 139:9 142:6 187:2 started (2) 60:25 135:10 starts (7) 32:21 38:24 164:8,14 166:3 186:21 188:9 stated (6) 16:21 116:4,8 132:14 164:22 167:6 statement (55) 5:25 8:25 25:25 26:1 27:6 29:5 32:21 33:22,24 34:2,8,20 35:19 40:6 44:15,18 55:1,5 57:11,15 58:16 59:6,25 62:9 77:10,14,17,18 78:3 100:12 104:10,20 105:14 106:9,14 107:11 108:23 110:19,25 111:9 113:18 132:18 133:12 142:4 149:19 150:21 152:4 158:4	159:15 160:7 180:20 181:14 185:9,22 190:23 statements (2) 148:14,15 states (3) 58:4 127:8 141:21 stating (1) 60:7 stay (2) 43:13 95:7 steam (3) 163:21 164:2 167:13 steel (2) 77:4 140:1 step (1) 130:7 stephen (13) 93:19,21 94:16,16 98:16 111:19 112:2 131:23 186:18 188:2,3 189:23 190:4 steps (1) 24:17 steve (12) 78:11 82:6,8 90:9,19 94:17 136:10,24 137:4 189:24,24 190:4 stick (1) 74:8 still (24) 21:1 35:21 36:9,25 37:11,22 38:1,20 39:2,3 44:7,7 78:18,21 110:17 116:14 117:2 136:11,12 138:18 141:21 175:22 181:25 187:14 stood (1) 89:3 stop (4) 21:8 38:18,19 124:24 stopped (2) 9:23 89:6 stopping (2) 60:13 139:23 stored (1) 114:17 story (1) 147:15 straight (4) 17:18 24:7 36:21 175:13 strange (3) 33:12 34:12 187:18 strip (3) 21:22,23 139:25 stripdown (2) 18:15,18 stripping (1) 187:3 strips (3) 46:21 47:3,7 structure (1) 16:8 struggling (1) 21:21 studied (1) 68:25 study (2) 68:3 71:24 studying (1) 76:22 stuff (10) 8:18 71:17 98:13 105:9 107:23 108:6 127:2 138:10 158:22 180:4 subcontractors (1) 16:6 subject (9) 79:16 150:24 153:20 159:11 168:1 169:12 173:25 175:1 190:3 subsequent (3) 48:12 61:1 91:10 subsequently (5) 9:15 19:21 31:20 97:6 191:8 substance (1) 112:20 substantively (2) 92:20,23 substitution (1) 92:19 substrata (1) 116:13 substrate (2) 139:12,16 successfully (2) 116:7 157:9 sufficient (1) 130:13 sufficiently (1) 130:4 suggest (4) 30:3 55:16 180:10 188:23 suggested (4) 90:7 94:1 117:6,9 suggesting (5) 50:4 75:7 127:18,19,20 suggestion (2) 9:10 117:17 suit (1) 54:14 suitable (4) 66:11 69:6 122:20 123:3 suits (3) 63:4,6 155:2 summarise (1) 99:4 summarised (2) 75:23 143:14 summary (1) 160:24 supervise (1) 15:4 supported (1) 191:3 suppose (5) 39:11 88:15 122:10 137:20 187:21 supposed (3) 21:9 126:23 135:15 supposition (1) 62:17 sure (12) 24:24 31:4 37:25	43:4 57:9 78:8 83:22 131:4 145:5 168:24 169:3,24 surely (3) 12:23 74:21 190:8 surface (7) 88:13 109:7 164:19 165:3 170:3 191:7,9 surprise (3) 154:20 189:19 190:1 surprised (4) 94:24 104:24 152:8 158:22 surprising (1) 137:15 surrounding (1) 123:13 suspect (1) 191:25 suspected (1) 26:8 swear (2) 28:18,19 system (84) 7:14 10:8,14 21:12 22:16,19 24:20 32:17 48:19 59:3,4 64:20 67:12 73:16,21 75:20,21,22,24 78:4 84:17 85:10 93:8 95:10 96:18 97:5,14,16,22,23 98:6,8,11,15,16,21 100:9 116:6,9 117:25 119:18 121:2,4,9,14 122:7,21 123:4 126:2,8 130:10,11,17,19,20,21 131:1,6,16 132:10,15 133:5 139:14,24 141:9,12,15 142:12,22 149:25 150:2 159:21 162:10,17 164:15 166:22,25 167:2 181:15,18,23 182:9 185:16 190:18 systematic (2) 63:15 159:1 systems (12) 70:23 105:24 106:1 107:25 109:10 110:14,16 116:6 117:8 132:22 133:7 160:9 systemspecific (1) 117:24	130:24 151:16 152:8 177:4 178:21 180:1 terribly (1) 179:18 test (297) 5:13 7:12,20,24 9:19,23 11:11,12,15 13:3 15:15,20 16:7,8 17:10,13 18:21 23:11 25:13,16,20 26:4,7,17 27:2,5,18,22 28:1,5,11 29:7 30:4,12 31:7,9,17 32:2 34:15,16 35:8 39:25 40:20,21 41:3,9,10,14,16 44:8,9 45:24 53:6,11,16 54:13 56:25 58:8,20,23 59:2,9,15,15,24 60:10 61:6,12,17 62:6,15 63:2 64:25 65:3,6,8,13,18 68:11,19,21 69:22 70:19 73:7 74:3 75:21 79:18 81:5 82:4,5,12 83:1,2 84:16 85:3,24 86:20,22 87:9 88:14,14,22 89:10,11,19 90:2,18 92:13 93:13,14 95:12 96:12,16,17,21,22 97:2,3,11,12,13,16,18,19,24 99:7,9,18 100:7,11,19 101:1,7,13,19,23 102:9,12,25 103:1,3 104:16 105:21 108:7 110:1,10,11,13 115:9,10,16 116:4,7,10,15,15,23 117:16,23,25 118:16,19 121:17 122:4,5,11,12,12,14,15,16 123:8,22,25 124:2 125:13,18 126:24 128:10 129:17 130:9,10,18,18 131:7,9,12,14,17,25 132:21 133:5,14,25 134:4,7 137:12 138:4,5,23,25 139:4 142:9,10,17,25 143:23 144:4 145:4,21 146:22 147:10,13,17 149:18,23 150:10,24,25 151:15 153:20 154:22 157:7 159:3 158:13,16,24 161:5,16 162:1,19 163:2,7,22,25 164:19 165:13,21,24 166:24 167:3,13,14,24 168:2,5,6 169:22 170:1 172:15,17 173:4,4,10,11,25 174:8,17 175:2 177:7 182:8,11,18,21 183:4,5,6,7,8,15,18,24,25 184:3,5,6,7,25 185:6,20,25 186:1,2,9,11,12,19 187:8,11,16 190:5 191:4,4,5,12 tested (22) 11:16 16:9 74:3 97:24 116:1 117:4 119:18 130:20 149:25 157:9,24 162:10,17 168:14,15 170:6,8,14,22 174:21 185:16 190:18 tester (1) 190:13 testing (11) 8:19 54:20 117:17 123:1 127:4,24 130:1 132:5 159:12 171:24 190:17 tests (32) 32:13 52:1 59:20 60:1 61:21 88:11 102:3,6 134:3 141:20 159:20,25 160:1,2,3,9 162:7 165:10 167:16,17 172:18,19,20,22,23 173:1 175:24 176:13,23 188:25,25 190:7 text (12) 21:14 46:16,17 79:15 83:7 87:14 101:3 150:23 157:4,8 158:12 155:11 thank (39) 1:15,22 2:16,13,14,19 13:24 22:13
---	--	---	---	---	---	---

29:10 37:6,18,20 50:13,16,17 51:2,4 55:3 76:19 98:1 103:8,14,16,17 104:2,5,7 134:17 155:9 110,19,21 156:10,13,14 192:10,16,17 thanks (4) 90:20 151:20 174:1 175:3 thats (144) 3:18,22 6:16 11:17 16:6 17:15 18:25 21:4,15 22:12,12 25:11 33:16 36:3,14,23 37:10,23 38:2,14,19 39:20 40:3 43:15,22 45:25 46:3 47:21 48:4,9 49:17 51:14 55:2 56:16,19 57:9 59:22 60:16 62:2,10 64:9 65:9 66:16 70:21 72:10 74:19 77:5,20 79:3,19 80:7 81:9 82:25 83:2,10,21 87:19 88:21 91:4 92:18 94:12 99:16 101:14 102:2 104:21 106:12,18 107:25 108:14,19 109:10,13 110:1,20 111:9 113:20 114:3,10,14 117:23 118:12,18,19 119:4 122:16 125:5 126:21 127:10,25 128:1,1 129:20 131:21 132:23 134:14 135:4,9,14,20 137:3,4,14 140:23 141:13 142:6 144:23 145:4 146:5,18 147:7 148:14,17 149:7 150:4 155:3 156:7,9,10 158:4 160:6 161:10,13,20 162:19,22 166:19 170:4,19 172:9 174:23 176:7 177:5,24 178:13,13 179:19 187:24 188:9,14 190:22 191:20 192:7,8,10 themselves (5) 35:4 54:15 63:16 107:3 167:16 thereabouts (1) 91:7 therefore (8) 8:3 18:6 65:23 97:24 130:25 140:5 142:20 157:7 theres (21) 11:22 25:14 38:21,23,24 43:2 56:18,23 60:2 63:12 69:11 78:17 83:15 93:12 112:16 119:13 144:19 175:5,8 176:8 184:24 thermocouple (3) 19:14 103:4 186:24 thermocouples (11) 12:14 14:19 20:9 28:6 30:14 67:21 84:19 96:1 163:14 183:16,17 theyd (8) 4:14 5:20 23:19 25:7 49:9 105:15 112:14 131:8 theyre (6) 16:4 63:12 104:25 120:1,12 172:22 theyve (2) 63:16 64:6 thick (4) 139:10,12,25 140:1 thickening (1) 57:6 thicker (2) 26:9 58:9 thickness (5) 13:6 52:9 53:25 87:1 99:15 thing (39) 17:8 27:6,24 28:23 31:23 33:15 44:1 52:23 53:9,13,24 55:8 70:9 72:5 74:25 91:20 94:7,9 124:8 126:25 127:14 136:5 165:8 166:9 169:15,16 171:20,23 172:7,10 176:8 177:3,5,8 178:4 179:17 180:2 184:15 187:17 thinking (4) 101:11 129:15 189:18 190:20 thinks (2) 27:21 129:2 thinner (1) 96:8 third (11) 34:25,25 46:23 58:24 63:10 66:17 80:13 139:5 144:1 160:25 164:11	though (9) 10:23 24:14 54:7 81:7 87:11 96:14 148:1 181:23 187:25 thought (32) 3:22 12:12 31:15,21 49:8 53:7,24 55:7 56:1,4 59:7 69:6 71:21 72:9,11 85:25 105:15 107:20 109:17,19 126:6 153:9 159:6 166:11 168:20 169:22 170:21 172:25 178:1 180:22 190:4 192:5 thoughts (2) 174:1 175:3 thousand (1) 159:9 thousands (1) 138:2 thread (1) 128:4 three (19) 4:17 9:20 17:14 18:8 25:14 27:7 38:13 61:17 65:25 67:17 70:8 75:3 109:6,11 136:15 138:18 144:19 153:14 161:15 threeday (6) 106:17 109:1 110:5 111:7,18 113:2 threshold (1) 127:4 through (26) 15:12 16:20 24:2 41:9 42:15 51:18 64:19 66:4 73:25 74:2 84:16 91:18 93:6,7,8 94:16 98:7 102:20 111:8 138:16,18 143:20 146:20 147:1 169:17 191:11 throughout (5) 11:16 66:3 77:12 78:1 99:15 thursday (7) 11:15,16,16 13:17 21:22 156:17 192:21 thus (1) 163:15 ticksic (1) 156:25 time (131) 8:4 13:4 14:8 17:6,23 18:1,9,10 22:1,18 23:17 24:14,24 27:16 31:14 32:5,6 49:16,23 51:24 52:4,18 53:1 55:7 57:3 58:6 64:12 65:7 66:25 69:9,24 70:6,9 77:8,10,16 78:18,20 79:10 80:1 82:15,17 85:23 88:2 89:15 91:4,12,14,23 100:21 101:16 102:13,17 106:8 109:16,21 110:6,13 111:12,14 113:23 117:14 119:4,12,21 120:8,15 121:1,14,20 122:8 123:5,11 124:7,7,10,13 125:7,11 126:6,25 128:1 129:7,15,19,21,25 130:8,12,25 132:3,9 133:19 134:10 135:6 137:4,5,19 138:1 141:24 142:24 145:17 146:5,6 148:3 150:9 152:14,19,22 153:7 154:1,4,5 157:17 158:18 163:6 164:23 167:8,9 168:13 170:12 171:9 172:14 177:21 179:13,25 181:6 184:12 187:7,10 192:4 timeframe (1) 77:18 times (9) 134:9,10 135:3,15 138:10 146:17 171:11 172:9 177:9 timings (8) 11:23 135:1,18 145:10,24 146:9,16 147:18 tip (2) 145:25 146:3 title (2) 67:10 175:4 today (7) 1:8 90:16 106:4 136:4 141:21 148:19,19 171:20,23 172:7,10 176:8 177:3,5,8 178:4 179:17 180:2 184:15 187:17 thinking (4) 101:11 129:15 189:18 190:20 thinks (2) 27:21 129:2 thinner (1) 96:8 third (11) 34:25,25 46:23 58:24 63:10 66:17 80:13 139:5 144:1 160:25 164:11	113:14 129:16 132:21 156:6 169:3 173:15 179:14 tomorrow (5) 156:1 191:19,23 192:15,18 tonight (1) 191:14 tony (13) 92:17 94:22 98:17 102:18,19 112:24 131:22 161:8,11,17,17,20 165:9 too (6) 15:22 88:5 129:14 136:18 156:8 192:4 took (13) 23:18 27:16 29:9 64:25 65:7,9 67:4 84:15 150:9 164:5 185:2,5 186:11 topic (2) 60:24 123:10 topics (1) 174:15 torn (1) 4:15 towards (8) 42:7 44:23 45:18 58:4 101:5 159:16 161:5 163:9 tower (2) 24:8 105:23 traditionally (2) 122:20 123:3 transcript (23) 31:10 33:1,4,11 34:21,24 35:1,13 36:20 37:5 39:19 42:2 43:13,13 46:17 48:5,9 49:25 51:11 104:13 105:17 108:12 109:9 transcription (1) 40:3 transposed (1) 146:14 trawl (2) 111:8 113:21 treat (1) 131:7 treated (3) 122:14 167:17 172:19 trespa (3) 186:3,12 190:25 tried (1) 81:25 trigger (1) 38:7 trouble (1) 51:20 true (8) 70:12 77:5,20 95:5 107:25 108:14 118:18 158:3 trust (4) 126:16,22 127:22 186:23 trusted (1) 15:11 trusting (1) 15:22 truth (1) 77:6 try (4) 17:16 39:23 54:12 131:13 trying (5) 8:12 27:15 53:19 108:17 170:16 tuesday (2) 10:18 11:5 turn (7) 60:11,24 99:17 100:3 122:11 159:11 185:20 turned (1) 7:10 twice (1) 56:4 twisted (1) 56:3 two day (1) 15:12 twoperson (1) 6:23 type (5) 32:4 121:22,24 181:7 184:15 types (4) 61:21 123:7 144:19,20 typically (1) 131:3 typographical (2) 92:22 146:19	understanding (38) 6:11 17:7 19:23 46:10 49:17 52:23 53:4 57:24 58:2 76:17 77:8,25 80:20 85:14 86:9 89:1 93:20 94:18 96:25 97:4,7 99:14,16 101:18,24 113:21 121:21 122:13 130:12 140:23 141:10 144:19,24 154:24 169:19 177:4 178:15 180:11 understands (2) 35:6 48:17 understood (8) 14:14 58:8 84:8 105:8 108:4 129:19,20 177:20 undertake (4) 63:12 131:14,17 184:12 undertaken (2) 24:2 150:10 undertaking (1) 162:8 undertook (1) 97:3 unexpected (1) 137:17 uniform (1) 77:11 uniformthickness (1) 78:1 unless (4) 12:20 15:14 16:15 189:2 unlike (1) 14:17 unlikely (1) 155:23 unofficial (26) 164:18 165:5,8,19 166:4,8,9,13,18 167:5 178:2,4 180:13 181:2,22 187:6,15,23 188:13,16,24,24 189:9,15,21 190:3 unperforated (1) 172:17 unrepresentative (1) 131:2 unserved (1) 109:12 unsure (1) 158:20 until (9) 9:14 22:18 125:3 133:22 150:3 154:22 155:5 163:3 192:20 untoward (1) 74:7 untrained (1) 171:3 unupdated (1) 79:14 unusual (7) 78:6 102:9 122:24 140:20 165:21,22 167:20 update (1) 82:5 updated (8) 66:5 79:17 80:14,24 81:10 90:8,19 95:22 upfront (1) 141:9 upon (1) 191:25 upper (1) 20:4 ups (1) 52:1 upshot (1) 182:5 upstairs (1) 27:17 upwards (1) 88:8 used (42) 6:4 7:20 16:8 28:2 48:20 49:9 61:11 77:2 81:3,5,12 96:23 98:19 105:13 108:8,22 110:25 113:5,21 116:3,23 118:10,16 122:13 124:24 125:13 126:4 129:2 130:19 132:21 135:19 136:25 140:11 142:13,23 143:11 144:3,15 145:10,11 162:19 163:2 useful (5) 31:21,22,23 56:2 116:11 useless (1) 133:6 uses (1) 162:1 using (13) 6:14 14:8 26:9 48:18 78:16,19 79:7 97:13 122:6 123:1 133:7 176:7 186:3 usual (5) 1:4 4:5 13:19 50:5 112:13 usually (1) 4:7	variety (1) 132:21 various (1) 70:23 ventilated (4) 116:16 128:9,13 139:23 ventilation (3) 88:10 89:12,18 vents (2) 33:17 36:15 version (18) 4:24 22:10 57:13 64:18,22 82:12 83:1,19 87:17,19 91:19 92:21 93:17 94:21 95:18 146:25 147:3 148:4 versions (2) 78:19 91:17 vertical (8) 76:25 83:16 87:4,8,23 88:7 89:11,17 video (38) 27:3 32:12,13,25 33:4 34:21,23,25 35:1,22 37:1,2,23,25 38:3,10 39:13,15 41:20 42:1 43:8,11 51:5,6,8 61:1 69:21 101:6 114:18,20 124:20 146:17 151:15,20 165:20 167:18 191:4,16 videos (1) 108:7 viewing (4) 174:3,8,16,22 viewpoint (1) 41:11 views (2) 115:16 180:13 visible (4) 19:13 35:21 37:11 45:10 visit (6) 26:4 31:17 80:24 110:6 111:8,18 visual (2) 145:23 148:2 voestalpine (1) 160:18	wednesday (6) 1:1 10:20 11:5,12,14 136:4 week (4) 21:23 66:6 80:15 151:14 weeks (7) 9:6 17:14 25:14 65:2 70:11 125:6 137:3 welcome (5) 1:3 50:21 103:21 155:15,16 went (14) 20:23,24 78:7,10 80:4 93:21 108:4,15 109:16 136:11 138:16,18 143:19 175:23 werent (7) 16:25 24:5 105:20 133:23 146:16 173:1 181:21 weve (23) 6:18 34:22 38:1 63:23 69:20 71:11 78:2,2,8 113:19 114:11 118:2,11 138:11 145:9 165:16 167:23 173:16 178:23 180:6,8 187:24 189:7 whatever (7) 20:18 34:14 56:7 69:22 108:16 167:9 190:6 whats (10) 36:4 53:21 76:1 110:3 126:15 156:17,19 157:15 184:11 189:20 whatsoever (1) 124:4 whereas (2) 120:14 172:17 whereby (5) 7:14 18:22 121:4 126:2,8 whilst (1) 44:24 white (18) 3:12 6:5 12:17 19:12 20:4 35:22 54:1 67:20 68:7,8,9 69:2,11 70:16 73:7 74:5,14 79:1 whoever (2) 20:23 180:3 whole (13) 17:7 24:9 26:2 38:14 77:5 85:10,11 86:12 99:15 117:19 149:7 170:3 176:14 wholeheartedly (1) 167:1 wholly (4) 109:13,15 172:19,22 whos (1) 54:21 whose (5) 59:1 102:17 145:9,9 164:24 willingness (1) 180:12 wing (11) 38:25 39:3 44:7 47:15,20,21 83:17 87:5,9 140:3 191:7 wise (1) 50:2 wish (1) 64:20 wished (2) 97:12 107:11 wishing (1) 174:6 withdrawn (1) 156:23 witness (35) 1:14,21,25 2:5,13 25:24,25 28:23 29:11 35:18 50:13,16,25 57:11,14 103:14 104:1,4,10 106:14 107:11 111:9 113:18 142:4 149:19 155:9,18 156:9 159:14 161:21 185:9,21 187:3 192:8,16 witnessed (1) 61:4 witnesses (1) 161:5 witnessing (1) 62:7 wonder (6) 68:7 72:6,7 73:6,7 83:8 wood (1) 120:15 work (12) 4:6 7:13 8:12 26:19 63:11 71:24 73:12 136:12,24 139:15 175:22,23 worked (9) 14:9 18:2 47:8 65:4 72:12 129:25 173:5 184:15 189:24 working (11) 14:3 16:25 17:25 62:15 65:6 70:7,22,25 110:18 124:8 137:5 works (3) 116:6,9 132:15 world (2) 70:13 132:1 worse (2) 167:25 173:10 wouldnt (27) 12:16,18,21	20:21 23:17,22 25:19 55:11 59:13 63:19,19 97:8 118:13 122:8 123:5 126:6 136:25 138:3 144:16 148:8 158:23 159:6 174:20 179:4,20,22 189:2 write (8) 70:7 98:6 131:20 151:9 177:15 178:24 180:19 181:12 writes (1) 81:22 writing (3) 62:15 134:16 145:9 written (6) 93:23 98:9 133:20,23 151:13 182:3 wrong (6) 45:16 48:4 62:4 144:16 147:3 175:23 wrote (4) 77:24 98:5 149:11,12
X						
x (3) 139:10,12,12						
Y						
yea (5) 42:14,14 43:16,16,25						
yeah (32) 41:7 45:19 47:10						
55:10 56:14 67:25 68:6						
74:23 77:23 81:18 83:10						
85:19 92:7 110:2 111:3						
114:5 126:21 137:17,19						
148:8 149:2 154:8,24						
162:18 169:6 174:14,20						
185:18 187:21 188:10						
190:20,21						
year (4) 34:4 100:5,8 171:11						
years (6) 11:24 56:3 140:18						
147:14,25 185:21						
yesterday (25) 1:17 2:8,25						
5:22,24 8:11,24 12:19						
15:9,21 20:14 24:7 64:4						
84:18 90:17 104:13 105:17						
106:3 107:21 108:11,21						
109:8,22 136:4 170:15						
yesterdays (1) 174:3						
yet (1) 46:2						
youd (4) 2:11 24:15 112:3						
170:22						
youll (4) 31:16,17 45:12						
49:13						
young (1) 54:21						
youre (47) 15:14 17:22 20:12						
21:11 23:3 30:19 33:14						
36:21 37:9,25 41:13 47:12						
51:3 52:10 54:25 70:15						
74:20 77:24 85:8 86:17,23						
89:22 96:9,22,23 97:25						
104:3,6 110:4,9 118:24						
123:10 127:15,16 131:5						
133:10 137:19 147:9,17						
148:5 150:21 151:25						
155:7,20 179:14 185:23						
188:17						
yourself (15) 24:2 32:10						
71:13,21 72:7 80:2 83:22						
86:15 108:15 118:1						
122:25 142:4 165:12						
172:11						
youve (14) 7:8 20:21 24:16						
36:7 42:14 43:20 48:5						
51:18 59:12 99:2 108:2						
167:23 173:4 180:19						
0						
0 (4) 135:4,9,13 157:1						
0130 (1) 43:8						
0149 (1) 43:10						
0200 (1) 43:9						
04 (1) 101:8						
0410 (1) 32:20						
0415 (1) 32:22						
043						

1 (30) 25:6 33:7 34:9 39:19 43:15,16,25 51:13 61:9 65:11,13 67:2 71:13 75:20 79:23 80:11 92:12,16 124:13 128:4 135:24 142:6 150:16 151:8 157:16 176:18 177:12 181:9 183:12 193:3 10 (9) 76:23 88:6,20,24 145:15 146:14 192:15,18,20 100 (1) 103:18 1000 (1) 1:2 100millimetre (1) 162:24 10k (1) 58:18 10millimetre (4) 83:16 87:4,8,22 10th (1) 82:7 11 (1) 142:8 111 (1) 149:20 1115 (1) 2:9 1120 (1) 49:23 1121 (1) 50:18 1135 (3) 50:8,12,20 12 (10) 6:16 7:9 8:10 39:5 57:17 77:11 81:13 83:6,13 159:16 1200 (2) 139:10,12 12mil (4) 17:8 25:21 30:6 77:11 12millimetre (6) 12:17 44:5 76:18 86:10 95:14 99:15 12mm (1) 58:10 12s (1) 7:9 13 (1) 48:15 1311cb04 (1) 82:18 135 (39) 65:18 97:6,13 116:11 117:20 130:9,12,14 131:6,13,15,18,24 133:9 141:17 147:10,13 149:18,25 150:7,11 151:2,16 152:14 153:6,10,25 154:3,6,13,21 157:11 158:2 159:4,21,25 163:16 183:15 190:19 13501 (1) 141:19 1354 (1) 66:17 1355 (1) 66:17 14 (4) 3:2,21 34:4 105:18 148 (1) 104:21 149 (1) 104:21 15 (10) 21:7,18 22:14 35:25 87:18 104:16 113:19 147:25 155:8 168:11 155 (1) 99:22 15millimetre (1) 162:20 15minutes (1) 183:17 16 (4) 72:18 73:1,13,15 160 (2) 183:15,21 160second (1) 185:14 17 (2) 34:8 93:12 17minutes (1) 163:13 18 (13) 66:8 67:9,10 73:1,18 79:22 91:2,8,15,21 94:20 104:23 157:1 182 (2) 105:16 109:9 18m (1) 116:12 18metreplus (1) 129:24 18metres (1) 157:11 19 (16) 18:21 19:1,9,9 29:16 64:14 65:1 66:24 67:4 80:25 84:23 93:2,3 94:21 186:3,11 1996sic (1) 157:16	20 (8) 105:5 160:17 162:10 168:14 172:14 174:9,18 186:19 200 (2) 103:20 183:18 20000 (2) 157:6 159:3 2002 (1) 142:2 2004 (4) 100:4,8 103:1 122:4 2005 (39) 100:25 115:11,11,16,18 116:1 117:14 118:3,15 120:16 123:16,21 125:4 128:6 130:23 131:1,18,23 135:24 138:25 140:12 145:21 149:18,25 150:5,13,19 152:12 159:13 168:2,5,16 169:25 170:8,23 172:17,18 173:4,11 20052006 (1) 154:16 20052017 (1) 159:19 2006 (5) 153:19 156:17 157:18 158:5 171:16 2007 (10) 159:12 160:17 162:5,10 168:5,14 169:25 170:7 172:14 174:18 2008 (12) 115:14,18,19 132:12 159:12 160:22 167:16 173:22 182:8,9 183:11 185:6 2014 (17) 3:2,21 18:21 19:1 21:7 64:14 65:13 67:3 90:4 92:12 115:10 121:6 185:20 186:3,11,19 187:14 2015 (3) 149:24 150:3 154:23 2017 (2) 24:21 112:4 2019 (2) 106:10 113:19 2021 (3) 1:1 34:4 192:21 206 (2) 186:7,10 208 (1) 185:22 20k (1) 157:5 21 (2) 91:21 133:13 22 (2) 27:10 105:2 220876 (2) 139:1,2 237 (1) 190:23 24 (3) 1:1 150:19 153:19 2411 (1) 191:6 2421 (1) 191:8 25 (4) 47:20 150:5,13 192:21 25mm (2) 128:14 139:24 26 (1) 186:9 269 (1) 5:25 27 (3) 93:11 123:21 149:20 273 (2) 58:18,24 28 (1) 124:14 29 (2) 151:8 152:12 293940 (1) 186:9 295369 (2) 67:2 92:13 2nd (1) 183:14	42 (3) 33:23 34:6 35:5 427 (1) 146:12 430 (1) 192:19 45 (1) 66:5 46 (2) 40:8,9 47 (2) 40:8,17 48 (3) 44:19,19 45:17 49 (2) 44:19 45:3 4m (1) 146:8 4millimetre (3) 12:24 13:9 16:18	5	5 (3) 3:13 82:4 135:5 50 (1) 41:23 5000 (2) 159:22 160:1 51 (2) 145:20 185:22 5621 (1) 145:7 58 (2) 116:21 191:1 5th (1) 136:15	6	6 (15) 3:8 21:5 34:2 41:24 48:4 61:11 62:18 66:5 82:4 95:8 99:6,10 139:3,12 143:24 60 (1) 139:10 600 (3) 139:14 163:15 183:16 61 (1) 145:8 63 (1) 117:13 65 (1) 27:10 66 (3) 6:1 57:11 58:17 67 (1) 26:1 6mil (1) 25:18 6millimetre (13) 26:12 29:18 30:13 43:5 45:14 57:7 63:22 64:1 66:19 76:5 77:7,21 95:25 6mm (10) 34:10,17 40:13,19 44:22 45:1,5,9 57:20 58:10	7	7 (7) 90:17 91:7,14,24 115:14 132:12 160:22 76 (1) 170:10 77 (1) 100:11 78 (1) 159:14 79 (1) 160:7	8	8 (23) 6:20 7:8 8:10 9:13 16:12,14,17 45:4 62:18 75:17 78:12 83:6 86:16 90:4,15 99:11 125:4 138:15,25 142:17 145:21 156:17 158:5 8414 (13) 16:7 97:13 118:15 122:5 131:14,17 134:22 140:16 141:11 159:20 160:1,16 162:1 84141 (9) 100:7 116:2,10 119:18 130:9,18 142:2 143:18 157:10 841412002 (2) 142:7 157:25 84142 (5) 159:12 160:25 162:7 182:9 183:15 87 (1) 133:12 8mil (5) 17:4,5,7,8 25:21 8millimetre (18) 6:15 7:2 12:1,13,18 13:10 14:13,21 69:20 76:2,13 77:6,21 78:21 79:1 81:11 86:7 95:14 8mm (2) 58:10 78:24	9	9 (6) 48:15 116:2 142:8 173:22 174:21 186:8 900 (2) 139:11,12 9000 (1) 171:10 95 (1) 104:12 9c (2) 143:6,6
2 (38) 18:22 19:13 20:9 28:6 30:7,14 36:1 42:4,4 43:14,23 46:19,23 65:1,11,16 67:3,4,21 75:21 80:12 96:1,14 99:22 103:11,15,17 123:18 124:11,16 136:22 148:15 150:19 160:23 162:14,15 163:9 193:5	4 (13) 12:18 81:22 82:4 84:22 85:1 90:12 105:11 140:2 146:1,3,6 147:6 183:11 411 (1) 57:15											