

OPUS 2

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Grenfell Tower Inquiry

Day 82

December 3, 2020

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Thursday, 3 December 2020

1 (10.00 am)
 2 SIR MARTIN MOORE-BICK: Good morning, everyone. Welcome to
 3 today's hearing. Today we're going to continue hearing
 4 evidence from Mr Tony Millichap, so would you ask
 5 Mr Millichap to come in, please.
 6 MR TONY CHRISTOPHER MILLICHAP (continued)
 7 THE WITNESS: Good morning.
 8 SIR MARTIN MOORE-BICK: Good morning, Mr Millichap.
 9 THE WITNESS: Good morning.
 10 SIR MARTIN MOORE-BICK: Right, all ready to carry on?
 11 THE WITNESS: Yes.
 12 SIR MARTIN MOORE-BICK: Thank you very much.
 13 Yes, Ms Grange.
 14 Questions from COUNSEL TO THE INQUIRY (continued)
 15 MS GRANGE: Yes, good morning.
 16 Good morning, Mr Millichap.
 17 A. Good morning.
 18 Q. When we broke off yesterday, we were in the middle of
 19 discussing the updated BBA certificate from
 20 December 2013, if you recall, we had looked at that
 21 certificate.
 22 A. Yes.
 23 Q. I just want to remind you of a couple of passages in the
 24 transcript, before we pick up that topic again.
 25

1

1 If we could go to the transcript from yesterday,
 2 {Day81/192:9-22}.
 3 I asked you:
 4 "Question: Now, do you accept that this is the
 5 first time a BBA certificate for K15 made clear that the
 6 test data from the May 2005 test is only applicable to
 7 the specific tested system, and that further testing
 8 would be required for any other combination of
 9 materials?
 10 "Answer: Yes, it's clearer.
 11 "Question: Were you made aware of this significant
 12 change to the content of the 'Behaviour in relation to
 13 fire' section of the BBA certificate?
 14 "Answer: Yes, I was aware it was evolving.
 15 "Question: Was that something that Kingspan had
 16 been attempting to avoid, something quite that clear and
 17 straightforward?
 18 "Answer: I don't believe that's the case.
 19 I believe this is a -- probably a growing understanding
 20 within the BBA."
 21 You also told us earlier in your evidence yesterday,
 22 if we can look at {Day81/77}, that there had been
 23 a degree of frustration about delays to issuing BBA
 24 certificates. Do you recall that?
 25 A. Yes.

2

1 Q. So at the top of that page, I put a question. I say:
 2 "Question: Two BBA employees ... have told
 3 the Inquiry in their witness statements that this
 4 certificate was not published until July 2013."
 5 That was the April 2010 version. You say:
 6 "Answer: That would seem like a very long delay,
 7 even in the context of the BBA.
 8 "Question: Yes.
 9 "Answer: We for some time were very frustrated
 10 around the turnaround of these types of certificates.
 11 We held quite a few of them against most products in
 12 most applications, and it was always frustrating to try
 13 and progress, you know, getting the certificates
 14 released. It would very often take over a year."
 15 Then I asked:
 16 "Question: In your experience, did Kingspan always
 17 get back to the BBA quickly when suggested amendments
 18 were proposed to certificates?
 19 "Answer: Yes."
 20 So that was your evidence there.
 21 You also tell us in your witness statement -- for
 22 the transcript, this is at paragraph 7.17 on page 32
 23 {KIN00020821/32} -- that in your view the BBA were
 24 incapable of being influenced against their will and it
 25 was an organisation of integrity, and their assessment

3

1 criteria were black and white; is that right?
 2 A. Yes.
 3 Q. That was your evidence.
 4 Now, I then want to look at some correspondence that
 5 occurred in the run-up to that December 2013
 6 certificate.
 7 Were you aware that the BBA had been writing to
 8 Kingspan since November 2012 seeking approval on a new
 9 draft certificate for K15 to be issued?
 10 A. Not specifically.
 11 Q. Let's look at some correspondence on this.
 12 {KIN00009353}. This is an email chain between
 13 Mr Meredith, Mr Clarke and Mr Mills in November 2012.
 14 If we look at the bottom of the chain, page 5
 15 {KIN00009353/5}, what we see is an email from
 16 Mandy Osman of the BBA attaching a draft proposed
 17 certificate for K15:
 18 "We attach for your approval, a draft of the
 19 proposed Certificate which is to be sent to the
 20 Regulatory Authorities and our Technical Assessors for
 21 comment."
 22 A. Yes.
 23 Q. Then she explains what the purpose is of you seeing it.
 24 In the second sentence of that second paragraph, she
 25 said:

4

1 "This is also your opportunity to comment and
 2 request revisions."
 3 If we move up the chain -- so that's
 4 5 November 2012 -- there is then a chaser email sent on
 5 29 November 2012 on page 4 {KIN00009353/4}. She chases
 6 again:
 7 "Further to my email ... I note that we have not yet
 8 received your approval of the ... Certificate .
 9 "We would like to maintain progress ... if we have
 10 not heard from you by 6 December ... we will assume you
 11 are happy ..."
 12 She says that to Mr Mills at that point.
 13 There is then some further discussion on the same
 14 day, and if we go up to page 2 {KIN00009353/2}, there is
 15 an email on 29 November 2012 at 14.29 at the bottom of
 16 page 2, and Mr Meredith goes back to the BBA, copying in
 17 Joel Clarke, and said:
 18 "Ok I have copied my colleague Joel who will
 19 probably be leading the way with this work in the future
 20 however we shall come back to you as soon as possible."
 21 Then if we go up the chain, still on page 2, to the
 22 next email, we can see the BBA are chasing again on
 23 3 January 2013:
 24 "Dear Mr Meredith
 25 "Please may we have your approval of the Draft

5

1 Certificate to enable us to maintain progress."
 2 A. Yes.
 3 Q. You see that.
 4 The question I want to ask you at this point is:
 5 during November and December 2012, did any of your team
 6 show you the BBA's draft certificate? Do you remember
 7 receiving it at that early stage?
 8 A. I will have been aware of the draft and trying to
 9 progress it to something that that team were comfortable
 10 with. I don't recall getting involved in the detail of
 11 what it was that they were hoping to get into the
 12 certificate .
 13 Q. Right.
 14 A. It does seem like it's not happening quickly enough from
 15 our side, in this instance.
 16 Q. Yes, yes, we can see that.
 17 Then if we go to the very top email in the chain on
 18 page 1 {KIN00009353/1}, this is sent by Mr Meredith to
 19 Joel Clarke and Gareth Mills. He says this:
 20 "As Gareth has the experience on what we can and
 21 cannot get away with we need to take the lead from him
 22 and perhaps sit down and work out our approach
 23 ASAP.
 24 "Gareth - have you drafted anything to the BBA
 25 reference this draft that can be circulated?"

6

1 Now, did you know at the time that that was the
 2 approach being taken by members of your team, ie "what
 3 we can and cannot get away with", with the BBA?
 4 A. No. I think that's quite loose language. It was always
 5 a feedback loop, if you like, in that we were able to
 6 comment on what we saw as the most appropriate content
 7 for the certificate from our point of view. But there
 8 was always, you know, a strong point of view from the
 9 BBA as well. So I don't think it was ever coercive or
 10 negative in that regard. I think it was just a to and
 11 fro.
 12 Q. I see. So you wouldn't accept that there was a culture
 13 of Kingspan trying to minimise the limitations on the
 14 use of K15, rather than being transparent and accurate
 15 in terms of what's in these certificates?
 16 A. I think at all times we were keen that the product could
 17 be seen in the most positive light, so we would always
 18 do our best to extend the scope of relevance of the
 19 product in a way that was accurate. Possibly, looking
 20 at this, whether, you know, we are pushing a little bit
 21 too far on this occasion, it's obviously trying to
 22 achieve a balance.
 23 Q. I see. Yes.
 24 Let's look at another email chain now on this topic,
 25 {KIN00005572}. It's a long chain that runs from

7

1 November 2012 to 14 January 2013. It starts on page 11
 2 {KIN00005572/11} with the same emails we've just been
 3 looking at from Mandy Osman of the BBA, asking about
 4 comments on the draft.
 5 A. Yes.
 6 Q. Then I want to move up to page 6 {KIN00005572/6}. There
 7 is an email from Mr Meredith at 16.55 on 7 January 2013,
 8 and he says:
 9 "We will not be able to go into detail about this
 10 certificate during tomorrow's BBA review meeting.
 11 However we should consider doing it ASAP ..."
 12 So it looks like there's going to be some kind of
 13 meeting.
 14 Do you remember attending a meeting about the
 15 wording of this certificate?
 16 A. No.
 17 Q. Then if we look on page 4 {KIN00005572/4}, and we go up
 18 the string, there's an email of 9 January 2013 at 16.06,
 19 and this is from Joel Clarke to Mr Meredith, but you're
 20 copied in here. So you have become copied in on this
 21 string.
 22 A. Yeah.
 23 Q. I just want to ask you about this email. Mr Clarke
 24 says:
 25 "Sorry, perhaps I wasn't clear. I'm fully aware we

8

1 want it as open and delimiting as possible (that's
2 blindingly obvious, is it not?) - however, on the basis
3 of some of the comments flying around yesterday my first
4 thoughts are that we are not going to have it put back
5 to how it was by butting heads. I don't even think
6 they'll give us the get-out of 'contact the
7 manufacturer'. The phrase used more than once yesterday
8 was 'they're onto us'. Even if being used in a
9 tongue-in-cheek way (we're not doing anything immoral or
10 illegal after all) it does perhaps reflect the position
11 we are in.

12 "If, worst-case, we have to let them say in small
13 letters that anything other than 60mm should be
14 'assessed' then we need an 'assessment' of suitable
15 weight ..."

16 He then ends this email:

17 "I'd love it back how it was but feel it unlikely,
18 that's all."

19 Now, do you remember receiving that email and
20 reading it?

21 A. I have seen that email, yes.

22 Q. Was it blindingly obvious that Kingspan wanted the
23 certificate as open and delimiting as possible?

24 A. Within the realms of what was right and correct, yes.

25 Q. I see.

9

1 What do you think is meant by "they're onto us"?
2 Did anyone ever report back to you after the meeting
3 with the BBA and say, "By the way, they've realised that
4 there have been problems with the past certificates and
5 they're onto us now"? Did anyone say that to you?

6 A. No, not specifically. I think that is what Joel is
7 alluding to in this. Again, I think we would always
8 promote our position where we could. I think it does
9 actually also from the flipside state that the BBA
10 didn't let us get away with things that, you know,
11 weren't accurate and true.

12 Q. Well, we've looked at some earlier versions of the
13 BBA certificate where you have accepted already that
14 there were passages in those that weren't strictly
15 accurate.

16 Are you saying that you never pushed for wording
17 that was anything other than accurate? Is that your
18 evidence?

19 A. Yes.

20 Q. I see.

21 It's right, isn't it, that they'd decided to put
22 an end to the use of the words "contact the
23 manufacturer"? Joel Clarke calls that the "get-out"
24 clause there.

25 A. Yes.

10

1 Q. And that phrase didn't appear anymore in the "Behaviour
2 in relation to fire" certificate; that's right, isn't
3 it, after that?

4 A. Yes.

5 Q. Let's look at some correspondence from nearer the time
6 the amended certificate was issued now on the same
7 subject. {KIN00005870/2}. There is an email from
8 Mandy Osman on 6 December at 14.48 attaching a revised
9 copy of the final draft, and saying that they would
10 welcome your approval.

11 Then moving up to the next email {KIN00005870/1}, we
12 see that Gareth Mills has forwarded the final draft to
13 Joel Clarke and to Mr Meredith:

14 "Copy of the updated draft of the K15 certificate
15 which came through on Friday. I've not had a chance to
16 look over it yet ..."

17 Then if we look at the next email in the chain, we
18 see there, 10 December 2013, Joel Clarke then sets out
19 his thoughts to Mr Mills and Mr Meredith, and he says:

20 "Just been going through this. The first paragraph
21 is now exactly as it used to be, which is very good
22 news. Both versions attached for easy reference.

23 "There is a mention of some potential restrictions
24 at 8.2 and 8.3, as per the following:

25 "(8.2, note 1 [that was a footnote] ...) 'The test

11

1 result relates only to this specific construction ...

2 "(8.3) 'The product incorporated in the construction
3 defined at section 8.2 can be used in buildings with
4 a floor more than 18m above ground level. Fire breaks
5 should be used at every floor level after the first
6 floor.'

7 "Given that the note at 8.2 is in the smallest
8 possible font and buried deep in the certificate itself
9 we have made significant progress when compared with the
10 last draft.

11 "The wording at 8.3 could be read as a restriction
12 but logically -speaking it does not preclude the use of
13 other thicknesses ...

14 "Personally I believe this certificate is now
15 acceptable, at least insofar as it is much less
16 restrictive than it was and I do not believe we will get
17 any joy in trying to have this last restriction removed.
18 Happy to take on board comments though before going back
19 to BBA."

20 That footnote at 8.2, we looked at that, do you
21 remember, yesterday?

22 A. Yes.

23 Q. It was in much smaller font.

24 Can you explain to us why Kingspan would consider it
25 significant progress that the accurate limitation about

12

1 the test result was in the smallest possible font and
 2 buried deep in the certificate ?
 3 A. No, I don't agree with Joel's comments on that occasion.
 4 I think it's internal communication, it's ... I still
 5 believe that the process of getting to the content of
 6 these certificates was robustly monitored and managed by
 7 the BBA. There is evidence there that, you know, that
 8 team were, I think, pushing a little bit harder than
 9 they should have been, but they were trying to get to
 10 the best wording by compromise with the BBA.
 11 Q. Can we look at the top email in this chain. We can see
 12 there that this has been copied to you, this chain.
 13 You're cc'd on to Mr Meredith's response to Mr Clarke.
 14 A. Yes.
 15 Q. Mr Meredith said:
 16 "Thanks for your persistence with this.
 17 "Next week we 'could' have some new test results."
 18 Now, do you remember seeing Joel Clarke's email at
 19 the time?
 20 A. I will have, yes. I don't recall it specifically now.
 21 Q. You say you didn't or don't agree with his comments on
 22 that occasion. Did you say anything to him about this?
 23 You're one of his managers; did you say --
 24 A. Yeah.
 25 Q. -- "Joel, that's simply not acceptable, that can't be

13

1 the approach that we take"? Did you ever say that?
 2 A. I don't recall that I did specifically to Joel. He
 3 would have reported directly to Ivor. There were
 4 constant interventions with the team about what is and
 5 isn't appropriate. It absolutely isn't an excuse, but
 6 this was internal correspondence, these guys work
 7 closely together, and I think the language is a bit
 8 loose, honestly.
 9 Q. I see.
 10 Was this behaviour condoned by you at the time,
 11 looking back on it?
 12 A. No. No.
 13 Q. Now, if we can go back to your witness statement and
 14 look at what you tell us at paragraph 7.34 on page 36 of
 15 your statement {KIN00020821/36}, this is where you're
 16 dealing with this issue of the certificate on
 17 17 December 2013. We can see that from the top of the
 18 page. You're asked:
 19 "Why was a second issue of this certificate produced
 20 at this stage?"
 21 You say:
 22 "I cannot recall from memory. However, for the
 23 purposes of preparing this witness statement, I have
 24 been shown internal email correspondence which leads me
 25 to believe that Kingspan requested that the BBA make

14

1 changes to the BBA certificates for all of the Kooltherm
 2 products to reflect new agreed lambda values and
 3 subsequent to this the BBA made the decision to fully
 4 reissue the BBA certificate for K15 to reflect these new
 5 lambda values but also to update regulations and add a
 6 new acoustic section within the certificate. The
 7 amendments were to do with thermal efficiency rather
 8 than fire performance."

9 Now, that's simply not correct, is it?

10 A. No, not on the evidence of that chain.

11 Q. No.

12 A. It looks like they did a complete review of the
 13 certificate, given that there were other changes that
 14 needed to be brought in.

15 Q. Now, just staying with the BBA certificate but moving on
 16 to the NHBC and what they were told, if we look at
 17 paragraph 7.39 of your witness statement on page 38
 18 {KIN00020821/38} now -- actually, we should pick it up
 19 at the question before, so if we look at the bottom of
 20 page 37 {KIN00020821/37}, you're asked the question:

21 "Were you aware, prior to the issue of this
 22 certificate, of any issues raised with Kingspan by
 23 the [NHBC] in relation to the use of K15 on buildings
 24 with a floor over 18m? If so, please describe the issue
 25 or issues. Please also explain when and how these were

15

1 raised, by and with whom, and any action Kingspan
 2 took ..."

3 You say:

4 "No I was not aware."

5 But in fact what we know is that the NHBC wrote to
 6 Kingspan regarding the change to the BBA certificate,
 7 and raising concerns that it was not mentioned to them
 8 at a meeting that was had on 17 January 2014.

9 If we can look at {NHBC00000674}, this is an email
 10 from Dave White of the NHBC to Richard Bromwich and
 11 Mr Meredith. You're not copied in to this. The subject
 12 is "Fire Performance of Kingspan K15 ... over 18m".

13 In the second paragraph of this email, he says:

14 "I think that we established and agreed at our
 15 meeting in January - that the K15 insulation product had
 16 only been tested for fire performance to BS 8414 where
 17 K15 boards are installed using direct mechanical fixing
 18 onto a solid masonry blockwork backing wall."

19 Now, did you know that that had been established at
 20 the January meeting with the NHBC?

21 A. I don't ever recall seeing this email. That doesn't
 22 mean to say I wouldn't have reviewed it once I got
 23 involved with the NHBC discussions later.

24 Q. I see.

25 Then in the next paragraph down, he says:

16

1 "Please could you read the attached memo which
2 explains our concerns with regard to the recent re-issue
3 of BBA Certificate 08/4582.

4 "We would very much appreciate your response to
5 these concerns and any update that you can provide on
6 further accredited testing that may be underway."

7 If we can then go to that memorandum -- so they
8 attach a memo. That's at {NHB00000675}. If we could
9 look at the top of the page first, it's headed "BBA
10 [certificate] ... Fire Performance of Kingspan K15", and
11 they say in the top paragraph:

12 "Since our last meeting on 17th Jan 2014 we have
13 become aware that a newly issued version of BBA Cert
14 08/452 has been issued for Kingspan Kooltherm K15
15 insulation board i.e. Second Issue: 17 December 2013.
16 The re-issue of this BBA Certificate was not part of the
17 discussion at the previous meeting to discuss fire
18 performance of Kingspan K15 insulation on external walls
19 over 18m. However, from this meeting NHBC had
20 understood that further testing would be scheduled by
21 Kingspan to test the K15 product in compliance with
22 BRE 135 recommendations including typical representative
23 types of wall build-up for framed multi-storey
24 buildings.

25 "Following the January meeting - no further test

17

1 reports have been forwarded to NHBC Standards &
2 Technical to show how the K15 insulation board product
3 can perform within typical framed wall building
4 structures under the testing defined by BR 135 and
5 BS8414 Pt 1 for fire performance of multi-storey
6 building envelopes."

7 Now, can you help us as to why that amended
8 BBA certificate for K15 had not been mentioned to the
9 NHBC at the meeting in January 2014?

10 A. My conclusion would be that it hadn't been actually
11 issued at that point, or it hadn't been passed through
12 to the sales representatives of the company. If it was
13 an issue on 17 December, I don't know when we will have
14 received physical copies that we were then able to
15 distribute.

16 Q. What Mr White does in the passage of the memo after the
17 bit we've read is he goes through and he looks at the
18 differences between the BBA certificates. He says:
19 "Looking at the re-issued version of [the
20 certificate] - amendments now exclude important
21 information on fire resistance testing that has been
22 carried out in terms of the following."

23 He sets out some passages, and he says:

24 "The above information has been removed ..."

25 Then if we can look at the last three paragraphs, he

18

1 says this:

2 "I hope that you can appreciate that it is important
3 for us to understand under what technical basis the
4 changes were made to BBA Cert 08/452. In reading
5 through the new Certificate - it now appears less clear
6 than before in providing key information relating to
7 fire performance in design.

8 "We are very much aware that key aspects in fire
9 performance of building products are very important in
10 making correct design decisions for safe construction -
11 particularly of tall residential buildings over 18m
12 high. Where design related information on fire
13 performance is ambiguous, this will increase the
14 possibility of misinterpretation and may create greater
15 risk in terms of the decision making needed to provide
16 adequately designed fire resistant buildings.

17 "Clarification on the above would be much
18 appreciated as well as any updated information that you
19 can provide on the additional fire performance testing
20 that either has been carried out, or is currently in
21 progress, since our meeting in January."

22 So it's clear, isn't it, that the NHBC were very
23 concerned about aspects of this new 2013 certificate?

24 A. Yes, from that, yes.

25 Q. And were you aware at the time of those concerns?

19

1 A. Not at the time this was issued. I don't recall seeing
2 that letter, actually. At this stage I understood that
3 Ivor, along with Richard Bromwich, were managing the
4 NHBC query.

5 Q. Mr White specifically asks for any information about
6 testing that's recently been carried out or is being
7 undertaken. We can see that in this memo. He's asking
8 in that last paragraph for any updated information that
9 you can provide on the additional fire performance
10 testing that either has been carried out or is currently
11 in progress.

12 Can you help us, why had Kingspan not already told
13 the NHBC about a test to BS 8414-2 carried out on
14 7 January 2014 which could not be classified to BR 135?

15 A. No. At that time, we didn't see any value either way in
16 issuing those failed tests. I think we did change
17 position on that somewhat later in the correspondence
18 with the NHBC, and actually did disclose those tests as
19 well.

20 Q. If we could go now to {KIN00002169}, this is a letter
21 almost a month later, on 20 March 2014, from Mr Meredith
22 to Mr White, and it appears to be Mr Meredith's response
23 to Dave White's memo that we just looked at.

24 If we go to the bottom of page 2 of the letter, we
25 can see you are copied in to this letter.

20

1 A. Yes.
 2 Q. Now, does that help you recall whether you were aware of
 3 Dave White's email and memo, as well as this response,
 4 at the time?
 5 A. I would likely have reviewed that in -- yes, and
 6 probably supported Ivor in creating a response.
 7 Q. Do you remember discussing this response with
 8 Mr Meredith before this letter was drafted and sent?
 9 A. I can't recall a specific conversation, no.
 10 Q. If we go up to the top of the letter, if we could look
 11 more at the content of the letter, in summary what he
 12 says is that the BBA certificate was re-issued due to
 13 its age; do you see that at the beginning of the second
 14 paragraph?
 15 A. Yes.
 16 Q. "The revised BBA Agreement [certificate] ... was
 17 re-issued due to its age, the revised content was agreed
 18 with the BBA as being representative and appropriate at
 19 the time it went to print."
 20 Then he carries on about the testing.
 21 He says that the omission of the test report number
 22 from the certificate for the May 2005 test to 8414 was
 23 an oversight. That's in the seventh line of
 24 paragraph 2, three lines up in that paragraph:
 25 "The omission of the actual test report number is an

21

1 oversight by the BBA however we would trust that the
 2 fact that we have tested to BS 8414-1 is apparent and
 3 shall address the omission during the next certificate
 4 review."
 5 Then he goes on in the next paragraph to say that
 6 the EN 1365-1 testing is about fire resistance and not
 7 of direct relevance to K15 at height.
 8 Now, the BBA certificate was not renewed simply due
 9 to its age, was it?
 10 A. No, no, that's not strictly accurate. It may have been
 11 part of the reason.
 12 Q. And Kingspan had fought to keep its content regarding
 13 fire performance as unrestricted and broad as possible;
 14 do you agree?
 15 A. Yes, that was the approach, whilst maintaining it was
 16 still accurate.
 17 Q. Then if we go to the penultimate paragraph of this
 18 letter on page 2 {KIN00002169/2} -- sorry, let's just
 19 look at the top of this page first, before we get to
 20 that. We can see he says:
 21 "For clarity our position is:
 22 "It is our opinion that our Kooltherm K15 product
 23 would be fit for purpose if installed onto
 24 a non-combustible substrate, with horizontal
 25 cavity barriers ..."

22

1 Then it's talking about the LABC registered details
 2 certificate there; do you see that?
 3 A. Yes.
 4 Q. That's wording that we've seen many times before. Then
 5 he goes on about Kingspan Insulation have tested it to
 6 8414, in the next paragraph, fitted to a non-combustible
 7 substrate behind a non-combustible cladding system.
 8 Then if we look in the next paragraph, he says:
 9 "As discussed at our meeting in January
 10 Kingspan Insulation Limited do have an ongoing test
 11 regime around façade test standards to increase the
 12 applicability of Kooltherm K15 use in high rise above
 13 18metres and hope to be able to bring some further
 14 evidence to our meeting in April at your offices in
 15 Milton Keynes."
 16 So it would appear, doesn't it, that that failed
 17 test on 7 January 2014 had still not been mentioned to
 18 the NHBC by this time?
 19 A. It would appear that, yes.
 20 Q. The day before this letter -- this letter is 20 March --
 21 on 19 March, a second test to 8414-2 had been carried
 22 out on a system incorporating K15, hadn't it?
 23 A. Yes.
 24 Q. Why is that not included in Mr Meredith's letter?
 25 A. I don't know what stage we would have been at in

23

1 understanding the outcome of that test. I don't know.
 2 Q. And that tested system could not, in the end, be
 3 classified to BR 135, could it?
 4 A. No.
 5 Q. Now, you were specifically asked in your witness
 6 statement whether you were ever made aware of any
 7 concerns raised in respect of the content or wording of
 8 any BBA certificate, and your response was "No I was
 9 not". Can you explain why that was your answer, given
 10 the documents that we've just looked at?
 11 A. Yes, purely that I hadn't recalled this early
 12 correspondence with the NHBC. Front of mind was the
 13 correspondence latterly with them.
 14 Q. I see. And you accept now that there are aspects of
 15 this response which are not entirely satisfactory?
 16 Would you agree?
 17 A. In terms that it doesn't fully disclose the ongoing
 18 testing?
 19 Q. That, and that it says that the BBA certificate was
 20 updated due to its age?
 21 A. Yes, I'd accept it on those two, yes.
 22 Q. Let's move to a different topic now, which is the
 23 testing to 8414-2 that was carried out on systems
 24 incorporating K15 during your time as head of technical.
 25 We've already touched on some of these tests from

24

1 January and March 2014 and I want to ask you now
 2 a little bit more about this.
 3 For now I just want to ask you: why was that
 4 programme of testing started at that time in early 2014?
 5 A. From memory, we were looking to do some additional tests
 6 around obviously broadening what information we were
 7 able to use to support the enquiries we were getting.
 8 As the discussion with the NHBC developed, we accepted
 9 their concerns and actually conceded that we would allow
 10 them to help formulate that testing regime going
 11 forward.
 12 Q. It's right, isn't it, that by January 2014, the NHBC had
 13 requested evidence of compliance for any systems other
 14 than the one tested from May 2005? We've seen that.
 15 A. Yes.
 16 Q. Do you agree? And it's the case that there had also
 17 been an ultimatum from Wintech in October 2013, hadn't
 18 there, that they were going to express their concerns
 19 publicly about K15?
 20 A. Yes.
 21 Q. Did those two matters have something to do with the
 22 decision to start testing again?
 23 A. Yes, all of those matters, yes.
 24 Q. Yes.
 25 Now, I want to look at this point at a spreadsheet

25

1 that Kingspan have provided to the Inquiry. This is
 2 {KIN00022357}. So this is a spreadsheet where they've
 3 provided details of all the 8414 tests carried out on
 4 K15 commissioned at the BRE prior to 14 June 2017.
 5 If we look on page 3 {KIN00022357/3}, we can see the
 6 7 January 2014 test, and that was the first test after
 7 some time. There had been tests in 2007 and 2008, but
 8 then a gap in testing; that's right, isn't it?
 9 A. Yes.
 10 Q. We can see that on 7 January 2014, the system that was
 11 tested, three columns along, was 8-millimetre Trespa FR
 12 HPL, which is high-pressure laminate; yes?
 13 A. Yes.
 14 Q. And the test result was a fail, it was terminated early,
 15 and it's right, isn't it, that it also failed the
 16 thermocouple requirement on the temperatures?
 17 A. I don't know off the top of my head.
 18 Q. Okay.
 19 It says there, if you look in the middle of that
 20 page, under the column "Properties of the tested
 21 insulation product", that they're unknown.
 22 Are you able to help us with precisely what the
 23 insulation product was that was tested in that
 24 January 2014 test?
 25 (Pause)

26

1 A. My investigations since, or getting up to speed with the
 2 issued documents since the Inquiry was known, I was
 3 under the understanding that that was a modified
 4 product, a trial product, if you like. The only
 5 reference that I could find was something in the
 6 lamination meeting minutes. I believed it could have
 7 been a phosphoric acid modified product. But I'm not
 8 100% confident on that.
 9 Q. This test must have required quite careful planning,
 10 given that there had been no tests up to that point, and
 11 clearly these were important tests, weren't they?
 12 A. Yes.
 13 Q. So were you aware at the time that it was a modified
 14 version of K15 that was being trialled in this test?
 15 A. Yes.
 16 Q. And why did you think that was?
 17 A. Because of the experience on not being able to get
 18 a result to the part 2 test with the claddings that we'd
 19 tried previously.
 20 Q. So does it follow that you were aware, by this point,
 21 that there had been problems with the K15 itself, ie the
 22 K15 you're selling, the new technology K15, in terms of
 23 how it performed in those 2007/2008 tests?
 24 A. Yes, in terms of trying to achieve a pass with those
 25 systems, yes.

27

1 Q. No, that's not the question I asked. Does it follow
 2 that you were aware by this point that there had been
 3 problems with the K15 itself in those earlier tests?
 4 A. No.
 5 Q. So you're saying that you knew that there was going to
 6 be a modified product for this first test.
 7 A. Yes.
 8 Q. Why didn't you think that you should be just testing --
 9 A. Sorry --
 10 Q. -- the K15 you're selling? Why did you think it was
 11 appropriate to test a modified product at this point?
 12 A. Because of the experience of trying to broaden the scope
 13 of applicability with a wider test programme. The
 14 experience had been -- in trying to get a system
 15 approval with the new technology K15 had been negative,
 16 we hadn't been able to do that. The result we had got
 17 in the 2005 test was with what was contrived at the time
 18 to be the least onerous condition. Clearly, to extend
 19 the scope, you would have to test something more
 20 onerous, and the experience had been that the product
 21 we'd used previously wasn't giving us those results.
 22 Q. I see. So does it follow from that answer that you were
 23 aware that there had been issues with the K15 itself in
 24 terms of its performance in those 2007 and 2008 tests?
 25 A. In terms that it will have a contribution to the outcome

28

1 of the result, yes.
 2 Q. And that's why you were testing a modified version of
 3 K15 in these tests; is that right?
 4 A. Yes.
 5 Q. This test, this January test, is not one that you
 6 mention in your witness statement at all, the
 7 January 2014 test.
 8 A. Okay.
 9 Q. Is that because you had just forgotten about it at the
 10 time, or can you help us as to why that is?
 11 A. I can't. In my mind, I may have actually conflated this
 12 test with the one that preceded it. They were both
 13 a similar construction and I may have got the two ...
 14 Q. I see, okay.
 15 So the next test, if we look down on this schedule,
 16 was 19 March, in the next row. These were all tests to
 17 8414-2. It was terminated early because flames breached
 18 the top of the test rig; that's right, isn't it?
 19 A. It is.
 20 Q. And in this spreadsheet, what we see is it was carried
 21 out on Trespa decorative rainscreen board, so
 22 a different Trespa product.
 23 A. Yes.
 24 Q. Failed for early termination, and then we can see there
 25 it says:

29

1 "Trial Product.
 2 "Thickness: 80mm.
 3 "Foil: unperforated."
 4 Now, just looking at that foil there, was it your
 5 understanding that the January test had also been
 6 carried out on an unperforated foil?
 7 A. I think that's most likely.
 8 Q. Yes, and it's most likely, isn't it, because concerns
 9 had been raised by Mr Meredith and others about what the
 10 perforations were doing to the fire performance? That's
 11 right, isn't it?
 12 A. That was one of Ivor's considerations, yes.
 13 Q. So it's an unperforated foil. It's either 50-micron or
 14 100-micron, so that's significantly thicker than the
 15 normal, new tech K15 foil, which is 25-micron; yes?
 16 A. Yes.
 17 Q. We can also see that the core, it says it's R330UF,
 18 calcium carbonate and polyol blend added, and then we've
 19 got alternative blowing agent. Would you agree that
 20 that alternative blowing agent was something called
 21 solstice?
 22 A. Yes.
 23 Q. It's right, isn't it, that you were aware at the time
 24 that this test was not being carried out on the K15
 25 product actually being sold to market?

30

1 A. It is right, yes.
 2 Q. Are you aware now that that test has been withdrawn, as
 3 at October 2020?
 4 A. Yes, as at the opening statement from Kingspan, yes.
 5 Q. I think we touched on it yesterday. Despite the fact it
 6 was a fail, some of that data did make its way into
 7 desktop assessments; were you aware of that?
 8 A. I think I have seen correspondence to that effect, yes.
 9 Q. While we're on this spreadsheet, just looking at the
 10 landscape here, we then have the 7 July 2014 test, and
 11 we can see that that is on a terracotta tile,
 12 Taylor Maxwell Standard Classico terracotta tile, and we
 13 can see that that is a pass this time, and then in the
 14 "Properties of the tested insulation product", that's
 15 also a trial product.
 16 A. Yes.
 17 Q. Again, were you aware of that at the time?
 18 A. Yes.
 19 Q. The foil says "Perforated and unperforated 50micron
 20 foil". So it's a thicker foil; yes? It's 50 microns.
 21 A. Yes.
 22 Q. Is your understanding at the time that it had one side
 23 that was perforated, one side unperforated?
 24 A. I don't recall, but I have no reason to doubt that at
 25 all.

31

1 Q. Can you help, that test, that July test, did
 2 Adrian Pargeter have any involvement in the planning of
 3 that test?
 4 A. It's difficult, I don't recall at what stage Adrian
 5 became more involved. He would have been in a marketing
 6 role at this point, marketing and product development,
 7 in which case yes, I believe he would have had some
 8 involvement. The fire focus group was steering the
 9 direction of these tests. There was obviously growing
 10 concern that we wanted to extend the body of evidence,
 11 and therefore, naturally, more people had got involved
 12 in making those decisions.
 13 Q. Yes.
 14 SIR MARTIN MOORE-BICK: Can I just ask, you probably don't
 15 find it possible to help with this, but: as I understand
 16 it, you're saying that the board that was used for this
 17 test had one side with perforated foil and one side with
 18 unperforated?
 19 A. Yes.
 20 SIR MARTIN MOORE-BICK: Do you happen to know which way
 21 round it was fixed onto the substrate?
 22 A. I would assume, given Ivor's concerns, that the
 23 perforated side would be against the structure, so with
 24 the unperforated side outermost.
 25 SIR MARTIN MOORE-BICK: But you can't actually remember how

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1 it was done, I assume, it was --
 2 A. No, I can't.
 3 SIR MARTIN MOORE-BICK: It may appear from the test report,
 4 I don't know.
 5 A. Yes, definitely. There may be photography, as well, of
 6 the sample being erected, dismantled.
 7 SIR MARTIN MOORE-BICK: Thank you.
 8 MS GRANGE: I'm afraid the test report doesn't help us on
 9 that.
 10 SIR MARTIN MOORE-BICK: Does it not?
 11 MS GRANGE: No.
 12 A. Okay.
 13 MS GRANGE: All the test report says is it was K15. You
 14 don't see from the test report that it was an
 15 alternative K15 and what the differences were.
 16 SIR MARTIN MOORE-BICK: Thank you.
 17 MS GRANGE: Just on that July test, we can see in that
 18 middle column it says "Alternative blowing agent", and
 19 again this was a solstice-blown product, wasn't it?
 20 A. It was.
 21 Q. I'm going to ask you some more questions specifically
 22 now about that test carried out in March 2014 to 8414-2.
 23 If we can go to {KIN00021907/3}, what we see here is
 24 an email in the middle of that page from Stephen Howard,
 25 25 March, 10.44, and he says:

33

1 "Ivor,
 2 "I discussed the test with Phil and the current
 3 status is that you do not have a clear pass."
 4 Then on the same day, if we go to the email above
 5 that, that email is forwarded to you, to Mr Rochefort,
 6 and a number of others on 31 March.
 7 A. Yes.
 8 Q. Then if we go up again, on page 2 {KIN00021907/2},
 9 Mr Meredith emails on 31 March at 13.23. He says to you
 10 and others:
 11 "Initial feedback from the BRE is that this test did
 12 not meet the requirements of BR 135 3rd edition. This
 13 is by no means the end of this as we will be challenging
 14 this opinion and doing everything possible to get
 15 something [usable] out of the testing. Whether this be
 16 an assessment for a different cladding or a shorter
 17 build, or we try to get them to issue a report based on
 18 the earlier version of the standard.
 19 "The test is being dismantled this week so hopefully
 20 we can demonstrate very little flame spread on the K15
 21 and this will support the counter arguments that we are
 22 preparing.
 23 "As mentioned we have meeting with TENOS, ARUP, IFC
 24 and Trespa planned to analyse what we have learnt so far
 25 as limiting the use of K15 to just non combustible

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1 cladding types would be a big loss.
 2 "I spoke to Malcolm on Friday about this and he
 3 advised we should proceed with the 'non
 4 combustible/terracotta cladding.'
 5 So that was the next test done in July to
 6 terracotta.
 7 A. Yes.
 8 Q. "Following this news from the BRE are we all still in
 9 agreement in respect of this?
 10 "I shall know by the end of the week when I will
 11 need the insulation for the next test by. However the
 12 question remains about the insulation we choose to use.
 13 Is it possible to share the calorimeter results of the
 14 solstice vs standard vs phosphoric that we performed at
 15 FTT last week?"
 16 What would be FTT, can you help us?
 17 (Pause)
 18 It doesn't matter. He goes on:
 19 "Does this support our views on the
 20 flammability/calorific content of the different
 21 [phenolic foams]? This would be good to look at
 22 alongside the video."
 23 Now, taking this in stages, were you aware of what
 24 the counterarguments were that were being prepared?
 25 A. Yes. FTT I can only assume will have been a test

35

1 laboratory.
 2 Q. Yes, thank you, yes.
 3 Now, you tell us in your witness statement -- for
 4 the transcript, that's at paragraph 11.3 on page 53
 5 {KIN00020821/53} -- you say this about the BRE, you say:
 6 "While we were keen to receive feedback with respect
 7 to tests, I strongly believed that our interactions with
 8 the testers did not influence them."
 9 That's your evidence.
 10 A. Yes.
 11 Q. But do you accept that you did try to influence them --
 12 A. Absolutely.
 13 Q. -- by your interactions --
 14 A. Yes.
 15 Q. -- with regards to this test in particular?
 16 A. This test in particular, yes, I had quite a strong view
 17 on my interpretation of the BR 135 criteria.
 18 Q. If we look at paragraph 11.6 of your statement on
 19 page 54 {KIN00020821/54}, in the third line of 11.6,
 20 starting on the right-hand side, you say this:
 21 "Kingspan was not able to suggest amendments to the
 22 content relating to the observations and results of the
 23 test, i.e. the product's performance, as this was
 24 entirely within the BRE's remit and expertise. The
 25 types of comments that Kingspan could make were

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1 restricted to the physical description of the product
 2 tested."

3 Now, that's simply not right, is it? It's not what
 4 happened with this March 2014 test, is it?

5 A. Well, actually the outcome was we accepted their
 6 decision, and our protest didn't change anything.

7 Q. Yes, but you say:

8 "Kingspan was not able to suggest amendments to the
 9 content relating to the observations and results ... The
 10 types of comments that Kingspan could make were
 11 restricted to the physical description of the product
 12 tested."

13 A. Sorry, yes, I think what I'm saying there is that
 14 obviously we couldn't influence the wording of the
 15 outcome of the actual test. It isn't strictly true in
 16 that we were able to obviously have some feedback with
 17 them, but the actual results or the outcome of a test
 18 was the BRE's remit.

19 Q. Isn't it right that for this test you did actually get
 20 a test report out of them and then used it for desktop
 21 assessments?

22 A. I believe that was the case, yes.

23 Q. Yes.

24 Let's go back to Mr Meredith's email that we were
 25 looking at, {KIN00021907/2}. In the second line, he

37

1 says:

2 "... we will be challenging this opinion and doing
 3 everything possible to get something [usable] out of the
 4 testing."

5 What did you understand him to mean by that?

6 A. At this point, it wasn't an official result, based on --
 7 predominantly it was my view that there was some
 8 ambiguity in whether the fail mechanism was valid or
 9 not. I believe at this point we were hoping that we may
 10 actually get the BRE to reconsider their position at
 11 that time. I was keen to, you know, ensure that we had
 12 that conversation in a timely way, that we weren't
 13 issued with an official fail before possibly -- that
 14 we'd then have to challenge and get taken back and
 15 re-issued. I'd hoped that we might be able to get our
 16 point of view considered before the actual result was
 17 issued.

18 Q. I see. But you did end up getting something usable out
 19 of this, didn't you, in the end: that test report we
 20 just discussed that was then used in desktop
 21 assessments?

22 A. I believe that, yes, around this time we were actually
 23 given feedback that there was value in all test reports,
 24 whether they were a pass or a fail, and an assessor
 25 could use that information.

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1 Q. What you're trying to do here, aren't you, is to say --
 2 you can see it from the second paragraph -- it could
 3 demonstrate there is very little flame spread on the
 4 K15. So you're trying to use this test to demonstrate
 5 that the K15's performing okay, even though you kept
 6 telling us again and again that you did know it was
 7 a system test.

8 A. Yes, yes, because that information is valuable to
 9 an assessment.

10 Q. If we go up the chain on page 1 {KIN00021907/1}, there's
 11 an email from Gwyn Davies at the bottom of that page.
 12 He says:

13 "Surely we risk making fools of ourselves trying to
 14 quarrel with them based on an earlier edition of the
 15 BR 135."

16 Now, that's what you were doing, wasn't it? By this
 17 point there was a new edition of BR 135 from 2013 that
 18 made it clear that it was the whole test duration of
 19 60 minutes that counted, not just the first 30 minutes;
 20 that's right, isn't it?

21 A. I'm not 100% on the chronology of the various BR 135s
 22 that were released in relation to this test.

23 Q. Well, you can take it from me that there was a third
 24 edition of BR 135 in 2013.

25 A. Right, yes.

39

1 Q. And that does seem to make sense in terms of why
 2 Gwyn Davies is saying, "We're going to make fools of
 3 ourselves trying to quarrel with them based on
 4 an earlier edition of BR 135", because it was in that
 5 third edition that it made it clear that the full
 6 duration of 60 minutes was relevant.

7 A. I didn't feel that that was clear, that was the basis of
 8 our position that we presented to the BRE.

9 Q. Yes.

10 A. I believe there was a proposal to actually better
 11 confirm the test duration in the actual standard as well
 12 that was proposed after this.

13 Q. Right.

14 Then Mr Davies goes on in that first paragraph:

15 "I feel we need to understand why they are terming
 16 this a fail and how they have come to this decision and
 17 then discuss internally the counter to this and meet
 18 with Phil and Stephen."

19 So that would be Phil Clark and Stephen Howard, yes,
 20 of the BRE?

21 A. Yes, it would have been.

22 Q. Then if we go to the next email in the chain, you write
 23 on the same day and you say:

24 "Let's not forget we are carefully pushing BRE for
 25 the result, typically this is not issued without the

40

1 full report after 4-5weeks. In the short term we are
2 just trying to understand our options whilst waiting for
3 the full data and trying to sow some seeds to influence
4 that result. In the event we do not get what we aimed
5 for stronger tactics will be employed.

6 "Obviously Lindsay is welcome to attend
7 a dismantle however we must be careful not to be too
8 forceful at this stage.

9 "I will concurrently employ our solicitor to ensure
10 they are fully briefed to support a challenge or
11 defend against any ongoing contracts."

12 Now, can you help us, what do you mean by "trying to
13 sow some seeds to influence that result"?

14 A. Yes, just that I wanted to ensure that our point of view
15 was understood prior to the result being issued. My
16 interpretation of that classification was that the
17 second half hour of the test wasn't actually considered
18 within the pass/fail criteria. I think there is wording
19 to that effect. They did give us their point of view
20 and their clarification on that, which ultimately we
21 were obliged to accept. But, as I said, there was then
22 a proposal to put an amendment in the actual standard
23 itself to further clarify the 60-minute duration, and
24 I felt that at least demonstrated that there was some
25 ambiguity as a minimum.

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1 Q. But it's more than that, isn't it? You say that it was
2 to "ensure that our point of view was understood prior
3 to the result being issued". You're actually wanting to
4 try and influence the result, aren't you, by putting
5 pressure on the BRE?

6 A. Based on our understanding of the pass/fail criteria,
7 yes.

8 Q. Then what were the stronger tactics that would be
9 employed if you don't get what you aimed for? What did
10 you mean by that?

11 A. We'd considered at this stage that we could formally
12 challenge. We had raised an official complaint with
13 BRE, just to ensure that it did get considered properly.

14 Q. So did one of those tactics involve threatening
15 litigation and bringing lawyers involved?

16 A. I don't know whether that was ever said to the BRE, it
17 was just something that we considered to make sure that
18 our point of view was properly considered.

19 Q. Let's look in a different email chain now,
20 {KIN000010461}. This is an email from you to
21 Stephen Howard at the BRE on 7 May 2014, and you copy in
22 to this email Toby Randle of Fenwick Elliott Solicitors;
23 do you see that there?

24 A. Yes.

25 Q. Then you say:

42

1 "We write further to our ongoing correspondence and
2 prior to our meeting later this week ... we would
3 confirm the following.

4 "Having just received the full thermocouple data and
5 video footage of the BS 8414 pt2 test dated 19th March
6 it is clear the pass fail criteria for the first stage
7 of the test was met all as per the original indications
8 on the test day. It is our firm belief the second
9 section of this test does not have a pass/fail criteria
10 this being confirmed within BR 135, B2.4 and is for
11 recording observations only. It should also be noted it
12 was confirmed immediately after the test by your
13 Mr Phil Clark that the test ran to a full 1 hour
14 duration and was not terminated, we do accept that some
15 transient flaming was evident above the full rig height
16 although would not classify this as flame spread as
17 referenced in the standard, the insulation/fire barrier
18 at this point was not compromised in any way and the
19 test ran full duration.

20 "For clarity based upon data received we would
21 interpret this as a positive result against the BR135
22 assessment criteria and should this be interpreted any
23 other way by yourselves we would intend to appeal the
24 result formally.

25 "We look forward to exploring this further with

43

1 you ..."

2 And you refer to a meeting later this week.

3 A. Yes.

4 Q. If we can go briefly now to {BRE00003576}, we can see
5 that, just from these emails, in fact a complaint was
6 lodged. If we look at the email at the bottom of that
7 page, a complaint was lodged with the BRE about this
8 test.

9 A. Yes.

10 Q. This lady, Marian Bodian, is responding in her capacity
11 as complaints co-ordinator:

12 "I have taken this to mean that you intend to lodge
13 a formal complaint."

14 She says that at the end of the first paragraph.

15 Then your response in the top email of the chain is:

16 "Hello Marian,

17 "Many thanks for acknowledging our position. My
18 interpretation of the current situation is that we do
19 not yet have the formal results, my comments were based
20 upon Stephen's initial assessment which we are to
21 discuss further tomorrow."

22 That "tomorrow" was 9 May 2014.

23 Now, you refer to that meeting in your witness
24 statement, if we can go to that, at page 54

25 {KIN00020821/54}, paragraph 11.7. You tell us there:

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1 "I recall one significant meeting in which I was
2 involved with Ivor Meredith and two individuals from the
3 BRE. I do not recall the date of this meeting. We were
4 very keen to understand the parameters of a test result
5 that had been interpreted as a failure based on
6 observations from the second half ... of a BS 8414
7 test."

8 Given what we have just been looking at, is it
9 likely that the meeting you're describing here was that
10 meeting on 9 May --

11 A. Yes.

12 Q. -- about the March test?

13 A. Yes.

14 Q. Then you go on:

15 "I believe that subsequent to this meeting, they
16 clarified their understanding of the test criteria, thus
17 lending credence to the necessity for clarification."

18 If we pick it up again four lines down on the
19 right-hand side [KIN00020821/55], you say:

20 "We had interpreted from the available guidance
21 documents and Approved Document B that the observations
22 from the second half-hour of a BS 8414 test did not
23 factor into whether a test is a pass/fail ..."

24 Can you help us, you refer to Approved Document B
25 there. We can't find anything in Approved Document B

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1 that gives you any details about the pass/fail criteria
2 in BR 135, it merely just refers to BR 135 as
3 an alternative route.

4 A. Yes.

5 Q. Can you help us as to what you mean there, "We had
6 interpreted from the available guidance and Approved
7 Document B that the observations from the second
8 half-hour ... did not factor into ... [the] pass/fail"?

9 A. I think that should read BR 135.

10 Q. Right, thank you.

11 Did the BRE explain this to you at the meeting that
12 you then had, that their interpretation of the latest
13 version of BR 135 was that that second half hour did
14 factor into whether it was a pass/fail?

15 A. Yes, they did explain. I believe their explanation was
16 on the basis -- and I can't recall the wording from
17 BR 135, but there is wording that talks about "without
18 any early termination of the full fire load".

19 Q. Yes.

20 A. Their justification was that the full fire load included
21 the system components on the rig and not just the crib.
22 I'd interpreted it as the crib, and therefore any early
23 termination of the full fire load would have to have
24 been before the 30 minutes, which led me to believe that
25 the pass/fail criteria was in the first 30 minutes and

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1 not the second 30 minutes.

2 Q. I see.

3 A. That being supported by the second half of the test
4 being for observations.

5 Q. Right.

6 Our understanding is that their explanation was
7 based on clause 8.5 of the test standard itself, so they
8 actually referred you to a paragraph in the test
9 standard itself --

10 A. Yes.

11 Q. -- in 8414. Yes.

12 The upshot was that the BRE did not agree with you,
13 did they?

14 A. No, correct.

15 Q. They stood firm.

16 A. They did stand firm, yes.

17 Q. If we can go to {BRE00015592}, this is an email you sent
18 to the BRE on 21 May, third email down on the bottom of
19 page 1 and on to page 2. You say:

20 "Dear Marian,

21 "We write further to our ongoing correspondence in
22 respect of the above testing in order to clarify the
23 specific details of our claims."

24 Then you say at the top of that page
25 {BRE00015592/2}:

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1 "At a recent meeting dated Friday 09th May between
2 your Mr Stephen Howard and Mr Tony Baker our
3 Mr Ivor Meredith and myself we confirmed we still wish
4 to receive the test report according to the test
5 standard BS 8434 Pt2:2005, and would also like
6 a classification against BR135."

7 Then you say:

8 "Points verified at the meeting include:

9 •" Full draft test report to be supplied at the
10 earliest opportunity.

11 •" The test was valid and accorded to all needs of
12 the standard.

13 •" Video evidence from the rearward camera was
14 requested."

15 Now, that second bullet point, you say this was
16 a point verified at the meeting. That's not what the
17 BRE said to you at the meeting, was it? That's what you
18 wanted.

19 A. No, no, no, valid meaning that the test was undertaken
20 in accordance with the standard, not that it was
21 a positive result.

22 Q. I see. But you also wanted -- I see, you're saying it
23 was agreed at the meeting, was it, that interpretation
24 against the BR 135 criteria is not limited to the BRE?

25 A. Yes.

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1 Q. I see.
 2 Now, the BRE had not agreed to provide
 3 a classification report to BR 135, had they?
 4 A. No, no, not according to that.
 5 Q. If we could look at this point at 6.8 of your witness
 6 statement on page 25 {KIN00020821/25}, and I want to
 7 look at the second part of that paragraph, fourth line
 8 from the bottom. Actually if we pick it up five lines
 9 from the bottom, you say:
 10 "The test criteria was very important in
 11 understanding the performance in future tests. However,
 12 such criteria are completely within the domain of the
 13 BRE. It was important to understand this at a high
 14 level to help inform the test regime. Those who
 15 understood it had read the document itself (openly
 16 available to read) and through experience."
 17 Now, did you believe in May 2014 that it was open to
 18 Kingspan simply to interpret the 8414 test data itself
 19 to BR 135 and reach a different conclusion from the BRE?
 20 A. No. That would have had to have been via another
 21 independent body using the BR 135 criteria. They agreed
 22 that that was possible.
 23 Q. And you say there "such criteria are completely within
 24 the domain of the BRE", do you see that there?
 25 A. Yes, in that they wrote the classification standard.

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1 Q. Yes. So they understood how those systems should be
 2 interpreted and they understood full well the pass/fail
 3 criteria; yes?
 4 A. Yes.
 5 Q. If we go back to your email to the BRE of 21 May,
 6 {BRE00015592/2}, and look at the penultimate paragraph
 7 on page 2, you say this:
 8 "This issue is of such significance to Kingspan's
 9 business that we have consulted with our lawyers who
 10 have confirmed that in their view BRE's current position
 11 cannot be justified. We recognise the influential
 12 position BRE hold and do not wish to contradict its
 13 views however our conviction is such that we may have no
 14 other option."
 15 That was a clear attempt to put pressure on the BRE
 16 to change their decision on the matter, do you accept
 17 that?
 18 A. Yes, we were setting out our position, yes.
 19 Q. If we can go now to an internal BRE chain,
 20 {BRE00015594}, and the third email from the top, what we
 21 can see is that your email has been forwarded to
 22 Debbie Smith by Stephen Howard, and she says:
 23 "Please see the bit in yellow."
 24 Then going one email up, we can see that
 25 Debbie Smith asks Stephen Howard for the background.

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1 She says:
 2 "Obviously I am unaware of the background to this.
 3 It appears as if Kingspan are challenging a test failure
 4 based on our interpretation of br135 - is this correct?
 5 If so, what is the specific problem?"
 6 Then if we can go up again in this chain,
 7 Stephen Howard says:
 8 "There were flames over the top of the rig at around
 9 43mins. This in our view means that the test at that
 10 point is terminated and if you do not run for the full
 11 60 mins you cannot be classified against BR135.
 12 "Kingspan Insulation are contesting the
 13 interpretation.
 14 "The email was [sent] for info really. I suspect
 15 that they will get A. Nother to offer a classification
 16 against the test report."
 17 Now, did Kingspan ever approach any other
 18 organisation or individual to try to obtain a BR 135
 19 classification for that March test?
 20 A. I don't recall that we did, no.
 21 Q. And it follows, therefore, that nobody else ever
 22 classified that to BR 135, did they?
 23 A. No.
 24 MS GRANGE: Mr Chairman, I think that's a good moment for
 25 a break --

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1 SIR MARTIN MOORE-BICK: Yes.
 2 MS GRANGE: -- at this point, if that's okay.
 3 SIR MARTIN MOORE-BICK: Then we will take a break at this
 4 point.
 5 Mr Millichap, we will have a short break. We will
 6 come back at 11.30, please, and please don't talk to
 7 anyone about your evidence while you're out of the room.
 8 THE WITNESS: Of course. Thank you.
 9 SIR MARTIN MOORE-BICK: Thank you very much.
 10 (Pause)
 11 Right, 11.30, please. Thank you.
 12 (11.15 am)
 13 (A short break)
 14 (11.30 am)
 15 SIR MARTIN MOORE-BICK: Right, ready to carry on,
 16 Mr Millichap?
 17 THE WITNESS: Yes, thank you.
 18 SIR MARTIN MOORE-BICK: Thank you very much.
 19 Yes, Ms Grange.
 20 MS GRANGE: Yes, now, moving forward with the chronology and
 21 just thinking back to the NHBC situation now, there was
 22 a meeting with the NHBC involving Mr Meredith in
 23 April 2014. Do you remember that?
 24 A. Yes.
 25 Q. Can you remember what Mr Meredith told you after that

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1 meeting about what the NHBC's position had been?
 2 A. No, not from memory.
 3 Q. Now, prior to the July 2014 test, which we're going to
 4 come and look at in more detail in a moment, were you
 5 aware that another ultimatum had been issued on 16 June
 6 by the NHBC about the need for test data, and
 7 Mr Meredith had managed to get a reprieve by saying that
 8 there was upcoming testing still to be done? Were you
 9 aware of that?
 10 A. Yes, I was included in all that correspondence,
 11 I believe.
 12 Q. Yes.
 13 We've looked at the March 2014 test in some detail.
 14 I'm now going to ask you some questions about what
 15 happened from July 2014 onwards and that test first on
 16 7 July 2014.
 17 If we can look at an email that we looked at
 18 already, {KIN00021907/2}, there's an email sent to you
 19 by Mr Meredith. This was predominantly about the
 20 March 2014 test, but in that last paragraph -- we looked
 21 at it before -- Mr Meredith is saying, picking it up at
 22 the end of the first line:
 23 "However the question remains about the insulation
 24 we choose to use. Is it possible to share the
 25 calorimeter results of the solstice vs standard vs

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1 phosphoric that we performed at FTT last week?"
 2 That next test would be the test in July 2014; yes?
 3 A. Yes.
 4 Q. It appears to be being decided between you precisely
 5 what the foam would be for that test; do you agree?
 6 A. Yes.
 7 Q. Those are references not to the foil facer but to the
 8 composition of the phenolic foam itself, aren't they?
 9 A. The blowing agent, essentially, yes.
 10 Q. The reference to standard, solstice versus standard
 11 versus phosphoric, was standard the as-sold, being sold
 12 to market K15?
 13 A. Yes, it would be.
 14 Q. And phosphoric, was that the one that you said might
 15 have been used in January 2014?
 16 A. Yes.
 17 Q. Yes.
 18 A. That's a catalyst change, actually, I believe,
 19 phosphoric. I'm no chemist, but it's not a blowing
 20 agent strictly.
 21 Q. Yes. So these were all different types of foam at the
 22 time that, what, all fell within the potential K15
 23 banner; yes?
 24 A. Yes. Modifications.
 25 Q. Yes.

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1 Now, if we can look at your witness statement,
 2 {KIN00020821/6}, and I want to look at paragraph 3.9.
 3 I want to read the last eight lines with you. I'm going
 4 to read from, "The July 2014 test was successful", about
 5 eight lines up, about two-thirds of the way down that.
 6 So you say:
 7 "The July 2014 test was successful and did meet the
 8 BR 135 criteria. For the purposes of preparing this
 9 witness statement, I have been shown documents which
 10 suggest that there were uncertainties around whether the
 11 product that was tested in these tests might have had
 12 a 25 micron or 50 micron foil facer. I cannot remember
 13 which of the two foil facer thicknesses was the standard
 14 thickness of foil facer on K15 at the time. However,
 15 I do not consider that the difference in thickness
 16 between 25 micron and 50 micron is significant enough to
 17 make the tested product a different product to the
 18 standard K15."
 19 So you're telling us in your statement about the
 20 change to the thickness of the foil facer. You don't
 21 tell us about any changes to the foam itself. Can you
 22 help us on that? Why was that?
 23 A. Purely this was to address this disagreement, which it
 24 definitely was a disagreement internally, between what
 25 the actual foil facer was on those tests. Ivor had

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1 a very strong opinion it was a 50-micron foil based on
 2 his physical interaction with the product. Production
 3 insisted, almost as vehemently, that it was a 25-micron,
 4 so akin to the standard foil.
 5 Q. I see.
 6 I want to ask you about what you say right at the
 7 end of that paragraph. You say:
 8 "However, I do not consider that the difference in
 9 thickness between 25 micron and 50 micron is significant
 10 enough to make the tested product a different product to
 11 the standard K15."
 12 What do you mean by that?
 13 A. By that, I think there was a consensus between myself,
 14 Ivor and Malcolm at the time that it was a 50-micron
 15 foil that was tested. It was insisted by production and
 16 specifically Gwyn Davies that it were a 25-micron.
 17 Given it were his responsibility to supply the product,
 18 at the time I believe it was agreed that it was
 19 a 25-micron foil that was tested, was the official
 20 position.
 21 So that statement really is that -- in that we
 22 believed it was a 50-micron foil, if it had have been
 23 a 25-micron foil, it would have had a negative impact on
 24 the result rather than a positive one. So it shouldn't
 25 have detracted from the end result that we got.

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1 Q. Okay. I understand that there's this dispute going on,
 2 but I just want to understand how you're saying there
 3 that the difference in thickness, the doubling in
 4 thickness between 25 and 50-micron, isn't significant to
 5 make it a different product. Isn't that actually a very
 6 significant change?
 7 A. It's a significant change in itself, but with respect to
 8 the test, given it was agreed that it was a thicker foil
 9 that was supplied, it wouldn't have had an impact on the
 10 outcome of the result.
 11 Q. So you say it's a significant change, but then you say
 12 "given it was agreed that a thicker foil was
 13 supplied" -- what, supplied for the test?
 14 A. Yes.
 15 Q. Yes. And you're saying it wouldn't have had an impact
 16 on the outcome of the result?
 17 A. That's right.
 18 Q. Was Mr Meredith contending that, from a fire point of
 19 view, 50 microns was what you needed to try and pass the
 20 test?
 21 A. I'm not sure that was his contention. This was purely
 22 over what had actually been supplied for the test
 23 itself.
 24 Q. I see.
 25 SIR MARTIN MOORE-BICK: Can I just ask: isn't the real

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1 question here whether the foil on the test sample was
 2 the same as that which was put on the ordinary
 3 production run? What you say here is you can't remember
 4 which thickness of foil was the standard at the time.
 5 A. Yeah, it's definitely 25.
 6 SIR MARTIN MOORE-BICK: Was standard?
 7 A. Yes.
 8 SIR MARTIN MOORE-BICK: So if 25 was on the test sample,
 9 that clearly was reflective of the actual product --
 10 A. Yes.
 11 SIR MARTIN MOORE-BICK: -- in that respect, but if it was
 12 50, it clearly wasn't --
 13 A. Correct.
 14 SIR MARTIN MOORE-BICK: -- and would tend to give a better
 15 result.
 16 A. This was a trial product anyway, so it was never
 17 intended to be the same as the product that was being
 18 supplied.
 19 SIR MARTIN MOORE-BICK: No, but the heavier foil would,
 20 I think you've said, tend to give a better outcome than
 21 the lighter foil.
 22 A. Potentially, yes.
 23 SIR MARTIN MOORE-BICK: Potentially.
 24 A. Yes.
 25 SIR MARTIN MOORE-BICK: Thank you.

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1 MS GRANGE: Yes, if we just remind ourselves what the
 2 spreadsheet says about this, {KIN00022357/3}, it says,
 3 "Foil: Perforated and unperforated 50micron", and then
 4 over the page {KIN00022357/4}, "Foil", do you see that
 5 there?
 6 A. Yes.
 7 Q. So we appear to have been told by Kingspan in its formal
 8 position that it was 50-micron foil that was actually
 9 tested.
 10 A. Which was our understanding at the time --
 11 Q. I see.
 12 A. -- generally. However, it was definitely disputed.
 13 Q. I see.
 14 Did you consider there to be any difference between
 15 the fire performance of the standard K15 and the
 16 solstice-blown K15 prior to that test?
 17 A. We wouldn't have understood that prior to that test.
 18 Q. Even though the March 2014 test had been on the
 19 solstice-blown product?
 20 A. Sorry, yes. Erm ...
 21 (Pause)
 22 I don't think we'd tested an exactly similar system
 23 with the standard product according to that earlier
 24 test, but I think that there was a feeling, yes, that it
 25 was adding to the success of the test.

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1 Q. Yes.
 2 A. So that it was better performing.
 3 Q. Had any other tests been carried out to assess the
 4 difference in fire performance between standard as-sold
 5 K15 and solstice-blown K15?
 6 A. There will have been some smaller-scale tests,
 7 I believe, around this time. We'd actually invested in
 8 a calorimeter internally to aid with QC, but also to
 9 look at the variations between these foams.
 10 Q. Were you told about what the results of those tests
 11 showed?
 12 A. I don't think they were available at the time.
 13 Q. But were you subsequently told about what they showed?
 14 A. I will have been, yes. I can't recall the outcome.
 15 Q. You can't recall --
 16 A. No.
 17 Q. -- what difference there was between the two? You can't
 18 recall?
 19 A. Not from the calorimetry, no.
 20 Q. If we go now to an email chain from October going into
 21 November 2014, {KIN00021904/4}, at the top, there's
 22 an email sent by Mr Meredith to you, Gwyn Davies,
 23 Linzi Hobbs, Adrian Pargeter, and he tells you:
 24 "I have been advised the 150mm K15 trial is not
 25 [usable] this is very bad news.

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1 "Do we have QC data on the 100mm and 50mm and is it
 2 the same as the 80 and 85mm products previously tested."
 3 Do you know what he means there by, or what did you
 4 understand him to mean by, the "K15 trial" in the first
 5 line?
 6 A. I believe this will have been trying to source a product
 7 for the next test.
 8 Q. I see.
 9 Then if we go to the next email up in the chain,
 10 page 3 {KIN00021904/3}, this is sent by Linzi Hobbs at
 11 19.23, she says this:
 12 "Hi Ivor,
 13 "The 150mm made by Tiel was crystallised, as can
 14 happen with Solstice blown foam and it was always
 15 a risk."
 16 She says:
 17 "We have looked at the boards, carried out lab fire
 18 testing and cone calorimetry.
 19 "The lab fire tests indicate that the more friable
 20 the foam the quicker it burns and the more material is
 21 lost through foam being propelled from the sample whilst
 22 burning. The friable foam however did seem to
 23 extinguish sooner.
 24 "The initial cone results suggest the 150mm ignites
 25 much quicker and releases more heat. The 150mm cracked

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1 open more readily allowing more sample to burn."
 2 Now, going back to that first paragraph, that first
 3 line, she says:
 4 "The 150mm made by Tiel ..."
 5 Who was Tiel?
 6 A. Tiel is a production site in Holland.
 7 Q. In the Netherlands?
 8 A. Yes.
 9 Q. A Kingspan site in the Netherlands?
 10 A. Yes.
 11 Q. And it would appear that what's happened is the
 12 solstice -blown foam that you had tested in March and
 13 July 2014 has crystallised; do you see that?
 14 A. I think that, yes, this was material intended to that
 15 trial. I'm not sure that it actually made it onto that
 16 test.
 17 Q. Sorry, you say you think that, "yes, this was material
 18 intended to that trial. I'm not sure that it actually
 19 made it onto that test". What do you mean, made it onto
 20 which test?
 21 A. The next large-scale fire test.
 22 Q. Ah, after October 2014?
 23 A. Yes.
 24 Q. Right. Yes. But what you can see here, can't you, is
 25 that you can't produce the solstice -blown foam, can you?

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1 It's crystallising.
 2 A. On this instance, yes.
 3 Q. Yes.
 4 A. Yes.
 5 Q. So the product you have trialled and you have managed to
 6 successfully get a pass in July 2014 you know can't be
 7 produced for general manufacture and circulation; yes?
 8 A. No, that's not my understanding. I believe it was
 9 a struggle in this instance to make it at that
 10 thickness. Production of these foams is always more
 11 challenging, the thicker you get. I believe Ivor had
 12 requested as thick as possible a product for an upcoming
 13 test, and therefore they had pitched at where they felt
 14 they could get a good production trial at the thickest
 15 they possibly could, but in this case it had obviously
 16 not come off.
 17 Q. But this was confirmation, wasn't it, that it couldn't
 18 be produced commercially, and you knew that, didn't you?
 19 A. No, it's not confirmation of that at all. This is
 20 trying to produce some boards for an actual test at as
 21 great a thickness as possible, and that production trial
 22 has failed.
 23 Q. I see.
 24 A. It doesn't translate that we can't make that product.
 25 Q. Well, did you ever make that solstice -blown product and

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1 sell it for wider distribution?
 2 A. Not as K15, but yes, in other product ranges, I believe
 3 so.
 4 Q. Right.
 5 A. Not during my tenure. I believe it was around that time
 6 that there was some transition to a K ... I think there
 7 was an additional number 1 at the beginning of the
 8 product description.
 9 Q. So just to be absolutely clear, the product that you
 10 tested in July 2014 in that 8414 test, during your time
 11 as head of technical, was never sold for general
 12 circulation, was it?
 13 A. Correct.
 14 Q. And you knew that at the time?
 15 A. Yes.
 16 Q. Did you also know at this time that Kingspan was using
 17 that July 2014 8414 test to support and promote the use
 18 of standard K15 on high-rise buildings?
 19 A. No, that -- well, I don't know that I didn't know that,
 20 but that wouldn't have been appropriate, obviously,
 21 because it's not the same product.
 22 Q. Well, precisely. You say, "I don't know that I didn't
 23 know that". Can we be absolutely clear: did you know
 24 that the product that you had tested in the July test,
 25 the July 2014 test, was not then sold in general

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1 circulation? You have said "Yes".
 2 A. Yes, that's my understanding.
 3 Q. Then did you know, nevertheless, that Kingspan were
 4 seeking to rely upon that July test to support the use
 5 of standard K15 for use above 18 metres?
 6 A. I don't recall that I did know that. That -- this is
 7 something, actually, that I know is referenced in
 8 communications I've since reviewed. The move to a new
 9 product is a very significant one, and I'd pointed that
 10 out at the time, that clearly if you decided you were
 11 then moving to a new product, you have to make that
 12 clear.
 13 I believe -- I don't believe the product was
 14 supplied prior to me finishing at Kingspan. I think it
 15 was intended that was the case, from this point onwards.
 16 I believe the product was even named K115. I think
 17 after the fact, I don't believe it ever got to market.
 18 But it was a different product, and it should not have
 19 been used to support supply of the standard product.
 20 Q. Did you ever make it clear to your team that they
 21 couldn't use the July 2014 test for that reason, because
 22 that's not what you were selling? Did you ever make
 23 that clear to them?
 24 A. Yes, I'd like to hope that I would. I don't believe --
 25 from the test in July, I believe the test report was

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1 available from December of that year.
 2 Q. Well, we're going to come on and look at some
 3 correspondence, but I'm trying to ascertain what your
 4 general understanding was.
 5 I asked you the question, which you have not
 6 answered: did you ever make clear to your team that they
 7 couldn't use the July test for that reason, ie they
 8 couldn't use it to sell standard K15?
 9 A. I don't know that I did that deliberately in writing,
 10 but I feel that would have been obvious because it was
 11 understood it was a different product.
 12 Q. Yes, and you've already said it would be wholly
 13 inappropriate to be selling a different product from the
 14 one you have tested --
 15 A. Yes.
 16 Q. -- and relying on that different test?
 17 A. Correct.
 18 Q. Let's keep going.
 19 It's right, isn't it, that someone reading a BRE
 20 test report, including that July 2014 test report, would
 21 just see K15, wouldn't they? They wouldn't be told that
 22 it was a solstice-blown K15 with one side that was
 23 perforated, one side unperforated, thicker foil. That
 24 was never said, was it, about the product?
 25 A. I'm not aware how it was labelled in the test. It

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1 should have been identified as a trial. I don't believe
 2 at the time it was tested it had a different name, but
 3 it should have had.
 4 Q. Well, the July test report does not say "trial", it does
 5 not say "K115", it does not say "solstice-blown K15 with
 6 a thicker foil facer"; it just says standard K15, or it
 7 refers to what everyone would have understood as the K15
 8 you're selling to market.
 9 A. Yes.
 10 Q. And you agree that that's inappropriate?
 11 A. Yes.
 12 Q. Let's look at some correspondence now. {KIN00020736}.
 13 This is an email from Mr Meredith to you and a number of
 14 others on 21 August 2014, and the subject is, "Comment
 15 required by Monday 5pm pls:- K15 Update".
 16 Essentially, what Mr Meredith is doing is seeking to
 17 update you and others about the events on that product
 18 since the last meeting a month ago. So he says that in
 19 the first lines:
 20 "As the key stakeholders for ... K15 ... I have
 21 taken five to update you all on the current situation
 22 since our last meeting a month ago."
 23 You were one of those key stakeholders, weren't you,
 24 because --
 25 A. Yes.

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1 Q. -- you're a recipient?
 2 It's also gone to someone called -- actually, no,
 3 that's an error sorry.
 4 Yes, so I want to start with the very end of his
 5 email at point 6 on page 2 {KIN00020736/2}. He says
 6 this:
 7 "We have issued a couple of standard letters to the
 8 larger contractors (Praters, Lakesmere etc) and
 9 confirming our good news confirming pending reports and
 10 a more general letter confirming test success. These
 11 are being used by Technical and Sales for job specific
 12 queries which we are targeting handling within 48 hours
 13 of receipt. Tony/Malcolm I have not written to Stuart
 14 Taylor at Wintech has this been done?"
 15 Do you see that there?
 16 A. Yes.
 17 Q. So Mr Meredith is saying that on the back of the good
 18 news -- and that can only be the July 2014 test, can't
 19 it?
 20 A. Yes.
 21 Q. That what Kingspan are doing is writing standard letters
 22 to the larger contractors -- Praters, Lakesmere -- and
 23 confirming test success, and:
 24 "These are being used by Technical and Sales for job
 25 specific queries which we are targeting handling within

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1 48hours of receipt."

2 So you're using that July test for technical and

3 sales query purposes; that's right, isn't it?

4 A. Yes.

5 Q. And you knew that at the time?

6 A. I must have known that at the time, yes.

7 Q. And you also must have known that the K15 that you're

8 selling in August 2014 is not the same K15 as that which

9 you have tested in July 2014; yes?

10 A. Yes. I believe it was fully the intention that the

11 product would change over. This was clearly

12 a transition period. But, yes, it would seem that

13 that's been used to support the existing material.

14 Q. Can you explain to us how you allowed that to occur?

15 A. No, it's been missed. I was very clear on the fact, and

16 I know it's in correspondence, that if we were to,

17 you know, make this significant a change, then it's

18 a very significant change that would signal a move from

19 the old product to a new product, and that would need to

20 be clear. Clearly in a transition, this has got missed

21 and overlooked.

22 Q. Well, Mr Millichap, I would suggest to you that this is

23 not just something that's been missed or overlooked.

24 The way this is written, and there's other

25 correspondence we'll come to, it was absolutely

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1 deliberate by Kingspan, wasn't it?

2 A. It was absolutely our intention to transition to a new

3 product at that time. I know that didn't happen, and,

4 you know, that timescale got extended, but as far as

5 I recall, at the point when I left Kingspan, I believe

6 that was still the intention, that we would move to that

7 new product and that would be the supplied product.

8 Q. But how could you justify that interim period of

9 carrying on selling standard K15?

10 A. Only on the basis that, you know, we would be supporting

11 new specifications that would be satisfied with the new

12 product, but I appreciate there is a risk that that

13 wouldn't be the case.

14 Q. Well, clearly here there are projects that you're

15 recommending K15 for, and we can't find any

16 correspondence where anybody's told, "By the way, this

17 test was on a new product that we haven't yet produced,

18 so you do need to be aware of that".

19 A. Yes.

20 Q. Yes.

21 If we go and look at point 1 of this email now,

22 {KIN00020736/1}, Mr Meredith, under the heading

23 "NHBC/BCA", says:

24 "A meeting has been held with the NHBC whom are

25 still pushing for someone to provide job specific test

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1 data. They are still sanctioning the use of K15 as long

2 as they get a bespoke letter off [Kingspan] which

3 Technical Projects are turning around in 48hours on

4 receipt of the drawings and confirmation of the

5 fire barrier dimensions."

6 Now, just pausing there, you can't have thought at

7 the time, can you, that what he is referring to there is

8 them having explained that there was a new product;

9 they're just carrying on selling K15 as before? That's

10 right, isn't it?

11 A. That does seem to be the case. But, again, it was fully

12 the intention to move to the new product at that time.

13 Q. He carries on:

14 "They have also given us an extra 3 months to get

15 some further assessments on the test data to meet their

16 needs. We have also requested 2 weeks notification if

17 they decide to change their stance. Steve Evans was

18 also involved in the BCA publication attached which has

19 been driven by them following the confusion in

20 interpretation of our high rise regulations. I have

21 highlighted some parts of this document as it clearly

22 singles out polyurethane as not being suitable but does

23 not mention PF."

24 Do you see that there?

25 A. Yes.

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1 Q. Now, did you authorise those bespoke letters that were

2 being turned around in 48 hours?

3 A. Yes, I believe that was -- came out of the discussions

4 with the NHBC, to support them going forward.

5 Q. At the end of Mr Meredith's email, this email, he

6 includes the minutes of an earlier meeting on these

7 issues held on 15 July 2014. We can see that from

8 page 3 of this document {KIN00020736/3}. Can you see,

9 "Date of Meeting - Tuesday 15th July", and we can see

10 you were present at that meeting.

11 Under "Test Reports/Letters", under action point 2,

12 it says "TM" -- would that be you, Tony Millichap?

13 A. Yes, I assume so.

14 Q. "... to write reports/letters to be used as a

15 marketing/commercial tool to announce the result of the

16 test and get on the front foot in the market.

17 Action TM."

18 So it would appear that you were to be actively

19 involved in using that July test as a marketing and

20 commercial tool; do you agree?

21 A. Yes.

22 Q. And that's what you did, isn't it? You went on and did

23 that.

24 A. I believe so, yes.

25 Q. Then under the heading "Market Launch", which is towards

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1 the bottom of page 3, it says there -- and I think this
 2 might be what you were referring to earlier :
 3 "Consideration needs to be given as to either
 4 launching this product with a new code (K20) at [and
 5 then some figures are given] ... or Keep K15 brand and
 6 use across all heights. Decision will be taken on this
 7 after further testing."
 8 So some consideration does seem to be given at this
 9 point as to whether to launch this product with a new
 10 code, with a K20 code, but there's no indication in
 11 these minutes that anyone was going to stop selling the
 12 current version of K15, is there?
 13 A. No, but that was fully the intention.
 14 Q. Why isn't that minuted in this meeting? You're present
 15 at it. It's a meeting held on 15 July, so a week or so
 16 after that successful test. Why don't we see anybody
 17 saying, "Well, we can't market this yet because it's not
 18 the product we're selling, we must transfer over to that
 19 trial product and then we can market it?"
 20 A. Yes, I can only assume that we planned that this would
 21 happen quicker than it did at the time. I know that
 22 there were additional concerns with the solstice product
 23 being commercially viable that weren't considered at
 24 an early enough point.
 25 Q. Can you help us as to why none of that is mentioned in

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1 your witness statement to the Inquiry?
 2 A. No, I was answering the specific questions.
 3 Q. If we can now go to {KIN00010825}. This is a series of
 4 internal emails sent just after that July 2014 test,
 5 that successful test on terracotta tiles.
 6 If we go to the very first email in the chain at
 7 page 2 {KIN00010825/2}, we see that Mr Meredith, at
 8 16.07 7 July, so later in that afternoon, he is
 9 announcing it to you, Malcolm Rochefort, Gwyn Davies,
 10 et cetera, "BS 8414-2 news", and he announces the
 11 result :
 12 "Between 11.30 and 12.30 today we tested Kooltherm
 13 K15 behind a ventilated terracotta rainscreen at BRE
 14 Garston.
 15 "We have just had the Thermocouple data
 16 provisionally verified and it meets the requirement ...
 17 for the full test duration.
 18 "There was no flaming above the 2nd
 19 fire barrier ..."
 20 And then he attaches pictures. So he announces that
 21 to the team.
 22 And then if we move up the chain -- and just to be
 23 clear, you're not copied in to the emails that then
 24 follow, but I nevertheless want to ask you about them.
 25 A. Okay.

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1 Q. At 7.34 the next morning, the next email in the chain,
 2 Richard Bromwich writes to Alistair Lambie and
 3 David Collier with "Good news lads!!"
 4 Alistair Lambie was the head of business development
 5 at Kingspan; is that right?
 6 A. I'm not sure he would have been at this time. I believe
 7 Richard Bromwich would have been in that role at that
 8 time. I believe Alistair did take that role.
 9 Q. Who is David Collier? What was his role?
 10 A. He, I believe, would have been another business
 11 development manager.
 12 Q. Then we can see a response from Alistair Lambie
 13 ten minutes later, you can see at the bottom of that
 14 page {KIN00010825/1}, so this is very early the next
 15 morning, 7.45, he says:
 16 "F'ing happy days!
 17 "I think we have just pissed over Knauf, Xtratherm
 18 and Rockwool!
 19 "Marketing campaign?
 20 "Ali."
 21 Then what I want to ask you about is
 22 Richard Bromwich's immediate response, just a few
 23 minutes later, or almost immediately. Richard Bromwich
 24 responds:
 25 "On it mate despite the attempts of slap head

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1 Millichap saying we shouldn't because it's not a
 2 compelling story! grrrrrrr!"
 3 Now, in fairness to you, we want to put this to you:
 4 were you saying that you shouldn't have a marketing
 5 campaign because it wasn't a compelling story?
 6 A. I had pointed out that if we were moving to that
 7 product, which was fully the intention, then obviously
 8 that product needs to be identified as a different
 9 product.
 10 Q. Who had you pointed that out to?
 11 A. I've seen that in a couple of -- definitely the fire
 12 focus group, I think predominantly, so the senior team
 13 responsible.
 14 Q. Right.
 15 Did any of these men know that the test that had
 16 been carried out was actually on a research and
 17 development product, do you know? How widely was that
 18 information known within Kingspan?
 19 A. Yes, I believe it would have been. I mean,
 20 Richard Bromwich was the most senior representing the
 21 sales efforts. He will have been kept abreast of those
 22 developments. I don't recall, but I believe he would
 23 have been invited to the fire focus group. I'm not sure
 24 if he attended.
 25 Q. Right. What about Adrian Pargeter, did he know that it

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1 was a trial product that was different to that that you
 2 were selling?
 3 A. Yes, I believe it was common knowledge.
 4 Q. Did you disagree in the event with the plan to promote
 5 and market standard K15 on the basis of the test that
 6 you knew not to have been on that K15?
 7 A. It's difficult to recall the exact chronology. At the
 8 time this was written, and the test was being discussed
 9 and put out there, I know it was clearly the intention
 10 that that would be the product that was being supplied.
 11 And in that case, yes, there will have been a transition
 12 where there was a potential risk of crossover, but that
 13 should have been a minimal risk.
 14 As it transpired, I know the production side of the
 15 business weren't able to deliver that product when,
 16 you know, clearly it had previously been considered we
 17 were able to deliver that product. Giving it a name and
 18 talking about marketing campaigns means you've got
 19 a product that we can put to market. It didn't
 20 obviously transpire that way, and I don't believe that
 21 product ever got supplied, to my knowledge.
 22 Q. Did you ever communicate to anybody concerns about
 23 public safety or life safety involved with just carrying
 24 on selling the standard K15 at this time?
 25 A. Not specifically in those terms, but ... no.

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1 Q. Can we go now to another email, {KIN00021810}. The
 2 second email in this chain is from you to
 3 Richard Burnley on 12 November 2014, and the subject is
 4 "K15 testing direction", and you say:
 5 "Further to our meeting of earlier today I have set
 6 out our understanding of the published Celotex RS5000
 7 result and its current impact."
 8 You go on:
 9 "Initially having sourced a copy of Celotex
 10 marketing blurb we were not surprised of the vagueness
 11 surrounding the specifics of the test construction,
 12 notably around provision of fire breaks. Further
 13 efforts finally secured a copy of the actual test report
 14 (albeit this was missing the relevant pages relating to
 15 the test construction) upon receipt of the actual
 16 construction designs these were reduced photo copies
 17 again lacking clarity, the reports text references four
 18 horizontal fire breaks however the sketch is unclear
 19 where/how these are positioned.
 20 "I do suspect from their construction designs that
 21 a critical panel joint that is essential to the test and
 22 influences the result is missing from the Celotex
 23 design, I am not confident we have enough clarity to
 24 challenge this officially with BRE but we will raise it
 25 in any case.

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1 "We are only aware of one project where the Celotex
 2 product has been adopted which involved the same supply
 3 chain as their test programme, we have yet to be asked
 4 to defend specification against the product, we are
 5 actively involved in supporting 60+ projects
 6 specifically on the over 18m issue. Whilst we had to
 7 financially support the project at First Street,
 8 Manchester this specification held and we have not lost
 9 a specification since. Feedback from specialist
 10 sub contractors, specifiers and consultants all raise
 11 doubt over the 'Celotex solution'.
 12 "In light of the fact we cannot produce K15 100%
 13 Solstice either commercially or from a production
 14 perspective I would advocate we test the blended product
 15 (once lambda and costs are acceptable, I have included
 16 Malcolm's costs assessment). To revert to testing
 17 standard NT K15 will not support the strategy we are
 18 pursuing with ARUPs and NHBC but will signal a backwards
 19 step with significant consequence.
 20 "The above approach assumes we continue to
 21 acknowledge differences between the tested products
 22 (both blowing agent and facing thickness have
 23 significant impact). All testing has been referenced
 24 back to precise batches with control samples as is
 25 a requirement of BRE however this does not include

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1 a description of the physical differences.
 2 "Next test is scheduled for the end of November ..."
 3 So in this email, 12 November 2014, far from being
 4 reticent about carrying on selling standard K15, you're
 5 positively pushing it, aren't you? You're saying to
 6 colleagues, "We've got to go head to head with Celotex
 7 and we've got to maintain our position in the
 8 marketplace". That's the thrust of what you're saying.
 9 A. I'm supporting at this point -- we had committed to that
 10 product and that was what we needed to carry forward
 11 with, because that's where the test evidence lay.
 12 Q. If we go back up and look at the top of this email, you
 13 say you'd obtained a copy of the BRE's test report for
 14 Celotex on a system incorporating RS5000. Can you help
 15 us, how did you obtain a copy of that report?
 16 A. I understand it was -- Ivor supplied that to me, but
 17 I believe it was sourced via the sales team. I don't
 18 know where they would have got it from.
 19 Q. When you say in the third paragraph:
 20 "I do suspect from their construction designs that
 21 a critical panel joint that is essential to the test and
 22 influences the result is missing from the Celotex
 23 design ..."
 24 How did you come to say that?
 25 A. It was a conclusion that Ivor had shared with me from

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1 what we could see of the test. There was -- a panel
2 joint is expected to be created centrally above the crib
3 to create a worst-case scenario, a weak point if you
4 like, in the cladding. I believe -- Ivor suggested that
5 was one way, by avoiding that joint, that Celotex could
6 have been successful.

7 Q. Right. Did you ever challenge that? You float in this
8 email the possibility that you might challenge the
9 Celotex result officially with the BRE. Was that ever
10 challenged with the BRE?

11 A. Not to my knowledge. It may have -- Ivor may have said
12 something verbally, but not that I recall was recorded.

13 Q. Then in that fourth paragraph down:

14 "We are only aware of one project where the Celotex
15 product has been adopted ..."

16 You then go on and explain in the second and third
17 lines:

18 "We are actively involved in supporting 60+ projects
19 specifically on the over 18m issue."

20 What do you mean by actively involved in supporting
21 60-plus projects?

22 A. That would be projects that were specifically flagged to
23 be above 18 metres and had had some support from the
24 technical department.

25 Q. Then you talk about the First Street Manchester project.

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1 That was the project where we saw the credit note being
2 issued.

3 A. Yes.

4 Q. I think you're referring to that here, is that right,
5 when you say, "we had to financially support the
6 project"?

7 A. Yes.

8 Q. But what do you mean, then, when you say, "Whilst we had
9 to financially support that project ... this
10 specification held"? What does that mean?

11 A. From memory, there were two phases or two separate
12 buildings on that project, and I believe the first
13 phase -- there may have even been different project
14 teams, I'm not sure, there may have been some
15 consistency with different subcontractors, I don't
16 recall, but I believe one of the specifications held on
17 one of the buildings. The monetary support was
18 obviously a contribution towards them having to replace
19 the project on the other phase.

20 Q. I see. So when you say it held, ie K15 did get
21 installed onto that particular building in that project?

22 A. On one of those buildings, yes. I believe there was
23 more than one or a different phase of that same
24 building.

25 Q. And that was a high-rise project?

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1 A. I believe it was, yes.

2 Q. Yes. You go on and say:

3 "In light of the fact we cannot produce K15 100%
4 Solstice either commercially or from a production
5 perspective ..."

6 So, contrary to what you said earlier today, by this
7 point you clearly know that you can't produce that
8 solstice commercially or from a production perspective;
9 that's clear in this email, isn't it?

10 A. Yes.

11 Q. When had you learnt that? Was that because it was
12 crystallising? Was that because of what you were told
13 by Linzi Hobbs that we previously looked at?

14 A. No, this would have been via ongoing meetings with
15 production whereby they were now suggesting that to
16 make -- the product didn't make commercial sense.

17 I believe the solstice blowing agent itself, there
18 was some uncertainty on whether it were available in the
19 quantities that would have been required. I believe it
20 was a completely new product. Again, these things were
21 dealt with by production, but as I understood it.

22 There was obviously efforts for -- to be able to
23 source that blowing agent in volumes that would be able
24 to support the production, and I believe that -- whether
25 there were some early arrangements that couldn't be

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1 followed through.

2 Q. But at this point, if you know it can't be produced,
3 then there cannot have been any further intention to
4 transition to supplying that product to market, can
5 there?

6 A. I believe there was -- yes, there was still an intention
7 to move the product to a solstice product, but using
8 a blended -- I don't know what the percentages would be,
9 but a mixture, essentially, of solstice and another
10 blowing agent.

11 Q. Why do you not say here in this email, "In light of the
12 fact we can't produce solstice commercially or from a
13 production perspective, we cannot rely on that July 2014
14 8414 test to market the K15 we're currently selling"?

15 A. I think I reference it, albeit tentatively, when I talk
16 about a backwards step with significant consequence.
17 I think that should be plainly understood. The test is
18 on a different product and therefore it doesn't
19 support -- can't continue to support what's being
20 supplied into the market.

21 Q. That sentence you have just highlighted, where you say,
22 "To revert to testing standard [new technology] K15 will
23 not support the strategy", wasn't that because -- so you
24 can't produce the solstice commercially or from
25 a production perspective, that's the one you have

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1 successfully tested, and you can't revert back to
 2 testing standard new technology K15 because you know
 3 that that performs badly in fire; that's right, isn't
 4 it?
 5 A. No. My reading of that is that to revert to testing
 6 standard new technology K15 will then signal another
 7 U-turn with those people that we are trying to give
 8 additional assurance to. At this point, I believe --
 9 Q. How?
 10 A. -- it was still the intention that we would move to the
 11 new product.
 12 Q. But how does that signal a backwards step to those
 13 individuals when none of them know anything about these
 14 trial products, they don't know anything about the new
 15 technology performing badly, they don't know anything
 16 about solstice blown or thicker foils? How does it
 17 signal a backwards step to them?
 18 A. I appreciate it wouldn't have at that time, but the
 19 intention still was to move to a new product, launch
 20 that new product, and at that time that the test
 21 evidence would support the product that was being
 22 supplied.
 23 Q. I would suggest to you that a more natural reading of
 24 that, given everything we know up to this point on your
 25 writing this, is that what you are saying is you can't

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1 revert to testing standard new technology K15 because
 2 you knew full well that that couldn't pass in an 8414
 3 test given what had happened in 2007 and 2008.
 4 A. I suppose it could be read that way. I don't believe
 5 that was my intention at the time.
 6 Q. Yes.
 7 A. We were fully committed to moving forward with this new
 8 product at this point.
 9 Q. Right.
 10 Just to be clear, the blended product would be
 11 a different product again; is that right? So it would
 12 be, what, part solstice, part what?
 13 A. I don't know. That would have to be a question for
 14 production. They were at this point given -- they were
 15 now saying, you know, that that wasn't a viable way
 16 forward, they were obviously looking at alternates.
 17 Q. You say, "I would advocate we test the blended product".
 18 What was the blended product as you understood it at
 19 this point?
 20 A. It was a potential route forward that production had
 21 identified.
 22 Q. I see.
 23 Now, we can also see, if we look at the bottom of
 24 this email, that, in the paragraph third up from the
 25 bottom, you say:

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1 "The above approach assumes we continue to
 2 acknowledge differences between the tested products ..."
 3 And you say this:
 4 "... (both blowing agent and facing thickness have
 5 significant impact)."
 6 So can we take it that, at this time, you did
 7 understand that both the blowing agent and the facing
 8 thickness did have a significant impact on the product's
 9 fire performance?
 10 A. Yes.
 11 Q. And you also tell us that:
 12 "All testing has been referenced back to precise
 13 batches with control samples as is a requirement of BRE
 14 however this does not include a description of the
 15 physical differences."
 16 So is it right that, at this time, you knew exactly
 17 what K15 product had been tested on every occasion from
 18 January, March, July onwards; yes?
 19 A. I believe that was the case. I believe production were
 20 required to confirm that directly to the BRE. Due to
 21 intellectual property, I wasn't aware of the SOPs for
 22 the product.
 23 Q. So you accept that you knew that the K15 product being
 24 sold could not, on the basis of the test data you had,
 25 be supplied -- sorry.

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1 Did you yourself at any stage give any consideration
 2 to whether or not this course of action was appropriate
 3 and responsible?
 4 A. Yes, I was concerned. We were in a position where we
 5 had committed to supplying another product and that was
 6 getting pulled from under us, that product was now being
 7 said it couldn't be produced.
 8 Q. Did you ever have any discussions with Adrian Pargeter,
 9 Richard Burnley or Malcolm Rochefort about the
 10 appropriateness of carrying on selling standard
 11 technology K15 in these circumstances?
 12 (Pause)
 13 A. I will have had, but not that I can bring attention to
 14 or that was put into writing.
 15 Q. Now, I want to go back now and look at the situation
 16 between Kingspan and the NHBC again.
 17 Now, it's right, isn't it, that discussions between
 18 Kingspan and the NHBC about the use of K15 in buildings
 19 over 18 metres continued throughout July 2014 and
 20 through to the end of that year and into the early part
 21 of 2015?
 22 A. Yes.
 23 Q. During that time, in any correspondence or meetings with
 24 the NHBC in which you were involved, did you ever inform
 25 the NHBC that the test to 8414-2 carried out in

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1 July 2014 had been carried out not on as-sold K15 but on
 2 a research and development product?
 3 A. I wouldn't have done that personally, no. But that
 4 would have been the intention, and that would have been
 5 something that Ivor should have done. But I think the
 6 position with the transition to a new product not
 7 getting resolved has clearly muddled the waters around
 8 that.
 9 Q. You say that would have been the intention; you mean it
 10 would have been the intention to tell the NHBC that?
 11 A. Absolutely, at the point that we knew that the new
 12 product could be launched. Unfortunately that didn't
 13 come.
 14 Q. What about before that? What about while you're still
 15 selling standard K15 on the back of that July test?
 16 Would there have been an intention to tell the NHBC
 17 about it at that time?
 18 A. Yes. At that time, when the new product became
 19 available, it would have been launched as that and been
 20 obvious in the market.
 21 Q. You said, "Ivor should have done"; Ivor should have done
 22 what?
 23 A. It would have been Ivor's job to communicate that at the
 24 point that we were able to supply. I believe his
 25 announcement was intending -- informing the direction of

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1 travel, and at that time we -- collectively, I believe
 2 there was enough confidence that that is what would
 3 happen, but that didn't transpire to come to be.
 4 Q. Mr Meredith's evidence, when he gave oral evidence to
 5 us, was that he would have been out on his ear had he
 6 said anything about this to the NHBC; do you agree?
 7 A. No, I don't. This, to my recollection, was the
 8 direction of travel. We were moving from the standard
 9 product we were supplying to a new product. The
 10 difficulty comes in that the confidence we had in moving
 11 to that new product disappeared, because, you know, it
 12 wasn't able to be made commercially, or from
 13 a production perspective latterly, from a production
 14 point of view.
 15 Q. Right.
 16 SIR MARTIN MOORE-BICK: Can I just ask a question? I'm
 17 rather puzzled by this.
 18 As I understand it, your sales team were selling
 19 what we will call for a moment the old product, the
 20 existing product --
 21 A. Yes.
 22 SIR MARTIN MOORE-BICK: -- on the back of or using as
 23 a basis the new test result.
 24 A. I believe the new test result had been announced to the
 25 market, and potentially it was used to support new

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1 specifications on the premise that --
 2 SIR MARTIN MOORE-BICK: Well, you hadn't got a new
 3 specification yet, had you?
 4 A. That's correct, but at the time that the information was
 5 put to the sales team, it was intended that that would
 6 be the case.
 7 SIR MARTIN MOORE-BICK: I understand that part of your
 8 evidence. What's puzzling me is: how do you launch
 9 a new product on the basis of a test that's just been
 10 used to sell an old product?
 11 A. I don't believe the intention at the time was that the
 12 test would be selling the old product. This would have
 13 been writing new specifications that had not come to be.
 14 SIR MARTIN MOORE-BICK: But I thought we'd established that
 15 the July test was being used in support of sales of the
 16 existing product.
 17 A. I think there was a risk that that could have happened
 18 in that transition, which ended up being longer than it
 19 should -- it was intended or should have been.
 20 SIR MARTIN MOORE-BICK: Then my question remains: how do you
 21 sell a new product -- let's say you called it K20.
 22 A. Yes.
 23 SIR MARTIN MOORE-BICK: How do you sell K20 using as your
 24 support a test which has been used to sell K15? Aren't
 25 people going to be a bit puzzled?

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1 A. Yes, and this is why it would need -- at the point it
 2 could have been supplied to market, it would have had to
 3 have been identified separately.
 4 Honestly, at the time, you're right, I don't think
 5 enough thought was given to how that would be
 6 identified. That announcement, in retrospect, was
 7 premature.
 8 SIR MARTIN MOORE-BICK: All right. Thank you.
 9 Yes, Ms Grange.
 10 MS GRANGE: You have said there that there was a risk that
 11 you could have been selling standard K15 in that
 12 transition period on the back of that test, which was
 13 a different test, but what I'm going to put to you that
 14 that was the deliberate strategy of Kingspan at the
 15 time, and all the documentation supports that. It
 16 wasn't just a risk that that might arise; that's what
 17 you intended the moment you got that successful test,
 18 wasn't it?
 19 A. That was never my deliberate intention. It was always
 20 intended that a new product would be released. As
 21 I say, the fact that that new product could then not be
 22 produced as it was intended meant that that launch got
 23 delayed indefinitely, in the end, and obviously, yes,
 24 put us in that dubious position.
 25 Q. You say, "That was never my deliberate intention", but

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1 were you aware at the time -- I would suggest you must
 2 have been, from the correspondence we've just looked
 3 at -- that others around you were using that test
 4 straight away to justify the use of standard K15 being
 5 sold on high-rise buildings?
 6 A. Yes, I think that information was released prematurely.
 7 Q. Yes, and they were doing that deliberately, weren't
 8 they, knowing that it had been tested on a different
 9 product? You agree?
 10 A. My only counter to that is that it wasn't deliberate,
 11 given that it was our intention that the product would
 12 change.
 13 Q. Right.
 14 Let's look at some other correspondence now.
 15 {KIN00006074}. If we go down page 1, from the third
 16 email from the top we can see that Steve Evans from the
 17 NHBC, on 14 July 2014 at 9.49, says to Ivor Meredith:
 18 "Dear Ivor,
 19 "Please find attached copies of recent
 20 communications that NHBC have had with DCLG [Department
 21 for Communities and Local Government] in respect of the
 22 fire safety and facades. I have also been keeping
 23 colleagues at the Building Control Alliance, LABC and
 24 the fire brigade up to date with the progress of our
 25 discussions.

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1 "As [stated] in the communication with DCLG, at our
 2 meeting on 6th August 2014, NHBC will be looking for
 3 evidence from Kingspan that supports the use of K15
 4 above 18m outside of the constraints of the current BBA
 5 certificate.
 6 "I look forward to seeing you in August."
 7 Then in the email above, Mr Meredith forwards that
 8 to you. He says:
 9 "The attached can be used to justify our need for
 10 a meeting."
 11 Why would he say that? Why would he say to you this
 12 can be "used to justify our need for a meeting"? Was
 13 there not a desire to have a meeting about this?
 14 A. I think it's -- on first reading of that, I think it's
 15 the opposite: there was a desire to have a meeting with
 16 the NHBC.
 17 Q. Did you read the attachment to Steve Evans' email, ie
 18 the correspondence that he had forwarded between the
 19 NHBC and Mr Brian Martin at DCLG?
 20 A. I don't recall without seeing it.
 21 Q. Let's look at it now, {KIN00006071}, and if we go to the
 22 bottom of page 1, we can see this is what he attached.
 23 So on 2 July 2014 at 11.42, from Brian Martin to
 24 Neil Smith at the NHBC, and Mr Martin says this:
 25 "Hi Neil

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1 "I've been talking to a few folk about fire safety
 2 and facades recently.
 3 "Allegedly - several buildings have been erected
 4 where PIR insulation has been used in cladding panels
 5 well over 18m in height. Apparently people are under
 6 the impression that PIR is a material of limited
 7 combustibility (which it isn't). Again, allegedly, many
 8 of these buildings are blocks of flats.
 9 "I've no idea how true these allegations are but
 10 they come from relatively reliable sources.
 11 "The purpose of my email is a friendly warning. You
 12 might want to double check with your inspectors and plan
 13 checkers that they are on top of this.
 14 "Happy to discuss.
 15 "Regards
 16 "Brian."
 17 Now, does this help as to whether you did look at
 18 that correspondence that Mr Meredith had forwarded on to
 19 you?
 20 A. Yes, it doesn't bring a recollection, but if it were
 21 attached on the email forwarded to me, then I would have
 22 read it.
 23 Q. Do you remember being aware that there had been
 24 discussions between the NHBC and DCLG about insulation
 25 being used over 18 metres in height in inappropriate

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1 circumstances?
 2 A. No.
 3 Q. You don't remember being aware of that?
 4 A. No.
 5 Q. If we go to the next email up in the chain, this is
 6 Mr Evans' response to Brian Martin which you were also
 7 sent, you were sent this whole chain, and Steve Evans
 8 says to Brian Martin:
 9 "Dear Brian
 10 "I hope that you are well. Neil Smith has discussed
 11 your email with me (below) and asked me to respond as
 12 I have been dealing with this on behalf of NHBC.
 13 "This is an issue that NHBC are aware of and have
 14 been in discussions with industry about it for some
 15 time. The issue is in respect of the use of Kingspan
 16 Kooltherm K15 Rainscreen Board in buildings over 18m in
 17 height. The confusion has arisen from Kingspan's
 18 statement that their product is acceptable for use in
 19 a building >18m. However, the product is made from
 20 a generic type of polyurethane foam which is, by nature,
 21 combustible. However, since 27 October 2008, the
 22 product held a BBA Certificate (attached) which
 23 indicates that it is acceptable for use in accordance
 24 with Approved Document B Volume 2 Paragraph 12.7 (7.1)
 25 subject to advice being sought from the

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1 certificate holder (7.2) if the building exceeds 18m in
2 height. It was on this basis that NHBC Building Control
3 and other building control bodies accepted the use of
4 K15 in buildings over 18m in height including blocks of
5 flats. We understand that LABC have also issued a
6 Registered Detail approving the material for use over
7 18m.

8 "In January of this year we were made aware of
9 a revised BBA certificate for K15 issued on 17 December
10 2013 (also attached). The new certificate removed the
11 passage which indicated that it was acceptable for use
12 in accordance with Approved Document B Volume 2
13 Paragraph 12.7 and instead states that the product will
14 not contribute to the development stages of a fire, but
15 that it has only been tested (and therefore is only
16 suitable) for one specific construction on masonry walls
17 (8.2).

18 "As we had a number of projects under construction
19 and in advance stages of design utilising K15, NHBC
20 approached Kingspan and made them aware of our concerns.
21 As a result of this dialogue Kingspan are currently
22 undertaking further testing using different cladding and
23 façade treatments in accordance with BS8414-1:2002. The
24 results from the tests are expected by the end of this
25 month and NHBC are meeting with Kingspan at the

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1 beginning of August at which time Kingspan will be asked
2 to provide evidence that their product can be used in
3 alternative construction types other than that specified
4 in the current BBA certificate.

5 "There is no reason to suspect that buildings which
6 have been built with Kingspan K15 are at risk at this
7 time, it is just the fact that the testing carried out
8 to date does not bear this out. Kingspan are confident
9 that the testing currently underway will prove the
10 suitability of the material for use over 18m. If they
11 are not able to do this, we will begin the process of
12 informing industry that the product is no longer
13 suitable for use in facades over 18m as well as
14 informing other stakeholders such as BCA and the Fire
15 and Rescue Service, although both parties are already
16 aware of our on-going discussions.

17 "I trust that this addresses your immediate concerns
18 and I will keep you informed further developments. In
19 the meantime if you have any queries or would like to
20 discuss this further please feel free get in touch."

21 Now, I have read that out in full.

22 Do you remember reading that and being aware of
23 that?

24 A. Yes, I will have read that.

25 Q. Is it fair to say that DCLG's awareness of the situation

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1 in July 2014 increased the pressure on Kingspan to
2 provide the evidence that the NHBC had been seeking?

3 A. I don't recall that specifically. There was definitely
4 increased urgency or, you know, a need to assist NHBC
5 with their concerns.

6 Q. Did it give you any pause for thought at all in terms of
7 what you were doing at the time that the DCLG had now
8 been alerted to these issues, and had been told this by
9 NHBC? Did that in any way make you question what you
10 were carrying on doing?

11 A. Yes, we constantly questioned ourselves and were being
12 as collaborative with NHBC as we could.

13 Q. But what action did you take as a result? You say you
14 were constantly questioning; did you actually do
15 anything as a result of being aware of this?

16 A. Yes, we continued with a test programme to help satisfy
17 their concerns.

18 Q. Did it make you think carefully about whether to keep
19 relying on the July 2014 test?

20 A. I don't recall whether that test was identified to the
21 NHBC. I know there was a discussion between myself and
22 Ivor about that test being identified as not
23 representing the current product that was supplied.
24 I don't know how that report was represented to the
25 NHBC.

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1 Q. Did it give you any pause for thought that the fire and
2 rescue service were said to be aware of these ongoing
3 discussions?

4 A. Absolutely. I never, you know, took light of the
5 implications of a product used in this scenario.

6 Q. If we can go to your response internally to this, it's
7 at {KIN00006075}. If we look at the second email down
8 from the top of the page. So Mr Meredith said to you
9 below this, "The attached can be used to justify our
10 need for a meeting", we looked at that earlier, and then
11 you respond to Mr Meredith:

12 "Ivor,

13 "Firstly please let Richard Mark and Karen know they
14 are not to respond in any way. As we have received this
15 directly we will likely need to rebut some of the claims
16 which are inaccurate (whilst keeping them onside), we do
17 not need to action anything ahead of tomorrow's meeting
18 but I will inform Toby Randal(sic)."

19 Now, Toby Randle was Kingspan's solicitor; is that
20 right?

21 A. Yes.

22 Q. Now, other than Steve Evans having said in his email to
23 Brian Martin that K15 was a polyurethane foam as opposed
24 to a phenolic foam, which was clearly an error, which
25 claims did you consider inaccurate in what was said in

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1 Steve Evans' email to Mr Martin?

2 (Pause)

3 A. Could we go back to the --

4 Q. Of course.

5 So it's at {KIN00006071}. That's Steve Evans back
6 to Brian Martin. Please take time to read that, if you
7 need.

8 A. Thank you.

9 (Pause)

10 I believe I was referring to the polyurethane foam.
11 I don't see anything else in there that I would
12 question.

13 Q. No.

14 Did you have a meeting on the back of receiving
15 this? It looks in the emails like you were planning
16 an internal meeting to discuss this. Did that take
17 place?

18 A. Yes, I believe it did.

19 Q. If we go back to that, {KIN00006075}, you talk about
20 "don't action anything ahead of tomorrow's meeting".
21 What was discussed at that meeting?

22 A. This will have been a senior team meeting to agree on
23 how we continued to progress the discussions and
24 hopefully a resolution with the NHBC.

25 Q. Would Adrian Pargeter have been at that meeting?

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1 A. Quite likely, but not necessarily.

2 Q. Right.

3 A. His role was still market and product development.
4 I believe this would have been the senior team. So the
5 managing director, Malcolm.

6 Q. Did you draw this correspondence between NHBC and the
7 DCLG to the attention of your superiors, and if so who?

8 A. Yes. I believe from this point forward, the entire
9 content of the correspondence and everything that was
10 relayed back and forth with the NHBC was relayed via
11 Toby Randle to keep a watching brief, and all
12 correspondence was copied through the managing director,
13 Malcolm Rochefort, amongst others, I believe legal as
14 well at group.

15 Q. When you refer to the managing director, who are you
16 referring to there?

17 A. Peter Wilson at that time.

18 Q. And what about higher up than that? Did it go up any
19 further than that?

20 A. I know latterly, particularly when we were working under
21 Toby Randle's direction, that was being tracked via
22 Lorcan Dowd and Tommy Reilly at group.

23 Q. After this correspondence, Kingspan sent a letter to the
24 NHBC on 3 August 2014. If we could go to that letter,
25 {KIN00002186}.

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1 A. Sorry --

2 Q. Sorry, yes.

3 A. Could I just -- I believe the managing director at that
4 time was likely Richard Burnley.

5 Q. Right.

6 A. He would have been involved, but also Peter Wilson would
7 have been involved as divisional managing director.

8 Q. Yes. Thank you.

9 If we can go to Kingspan's letter back to the NHBC
10 on 3 August 2014, {KIN00002186}. If we look at the
11 bottom of page 2, this letter is signed by Mr Meredith,
12 but it's copied to Richard Bromwich, Richard Burnley and
13 to you.

14 A. Yes.

15 Q. Do you remember who drafted this letter?

16 A. I believe that will have been drafted between all of
17 those, there would have been input. That -- could
18 I just have a look at some of the content?

19 Q. Oh, of course, sorry. So let's read it:

20 "We write further to your correspondence and the use
21 of Kooltherm K15 in building facades above 18m. We note
22 your comments and would take this opportunity to correct
23 a number of points."

24 In that first paragraph Mr Meredith corrects the
25 NHBC about the type of insulation Kingspan are

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1 producing, making clear it's not a polyurethane but it's
2 a phenolic.

3 A. Yes.

4 Q. Then in paragraph 2 he carries on:

5 "Our significant test portfolio alongside many
6 precedents in gaining approval, standards lobbying and
7 extended involvement with fire consultants over many
8 years has afforded Kingspan with a deep understanding of
9 the regulatory framework in this area. Given Kingspan's
10 confidence the product is fit for purpose and working
11 within this framework our only practical option to
12 demonstrate compliance is via a Fire Safety Engineering
13 Approach, the prohibitive cost and recognised lack of
14 scope of approval within BS8414 and BR135 demands this."

15 Now, just pausing there, do you know what's being
16 referred to by the "significant test portfolio"?

17 A. Yes. There was a significant amount of information
18 logged with NHBC at this time. It will have included
19 obviously the 8414 test result, it will have included
20 the LABC registered details, BBA certificates,
21 small-scale tests, assessments, I believe even some
22 fire resistance testing.

23 Q. In terms of 8414 testing that was in that portfolio, can
24 we agree that that could have only been the 2005 test,
25 which was not carried out on the K15 product actually

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1 sold after September 2006, and the July 2014 test, which
 2 was carried out on the research and development product?
 3 Do you agree, that's all you had at that time?
 4 A. That is all we had at that time.
 5 Q. What standards lobbying and extended involvement with
 6 fire consultants are being referred to in that second
 7 line of that second paragraph?
 8 A. That will have been Ivor's work in British Standard
 9 committees and obviously, you know, over his extended
 10 career.
 11 Q. And the extended involvement with fire consultants over
 12 many years, what's that referring to?
 13 A. Again, it will have been predominantly Ivor's
 14 involvement with various fire consultants.
 15 Q. And who were those fire consultants? Did you know, when
 16 this letter was written?
 17 A. Yes. I believe an awful lot of work was done via Exova.
 18 We had also used -- the names aren't coming to mind, but
 19 there was a significant amount of work done around
 20 fire resistance in other applications, such as timber
 21 frame, that Ivor would have been involved with, that
 22 would have involved fire consultants. There was
 23 a business based in Bristol that I know Ivor had a good
 24 working relationship with.
 25 Q. Just to be clear, none of that work was on 8414 testing,

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1 was it?
 2 A. Some of that work would have been on 8414 testing
 3 with -- sorry, not testing but assessments.
 4 Q. I see. Desktop assessments, extrapolations?
 5 A. Yes.
 6 Q. I see.
 7 Had the significant test portfolio actually been
 8 sent to the NHBC at this time? Kingspan are talking
 9 about a significant test portfolio; to your knowledge,
 10 had that actually been sent to the NHBC so they could
 11 see that?
 12 A. Yes.
 13 Q. Just to finish off this page, you say at the bottom:
 14 "For absolute clarity Kingspan Insulation are
 15 confident Kooltherm K15 can be appropriate for use in
 16 the application and would be deeply concerned by the
 17 implication NHBC may choose to advise industry to the
 18 contrary."
 19 What did that mean, "can be appropriate for use in
 20 the application"? Does that just mean over 18 metres?
 21 A. Yes, essentially all uses of the product were referred
 22 to as applications, whether that was use on a wall, roof
 23 or floor.
 24 Q. Then in the second half of that paragraph, it says:
 25 "In the event NHBC were to offer contrary advice to

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1 the wide industry we would request 14 days prior notice
 2 in order that we may consider our position further.
 3 This is particularly pertinent given the number of
 4 bodies you have undertaken to keep informed."
 5 Then if we can go over the page {KIN00002186/2} and
 6 look at the top paragraph, it said:
 7 "As part of the test portfolio we have completed two
 8 further successful tests to BS8414 Part 2 this year and
 9 currently await their interpretation to BR 135."
 10 Now, what were those two successful tests to
 11 BS 8414?
 12 A. They would have to have been the 2014 tests.
 13 Q. Yes, but which ones?
 14 A. Oh, sorry.
 15 Q. This letter is being sent in August 2014, so you have
 16 got the January 2014 test, the March 2014 test and the
 17 July 2014 test.
 18 A. It would have been the March and July tests.
 19 Q. So you're saying in this letter that that's a successful
 20 test, even though you knew full well that the BRE did
 21 not think so?
 22 (Pause)
 23 A. Yes, it was our interpretation that there was some value
 24 to be taken from that test.
 25 Q. You carry on:

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1 "These tests have been commissioned to demonstrate
 2 a range of approval and include scope for insulation
 3 thickness and cladding finish type. We have also
 4 reached some agreement with regards to extending the
 5 scope of this testing in line with comments from your
 6 Dave White with regards to the possibility to put
 7 flexible insulation fill between the steel frame
 8 studwork."
 9 Now, nowhere in this letter is there any mention of
 10 the fact that both of those tests, March 2014 and
 11 July 2014, were on a trial product that you weren't
 12 actually selling. That's not said in this letter, is
 13 it?
 14 A. No.
 15 Q. Then you go on:
 16 "As with all large and complex buildings a fire
 17 safety engineering approach is recommended as the only
 18 practical way of achieving fire safety. Our test
 19 information and its assessment is intended to best
 20 inform Building Control Professionals in order that
 21 a decision can be made to its appropriateness or as
 22 evidence towards compliance via a fire safety
 23 engineering approach as allowed by our regulations.
 24 Ultimately the success of the specification depends on
 25 acceptance of Building Control and the wider project

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1 team.
 2 "The BS 8414-2 report that is attached is a draft
 3 that does require some slight adjustments. It was
 4 prudent to give you a copy of this document however we
 5 request that this is not circulated ..."
 6 Which test report was that that was being provided?
 7 Was that the July 2014 test?
 8 A. I believe that's the terracotta pass, yes.
 9 Q. Yes. It carries on:
 10 "On receipt of the final test information and ARUP
 11 and BRE assessments this will be introduced into the BBA
 12 Certificate and LABC Registered details however it is
 13 the intention of Kingspan Insulation Limited to share
 14 this information with the NHBC prior to this. We trust
 15 the above meets your approval, should you have any
 16 further questions please do not hesitate to contact
 17 myself or Richard."
 18 Now, can you explain how that letter came to be
 19 written? Serious concerns have been raised by the NHBC,
 20 you know that the DCLG are now involved. Can you
 21 explain how Kingspan have come to write a letter in
 22 those terms, key pieces of information omitted?
 23 A. At the time, it was -- this was all what we believed to
 24 be the position. As we discussed earlier, the change in
 25 the product for these two tests was fully committed to

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1 at that time. It didn't come off in that way, but for
 2 my entire -- the time I worked at Kingspan, it was my
 3 belief that that product was to be launched, and we were
 4 working on that basis, that those tests would represent
 5 product that was being supplied.
 6 Q. What I'm going to suggest to you is that actually it was
 7 a deliberate lie, all of this. It wasn't just
 8 inadvertent; it was a deliberate strategy on the part of
 9 Kingspan to deceive not only the NHBC and other
 10 professionals, but by now potentially DCLG in giving the
 11 response you have just given.
 12 A. That was never my intention.
 13 MS GRANGE: Mr Chairman, is that a good moment?
 14 SIR MARTIN MOORE-BICK: Yes, I think it is, thank you very
 15 much.
 16 Mr Millichap, we're going to have a break now for
 17 some lunch. So we'll return at 2 o'clock, please, and
 18 the usual request: please don't talk to anyone about
 19 your evidence.
 20 THE WITNESS: Of course. Thank you.
 21 SIR MARTIN MOORE-BICK: Thank you very much.
 22 (Pause)
 23 Good, thank you very much.
 24 2 o'clock, then, please. Thank you.
 25 (1.00 pm)

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1 (The short adjournment)
 2 (2.00 pm)
 3 SIR MARTIN MOORE-BICK: All right, Mr Millichap, ready to
 4 carry on?
 5 THE WITNESS: Yes, thank you.
 6 SIR MARTIN MOORE-BICK: Yes, Ms Grange.
 7 MS GRANGE: Yes, thank you.
 8 So just one follow-up question from this morning.
 9 You mentioned at one point that you had some feedback
 10 that all data from test reports, whether or not that was
 11 a pass or fail, was useful data. Can you remember, who
 12 did you get that feedback from?
 13 A. Yes, it would have been through consultants that were
 14 working on assessments for the product. I don't know
 15 specifically, but it was some feedback that Ivor had fed
 16 into the mix, that, you know, there was positives that
 17 could come out of tests that hadn't passed.
 18 Q. Right. And you can't remember who the consultants were
 19 that you're referring to there?
 20 A. No, not specifically. It was relayed to me through
 21 Ivor, so ...
 22 Q. Right.
 23 I want to move on now to ask you some questions
 24 about the involvement of external consultants, so on
 25 that same topic, and starting with the involvement of

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1 Arup in issues around the use of K15 on buildings over
 2 18 metres in height.
 3 If we go to your witness statement, first, on page 6
 4 {KIN00020821/6}, paragraph 3.9. If we start from the
 5 second line down from the top, you say:
 6 "We were also liaising with ARUP and the NHBC
 7 regarding the most efficient testing strategy for K15.
 8 It was not practicable, in terms of time and cost, to
 9 test every single possible variation on a cladding
 10 system build-up and so we were exploring the possibility
 11 of testing the two ends of a realistic scale so that,
 12 subject to both ends testing successfully, NHBC and ARUP
 13 would be satisfied that any variations in between would
 14 also test successfully."
 15 Now, is the time period you're talking about there
 16 in 2014; yes?
 17 A. Yes.
 18 Q. That appears to be the case.
 19 A. Yes.
 20 Q. If we could look also at your witness statement at
 21 page 56 {KIN00020821/56}, paragraph 11.12. You say in
 22 your statement:
 23 "We also had a meeting with Barbara Lane and
 24 Charlotte Roben at Arup on 20 October 2014, in an
 25 attempt to get an academic perspective on what the most

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1 efficient test regime to conduct would be going
2 forwards. They had sympathy for the [difficulty] in
3 gathering a large amount of test data but they did not
4 commit to an answer so the outcome was unsatisfactory
5 from our perspective."

6 So that was the end result; yes? You didn't get any
7 assistance from Arup; is that right?

8 A. Yes, not on the larger project. I believe at the time
9 they had concerns over supporting one particular
10 manufacturer as well.

11 Q. I want to ask now about what you were telling the NHBC
12 about the involvement of Arup.

13 Did you tell the NHBC at any stage that they were
14 unable to commit to an answer and that the outcome had
15 been unsatisfactory from your point of view?

16 A. No, I don't believe I did.

17 Q. If we can look at this point, there's an NHBC report at
18 {NHB00000890}. This is a report that we have been
19 provided with from the NHBC, "Report on the Use of
20 Combustible Insulation Materials within the External
21 Wall Constructions of High Rise Buildings", and within
22 it are various records of meetings that they had with
23 Kingspan.

24 If we can look on page 14 {NHB00000890/14}, first of
25 all, and look at the very bottom of the page, it says:

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1 "Meeting with Kingspan - 10/10/14 MK Office."

2 Is that Milton Keynes office, do you know?

3 A. I'd assume so, yes.

4 Q. And then it shows that the attendees -- you weren't in
5 attendance, but Mr Meredith was, and Mark Swift,
6 together with Steve Evans, Graham Perrior and others of
7 the NHBC, John Lewis, Dave White are the names that
8 we've seen in the correspondence.

9 If we go over the page {NHB00000890/15}, in the
10 middle of the third bullet, we can see it says:

11 "NHBC queried whether the results of both tests
12 (together with any other similar tests which NHBC has
13 not seen) had been viewed by a third party fire
14 engineering consultancy (at previous meetings Kingspan
15 had stated their intention to have results assessed by
16 Arup Fire with a view to extracting key data). Kingspan
17 stated that Arup Fire have been approached but, at the
18 current time, do not hold the expertise in-house to
19 undertake such a review but would consider utilising a
20 PhD student to carry out this work. NHBC stated that
21 the time frame for this is unlikely to assist with the
22 current situation of numerous buildings ... "

23 As far as you're aware, was that true, that

24 Arup Fire had been approached?

25 A. It was, yes. As a result of the meeting with Barbara

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1 and Charlotte there, a second meeting was scheduled at
2 a London office, I believe, with the view to meeting
3 some junior staff, I believe, to explore the potential
4 of a PhD. But as it says there, that was never going to
5 be a short-term ...

6 Q. I see, so that's your recollection of the meeting that
7 you had on 22 October 2014, is it, so after this time
8 that we're looking at now?

9 A. Sorry, my recollection of?

10 Q. Yes, you say that there was a meeting with Barbara and
11 Charlotte in London. Is that the meeting on
12 22 October 2014?

13 A. I'm not sure on the date. It would have been obviously
14 after the first meeting. I didn't think there was that
15 much time between the meetings.

16 Q. And did you attend that meeting?

17 A. I did, in the London office, yes.

18 Q. Is that your recollection of it, that you discussed
19 whether there might be a PhD student available to assist
20 with some work and --

21 A. Yes.

22 Q. -- it wasn't satisfactory, because there wasn't; is that
23 right?

24 A. I don't believe it was dismissed at the time. I thought
25 it was -- there was potential in it for the longer term.

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1 Q. Right.

2 In the fourth bullet point down on the same page, we
3 can see that the NHBC asked:

4 "... what the instruction was from Kingspan to ARUP
5 in requesting their appointment for a fire engineering
6 scoping study. The actual brief as given to ARUP has
7 not been made clear to NHBC and was not fully explained
8 at this meeting."

9 There was no actual brief that had been given to
10 Arup, was there, at this time?

11 A. Not a formulated brief, no.

12 Q. No.

13 A. It was an initial scoping exercise, I suppose.

14 Q. So no such brief was ever provided, was it, because
15 there was no such scoping brief?

16 A. That's right, they weren't able to assist.

17 Q. Was this just another delaying tactic to try and keep
18 the NHBC happy, to try and engage with the likes of Arup
19 and tell the NHBC that's what you were doing?

20 A. No, absolutely not, we hoped that they could add some
21 value. We'd made a similar approach previously to this
22 to the BRE as to whether they could consider, you know,
23 some form of being able to release information
24 generically across their understanding of 8414 testing
25 to help advise industry. Again, they weren't able to

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1 help.
 2 Q. Right.
 3 Let's just look at a couple of emails that were
 4 exchanged between Mr Meredith and Dr Lane. If we go to
 5 {KIN00003915/4}, there's an email on page 4 sent on
 6 14 October 2014, which you're copied in to, and Dr Lane
 7 says:
 8 "Ivor
 9 "I understand you need to meet us urgently.
 10 "I am not clear why so we won't be sending you
 11 a letter."
 12 Then she gives some contact details.
 13 Given that this meeting had not yet taken place with
 14 Arup as at 14 October, can you help us understand why
 15 the NHBC had been told four days earlier on 10 October
 16 that Arup do not hold the expertise in-house to
 17 undertake such a review? Where had that come from?
 18 A. I don't know. I can only assume it would have been
 19 conversations between Ivor and either Charlotte or
 20 Barbara.
 21 Q. I see.
 22 Then on page 3 {KIN00003915/3} we can see that
 23 Mr Meredith responds to Dr Lane, just under an hour
 24 later on 14 October, and at the second paragraph we can
 25 see at the beginning he says:

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1 "Having met with the NHBC last week and presented
 2 recent BS 8414-2 test data that meets the requirements
 3 of BR 135 they desire a third party review our test
 4 information help justify use of our insulation material
 5 in high rise, even though if you followed the building
 6 regulations and copied the construction tested exactly
 7 its use would be acceptable. What the NHBC would like
 8 is evidence that we are entering into a commitment with
 9 a recognised fire engineer to assess the limitations of
 10 our test information against different building types
 11 and uses."
 12 Now, is that right, that it was the NHBC looking for
 13 a third-party review?
 14 A. I don't think it was necessarily one or the other.
 15 I think at this stage we were working together to try
 16 and find a resolution.
 17 Q. Wasn't it Kingspan who had first raised with the NHBC
 18 the potential involvement of external consultants,
 19 including Arup?
 20 A. That's quite possible.
 21 Q. Then if we look within that email, in the middle of the
 22 second paragraph at line 11 -- sorry, it's quite
 23 dense -- there's a sentence that begins:
 24 "We appreciate it would be very un-reasonable to
 25 expect Arup to write a letter of comfort ..."

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1 It's just below the halfway point.
 2 A. Yes.
 3 Q. So he says:
 4 "We appreciate it would be very un-reasonable to
 5 expect Arup to write a letter of comfort until you have
 6 had a proper chance to review the test information we
 7 have collated to date. However if we could have
 8 something to satisfy the NHBC that we are meeting and
 9 trying to move towards a situation where we can jointly
 10 put together a set of rules for the safe use of our
 11 material at height hopefully this would go some way to
 12 appeasing their concerns."
 13 Then we can see on page 2 {KIN00003915/2}, on the
 14 same evening, Dr Lane responds and she says as follows:
 15 "Who are you dealing with at NHBC?
 16 "I am very happy for you to say we are meeting.
 17 "BUT I do not want you to be under any impression we
 18 may agree or support anything you may have on the table.
 19 "We will be very honest with you when we meet and we
 20 are very happy to help so don't take my statement as a
 21 deliberate attempt to be unhelpful.
 22 "But [it] does mean we will probably have to agree
 23 various actions/items before we can be in agreement etc.
 24 "I'll check in with Adam on your conversations but
 25 I did discuss this with Charlotte and expressed concern

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1 about Arup being used in some kind of certification or
 2 proof capacity as we will not be associated with
 3 [products] - for obvious commercial reasons as I'm sure
 4 you can understand.
 5 "I don't want you to be disappointed."
 6 Do you see that?
 7 A. Yes.
 8 Q. Were you aware that that was what Dr Lane was saying
 9 even before the meeting?
 10 (Pause)
 11 A. I believe I will have seen this correspondence. I was
 12 copied in to it. But, honestly, this was at a very
 13 early stage and we hoped that they may be able to add
 14 some value.
 15 Q. I see.
 16 We can see at the bottom of page 1 in this string
 17 {KIN00003915/1} that Mr Meredith responds. He says:
 18 "Sorry but by the way you mentioned that we needed
 19 a letter I assumed you had spoke to Steve Evans and
 20 Graham Perrior from the NHBC whom have specifically
 21 asked for this (although this is perhaps a little
 22 unfair)."
 23 Then he says, "Let's just only discuss this between
 24 Arup and Kingspan and only involve NHBC on job-specific
 25 assessments if there is a need".

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1 Then it appears that you are then copied in to these
 2 emails, because if we go to the very top email in the
 3 chain, page 1, you then say to Richard Burnley:
 4 "[For your information], Ivor has managed to
 5 accelerate this meeting which was not due till Nov.
 6 "I am unsure of the outcome but fear we have no
 7 option but to pursue this to a conclusion either way,
 8 NHBC are close to being very obstructive."
 9 Now, what did you mean by that? In what way were
 10 the NHBC close to being very obstructive?
 11 A. I think this was a way of saying that NHBC were becoming
 12 increasingly impatient and were going to go out to
 13 market suggesting that K15 wasn't appropriate.
 14 Q. Right, yes.
 15 Let's look at the notes of the next meeting with the
 16 NHBC, which was 22 October 2014. If we go to
 17 {NHB00000890/17}, back to that same document, we can see
 18 there was a meeting with Kingspan again on
 19 22 October 2014, and you were in attendance at that
 20 meeting.
 21 A. Yes.
 22 Q. You're said to be there as the European sales director
 23 for Kingspan. Was that right or was that an error?
 24 A. That's an absolute error.
 25 Q. Right, yes.

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1 Then there are bullet points which record NHBC's
 2 note of the meeting, and if we could start with the
 3 second bullet point, we can see:
 4 "NHBC expressed its frustration at lack of movement,
 5 no letter of comfort from BRE, no involvement from Arup
 6 and no confirmation that the BS8414:2 tests are
 7 acceptable given the amount of ongoing burning and
 8 system collapse."
 9 Then you can see in the third bullet:
 10 "NHBC stated that, in its view, Kingspan had given
 11 no additional evidence to support the use of K15."
 12 Then "TM", would that be you, Tony Millichap?
 13 A. Yes.
 14 Q. "... stated that, as the reports showed that the
 15 required Level 2 temperatures were not reached, this
 16 shows that the test was satisfactory.
 17 " TM stated that, although the early termination
 18 criteria of the BS8414:2 test were reached during BRE
 19 Test 293940, in Kingspan's view the wording of the BS
 20 doesn't stated (sic) that this indicates that the test
 21 has failed (subsequent meeting with BRE confirmed that
 22 an early termination of a test does, indeed, indicate
 23 that the test has failed)."
 24 Now, it would appear that you're still referring --
 25 that test number, 293940, that's the March 2014 test,

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1 isn't it?
 2 A. Yes.
 3 Q. So at this meeting you appear to be arguing the case by
 4 reference to that test; is that right?
 5 A. Yes.
 6 Q. Then in the penultimate bullet on page 17, if we can
 7 look right at the bottom of that page, we can see it
 8 says:
 9 "TM stated that, in their view, satisfactory
 10 performance of cladding systems using K15 has been
 11 demonstrated, and so Kingspan saw no reason to progress
 12 this matter further."
 13 Now, did you actually consider that to be the case
 14 at the time, that satisfactory performance of cladding
 15 systems had been demonstrated?
 16 A. No, I'm not sure in exactly what context that's being
 17 said. "Kingspan saw no reason ..." It was clear we were
 18 ongoing committed to the product and demonstrating its
 19 performance, so I don't really understand that comment.
 20 Q. Sorry, the comment seems to say that you're saying
 21 satisfactory performance of cladding systems has been
 22 demonstrated.
 23 A. Yes, but these aren't my words, they're as they've been
 24 transcribed, I suppose, in an open meeting.
 25 Q. I see. So are you saying you didn't say words to that

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1 effect at the meeting?
 2 A. I can't recall specifically, but it wasn't my view at
 3 that time. Our development and, you know, further
 4 support of K15 and its appropriateness was absolutely
 5 ongoing.
 6 Q. Right.
 7 Then in the final bullet point:
 8 "NHBC stated that must now seek to reject the use of
 9 K15 except within the configuration of the first
 10 BS8414:1 test (using a masonry backing) but will accept
 11 justification from Kingspan's fire engineer on a case by
 12 case basis."
 13 Who was that fire engineer, can you help us?
 14 A. I don't believe that was anybody that was appointed at
 15 that point; I think that was an intention moving
 16 forward.
 17 Q. So, what, Kingspan said at the meeting that there was
 18 an intention to appoint a fire engineer in the future?
 19 (Pause)
 20 A. Yes, I believe that was an intention that, you know, if
 21 we were given information concerning specific projects
 22 then we could look into an assessment for that case.
 23 Q. I see. But you can see the way it reads, it sounds like
 24 you have got a fire engineer who can justify using it on
 25 a case-by-case basis.

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1 A. Yes, that wasn't the case.
 2 Q. Right.
 3 If we go now to {KIN00002188}, this is an email from
 4 the NHBC, Steve Evans, to you and Mr Meredith,
 5 24 October 2014, so two days after that meeting. It's
 6 a long email.
 7 It's exhibited to your witness statement, so can
 8 I take it that you have read it and you recall this
 9 email?
 10 A. Yes.
 11 Q. Did you read it at the time in October 2014 when it was
 12 sent to you?
 13 A. I believe I would have done.
 14 Q. I'm just going to summarise the first parts of the
 15 email, because it's quite long.
 16 What happens is the NHBC set out their own detailed
 17 analysis of the two tests carried out in March and July.
 18 They take note of the particular way in which the test
 19 rig had been designed and arranged, and their analysis
 20 does include some criticisms of the systems tested.
 21 So if we could go down the page a little bit, just
 22 above paragraph 3, if you just read the words above
 23 paragraph 3, they say, for example:
 24 "Whilst this arrangement was resistant to early
 25 temperature rise within upper storey levels, the overall

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1 fire behaviour indicated that the façade had only
 2 limited fire resistance and continued to burn
 3 extensively in excess of 30minutes."
 4 So they're making observations on the basis of those
 5 two test reports.
 6 A. Yes.
 7 Q. And they considered the March 2014 test to have been
 8 a fail, as they put it.
 9 A. Yes.
 10 Q. Then if we could go to the bottom of the second page of
 11 his email {KIN00002188/2} -- it's a long email -- I want
 12 to ask you about this part, right at the very bottom.
 13 He says:
 14 "Our interpretation of this is that an 'overall risk
 15 assessment' needs to consider all fire-related risk
 16 factors within the building. Whilst we would consider
 17 this to fall within the role of a fire engineer and, as
 18 such, an assessment to be made on a job by job basis,
 19 the majority of our affected schemes are high-rise,
 20 multiple occupancy residential buildings and so, in our
 21 view, already pose high risks due to ..."
 22 Then he sets out some of those risks
 23 {KIN00002188/3}:
 24 •" Occupants asleep.
 25 •" Defend in place fire strategy (i.e. no

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simultaneous evacuation of the building).
 •" No management control of persons entering the
 building.
 •" No management control over ignition risks .
 •" No management control over occupancy type.
 •" No fire suppression.
 •" No common detection and alarm system (other than
 within the flat of fire origin)."
 He continues:
 "As such, whilst we are happy to continue our
 efforts towards reaching an agreed view on what the
 performance reported from these fire tests truly
 represent, we request further justification be supplied
 by your Fire Engineer on a generic basis as to how the
 on-going burning of the cladding materials up the
 building (as demonstrated in the above tests) can be
 reconciled against the risks posed by a tall residential
 building.
 "NHBC have technically engaged in discussions with
 Kingspan on this issue since 2013."
 Then he goes on and sets out some of the exchanges,
 and he goes on, four lines down:
 "A significant period of time has now been allowed
 for this by NHBC. We had a reasonable expectation that
 you would provide a pro-active method statement at

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1 Wednesday's conference call detailing exactly how
 2 Kingspan intended to resolve the above matters, but
 3 disappointingly that did not occur which I'm sure you
 4 will appreciate now introduces a very difficult position
 5 that cannot be left unresolved. We have now been
 6 informed that a recognised expert in Fire Engineering
 7 Consultancy has indicated that they cannot positively
 8 review the K15 product fire performance data. This has
 9 understandably given NHBC cause for real concern as we
 10 were assured quite some time ago that an independent
 11 expert's review would be undertaken. We will now review
 12 all aspects of this matter and advise you in due course
 13 of the actions we intend to take."
 14 Now, that section there where they're saying, "We
 15 have now been informed that a recognised expert in
 16 Fire Engineering Consultancy has indicated that they
 17 cannot positively review the K15 product information",
 18 was that Arup and Dr Lane, as far as you understood it?
 19 A. As far as I understood it, yes.
 20 Q. They refer to that; were you aware that Dr Lane had
 21 in fact been contacted by the NHBC following your
 22 meeting with her on 20 October 2014?
 23 A. No.
 24 Q. We'll go to that in a moment.
 25 Those risk factors that are set out there so clearly

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1 by the NHBC about the types of buildings that they're
 2 dealing with and that they're concerned about, did that
 3 not prompt any reconsideration by you about whether it
 4 was appropriate to carry on selling K15 into the market,
 5 knowing what you knew about the test data?
 6 A. Yes, I mean, the concerns were there, and we understood
 7 and shared their concerns and were trying to work
 8 towards satisfying those concerns with them. Clearly it
 9 was providing -- proving difficult at this time. We
 10 were exploring a number of options.
 11 Q. You hadn't told them that you had not even tested the
 12 standard product, had you? So they're expressing these
 13 concerns, and in fact the situation is far worse than
 14 they realise, isn't it?
 15 A. I was still of the opinion at this time that we were
 16 intending to launch this new product, and therefore for
 17 projects moving forward, those tests would have been
 18 relevant to the new project -- new product, sorry.
 19 Q. Yes, but what about all those buildings with these risk
 20 factors in them that the NHBC have so clearly spelt out
 21 in this email to you? What about all those buildings?
 22 A. Existing buildings?
 23 Q. Yes, buildings where you're pushing K15 positively as
 24 appropriate at this point based on the July 2014 test.
 25 What about all of those buildings in the interim, before

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1 you've got this new product which you say you were going
 2 to launch?
 3 A. Could you rephrase it again for me? Sorry.
 4 Q. Yes. What I want to understand is why you weren't
 5 giving consideration to the buildings that were having
 6 K15 put on them at this time, K15 which was different to
 7 that that you had tested?
 8 A. That was in consideration, as I explained before, it was
 9 a difficult situation in transition that was not ...
 10 I can't say it was beyond my control, because I should
 11 have protested more, but it was a position which we
 12 didn't anticipate we'd be in given that the replacement
 13 product had been developed and at certain times we felt
 14 was ready to supply. That didn't end up being the case,
 15 and this situation clearly progressed for too long.
 16 Q. Thank you.
 17 Is the reality that you were just in too deep by
 18 this point? K15 was on too many tall buildings and you
 19 had defended its position for so long, it was simply
 20 inconceivable that you would change tack? Is that the
 21 reality now?
 22 A. No, I don't believe it is. We were working with good
 23 intentions towards a product that was suitable. We were
 24 providing evidence that we had at the time for it to be
 25 assessed by people that were responsible for signing off

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1 these buildings.
 2 Q. Now, you said that you didn't know that Dr Lane had been
 3 contacted by the NHBC. I want to show you what she said
 4 back to the NHBC. {NHB000008111/3}. There's an email
 5 on the bottom of page 3 sent by Dr Lane to the NHBC on
 6 30 October 2014 at 12.21. It's to Steve Evans, copying
 7 in Graham Perrior and others, and the subject is:
 8 "Fire performance of PUR and PIR thermoset rigid
 9 insulation boards in building envelopes >18m.
 10 "Importance: High.
 11 "Steve
 12 "I am on holiday but Jamie will call you to sort
 13 dates.
 14 "Arup are actually deeply concerned about the lack
 15 of understanding of assemblies and the ongoing incorrect
 16 use of test reports for individual materials being
 17 applied to more complex building envelope forms.
 18 "The use of highly combustible materials in
 19 residential buildings is now simply an accident waiting
 20 to happen."
 21 Then she carries on.
 22 So is it your evidence that you were not aware that
 23 Arup had written in such strong terms to the NHBC at
 24 this time expressing concern?
 25 A. I don't recall being aware of that, no.

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1 Q. Can we go now to {KIN00002199}. This is a series of
 2 emails between you and the NHBC in early February 2015,
 3 so we have moved forward now in time. If we go to
 4 page 3 {KIN00002199/3}, there's an email of
 5 3 February 2015 at 10.45. We can see that what's
 6 happened is Graham Perrior has tried to call
 7 Ivor Meredith, because Mr Meredith says in the beginning
 8 of this email:
 9 "My apologies for not picking up your call
 10 yesterday, however I have just spoke to Tony whom has
 11 also picked up a message from you."
 12 So it looks like Mr Perrior had been leaving
 13 messages for you and Mr Meredith.
 14 A. Yes.
 15 Q. Then you set out in your email of 3 February 2015, if we
 16 go up to the middle of page 1 {KIN00002199/1}, you have
 17 summarised Kingspan's current position, you have sent it
 18 to Mr Perrior, you have copied in Richard Burnley and
 19 Mr Meredith, and you say:
 20 "As promised I have summarised our current
 21 position ... apologise for the brief format necessary
 22 due to short notice.
 23 "Firstly it is important to reiterate Kingspan
 24 continue to support Kooltherm K15 as fit for purpose in
 25 its intended application. The importance of the product

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1 is not underestimated by Kingspan this being underlined
2 by your comment the product is currently specified in
3 excess of 400 projects to NHBC's knowledge. Similarly
4 we are aware of its intended use and where consulted
5 provide very significant resource in supporting each and
6 every project team to help demonstrate suitability."

7 Now, where you say in the first line of that you're
8 reiterating that Kingspan continue to support K15 as fit
9 for purpose in its intended application, what
10 application are you referring to there?

11 A. The application that we've previously supported via the
12 NHBC, so using the test evidence that we had to support
13 its use.

14 Q. And when had you come to learn that K15 was specified in
15 more than 400 projects to the NHBC's knowledge?

16 A. This must have been recently to this email. It wasn't
17 that number at the meeting I had at the NHBC premises.
18 I'm confident it wasn't that high at that time.

19 Q. And at the end of that paragraph you say:

20 "... and where consulted provide very significant
21 resource in supporting each and every project team to
22 help demonstrate suitability."

23 So you were still going to great lengths to justify
24 the use of K15 on all of those projects, weren't you,
25 where you were consulted?

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1 A. Yes.

2 Q. Then in the paragraph after that you say:

3 "As discussed today our test programme with BRE
4 continues unabated, our aim is to where practical
5 establish outer limits of some of the test variables to
6 allows better interpretation against specific projects.
7 It should be realised this presents some real challenges
8 in terms of cost but more importantly availability,
9 cycle time and the sheer myriad of variables. This
10 includes three successful BS 8414 tests, one onto
11 a masonry substrate ... a combustible and
12 non-combustible cladding system onto a steel frame ...
13 part 2."

14 Now, what are the three successful 8414 tests? We
15 know that 8414-1 test is the 2005 test; what were the
16 two other successful tests?

17 A. This can only be referring to the latter tests in 2014.

18 Q. So March 2014 and July 2014?

19 A. Yes.

20 Q. You're still putting forward March 2014 as a successful
21 test, even though you know by now that the BRE and
22 indeed the NHBC are saying it's a fail?

23 A. It looks that way, yes.

24 Q. You're also not revealing here, are you, that those
25 tests had been carried out on research and development

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1 products that were different to that that you were
2 selling?

3 A. That's correct.

4 Q. Then if we go over the page {KIN00002199/2}, if we could
5 pick it up one paragraph down from the top, you say:

6 "In our view the regulatory framework surrounding
7 the application and solutions leaves some real holes in
8 how to determine compliance, this highlights to Kingspan
9 the importance of the Fire Engineers role in providing
10 project specific assessment is key. We should not
11 forget AD Part B requires all components used within the
12 external wall build up (not just insulation) should be
13 of limited combustibility unless large scale test
14 evidence can be provided."

15 Now, what holes are you referring to there? You say
16 that the regulatory framework leaves some real holes in
17 how to determine compliance; what did you mean by that?

18 A. I think this is purely a reference to the difficulty in
19 demonstrating compliance via that direct route and
20 a test.

21 Q. Had Kingspan raised that matter of those real holes with
22 anybody else, including, say, DCLG, that you felt there
23 were real holes in the regulatory framework?

24 A. We discussed it at length from the point of view of
25 needing to pursue the assessment route, and explaining

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1 that it was nigh on impossible to demonstrate compliance
2 via the more direct route and a test.

3 Q. Right.

4 In the penultimate paragraph you say:

5 "In addressing some of your specific queries around
6 how to handle various aspect of Kooltherm K15's
7 performance we continue to engage with ARUP and will
8 keep you informed with progress."

9 What work was going on with Arup in February 2015?
10 Can you help us?

11 A. I think this could only relate to project-specific
12 queries that I believe, from previous correspondence,
13 Arup didn't rule that out.

14 Q. I see. So not any kind of overarching --

15 A. Not a holistic, no.

16 Q. Was anyone at the NHBC at this point told that there had
17 been a further test to 8414-2 in December 2014 on
18 a system incorporating K15? That test was sponsored by
19 a French company, Carea Façades. Do you remember that?

20 A. I do.

21 Q. Do you remember that being communicated to the NHBC at
22 any point?

23 A. I assume it will have been, yes.

24 Q. That test was terminated early at 29 minutes due to
25 flaming beyond the top of the test rig. We can't see

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1 any evidence of the NHBC being informed about that, but
 2 is it your recollection that they were?
 3 A. I believe there was -- were there two Carea tests? Was
 4 there a pass as well?
 5 Q. I will have to just double-check my notes.
 6 Yes, there were two Carea tests. This one in
 7 December 2014 had been a fail.
 8 A. Erm ...
 9 Q. Yes, there was then apparently a pass in March 2015.
 10 A. Yes. I would be under the impression that both tests
 11 will have been provided. I believe at this time we were
 12 disclosing failed tests as well as passes.
 13 Q. I see. We've not seen any evidence of that, but that's
 14 your understanding, is it, that those failed tests were
 15 provided to the NHBC?
 16 A. Yes. I don't know whether all of them, but absolutely,
 17 Ivor was ... we'd had that discussion and they were
 18 interested in seeing that, so ...
 19 Q. Right.
 20 Then on 5 February 2015, a letter was sent by
 21 Ian Davis, the NHBC's operations director, to you and
 22 copied to Mr Gene Murtagh.
 23 Who is Mr Gene Murtagh? Who was he at the time?
 24 A. The group CEO, I believe.
 25 Q. If we look at the letter, it's [NHB00000922]. The

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1 subject of the letter is "The use of Kooltherm K15
 2 Rainscreen Board in facades above 18.0m". If you pick
 3 it up in the second paragraph down:
 4 "Kingspan market K15 Rainscreen Board with the claim
 5 that '... it has been successfully tested to
 6 BS 8414:2002, and can meet the criteria within BR135,
 7 which makes it acceptable for use above 18.0m ...' This
 8 wording appears on the front page of the K15 product
 9 literature dated March 2011 which is on your website."
 10 We know that that product literature stayed in place
 11 until 2016.
 12 Then they say:
 13 "Being aware that the current BBA certificate for
 14 the K15 product, dated December 2013, does not provide
 15 the necessary evidence to fully support this claim, we
 16 have been requesting evidence from Kingspan, since early
 17 2014.
 18 "We are disappointed that despite commitments from
 19 Kingspan to engage Fire Engineer expertise or carry out
 20 substantial additional testing to demonstrate that
 21 alternative typical wall build-ups are acceptable to
 22 BR 135, to date none of this has come to fruition and no
 23 evidence has been provided to us that demonstrates that
 24 K15 can be used in facades over 18.0m in any other
 25 configuration than that detailed in the current BBA

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1 Certificate .
 2 "The absence of evidence from Kingspan means we will
 3 soon be faced with having to decline to accept buildings
 4 which are currently under construction and have
 5 specified the K15 product in facades above 18.0m, for
 6 risk management purposes as a provider of defects
 7 liability insurance and in many cases also as the
 8 approved inspector, unless the builders concerned can
 9 provide evidence themselves in accordance with BCA
 10 Guidance Note 18 ...
 11 "The absence of evidence also means we now have to
 12 advise builders registering new developments with us
 13 that if they specify the K15 product for use in facades
 14 above 18.0m, they will have to provide this evidence
 15 themselves in accordance with BCA Guidance Note 18. We
 16 are preparing our communications plan and intend
 17 informing our builder customers of our concerns at the
 18 earliest opportunity, however for your information, this
 19 will not be within the next 14 days."
 20 Now, do you remember receiving that letter?
 21 A. Yes.
 22 Q. What was your reaction to it when you received it?
 23 A. Obviously with the people it was directed towards,
 24 you know, it obviously jumped to the top of the list of
 25 what we were having to address at that time.

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1 Q. Did you think to yourself: well, they don't even know
 2 the full story, this is what they're proposing to do and
 3 they don't even know that what we've successfully tested
 4 this year was a trial product? Did that occur to you
 5 when you were reading this?
 6 A. No, it didn't occur to me.
 7 Q. Did you discuss the content of the letter with
 8 Mr Gene Murtagh at any stage?
 9 A. No, not directly .
 10 Q. Did you ever discuss with him that what you had been
 11 testing was a trial product and that was different to
 12 what you had sold?
 13 A. I didn't.
 14 Q. Do you know whether anybody else did at the time?
 15 A. I'm not aware. There will have been conversations.
 16 Obviously this was managed through myself, but obviously
 17 involving the managing director at the time and other
 18 legal representatives .
 19 Q. Were you involved in dealing with the response to this
 20 letter?
 21 A. I believe, yes, I co-ordinated it .
 22 Q. You co-ordinated that response.
 23 It's right, isn't it, that the response to this
 24 letter came not from Kingspan but from Kingspan's
 25 solicitors at the time, Fenwick Elliott; do you remember

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1 that?
 2 A. I believe so, yes.
 3 Q. Again, none of this is mentioned in your witness
 4 statement. Can you explain why this wasn't highly
 5 pertinent information for the public inquiry to be aware
 6 of, these events?
 7 A. Yes. I wasn't in a position to fully set this out at
 8 the time. I knew there were disclosures supporting the
 9 evidence. I answered the questions that were posed to
 10 me on the understanding that that wouldn't have been,
 11 you know, the full amount of evidence. I appreciate
 12 this correspondence would have been offered as well.
 13 Q. I see.
 14 You were posed a number of questions by the Inquiry
 15 about the NHBC's concerns. Did it just not occur to you
 16 that this might be relevant? What were your thought
 17 processes?
 18 A. I believe they were addressed in some of the later
 19 questions. I didn't feel it was appropriate for me to
 20 represent these ... I'm not sure on the right way to
 21 phrase it. I didn't think it was my place to represent
 22 what had happened at this stage, that the legal team had
 23 got involved.
 24 Q. I see.
 25 A. I believed that, you know, that was above my pay grade

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1 at the time, and particularly given the amount of time
 2 that had passed in the interim, and I'd worked in
 3 another role for in excess of five years, I was very
 4 keen not to misrepresent what had happened at that time,
 5 and it was, you know, very difficult to be confident
 6 that I would recollect it accurately.
 7 Q. Is there anything else that you didn't mention about the
 8 K15 story in your witness statement on the basis that
 9 you felt it was not your place to mention it?
 10 A. No, I don't believe that there is.
 11 Q. Let's look at the letter that was sent. It's at
 12 {KIN00008283}, and this letter contains a threat to
 13 injunct the NHBC in order to prevent them from going
 14 ahead with their stated plan to advise builders that the
 15 use of K15 on buildings with a floor over 18 metres
 16 required proof of compliance in accordance with the
 17 requirements of the BCA guidance note.
 18 The letter claims that to make any such statement
 19 would constitute negligent misstatement and defamation
 20 on the part of the NHBC, that's on the page 3 of the
 21 letter {KIN00008283/3}, going over to page 4:
 22 "Given what we have said above, it is clear that
 23 there is no justification for taking the steps outline
 24 in your letter of 5 February 2015. Taking such steps
 25 would cause our client very significant financial loss.

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1 They are not properly justifiable from the tests which
 2 have been carried out. They would amount to actionable
 3 negligent misstatements of the true position."
 4 Can you explain how this letter came to be written
 5 in circumstances where you knew that the product that
 6 had been tested was different from that which Kingspan
 7 was selling to market?
 8 A. No, this letter was compiled with reference from lots of
 9 colleagues at the time. I was the point contact with
 10 Toby Randle at this point, but I was co-ordinating a lot
 11 of responses from different people within the business.
 12 Q. But were there other people within the business that had
 13 a better knowledge than you about the test evidence and
 14 what that could support for K15? There wasn't, was
 15 there? That was you and your department as head of
 16 technical?
 17 A. Yes, that's the case.
 18 Q. So there couldn't have been anyone else who knew about
 19 other tests, could there?
 20 A. No.
 21 Q. At this point, were others in Kingspan informed that the
 22 product that had been tested was not the same as that
 23 which was being sold?
 24 A. Others in Kingspan informed by myself?
 25 Q. Yes.

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1 A. There would have been others that were clearly aware.
 2 Q. And who were those others, at this point, by this time?
 3 A. At this time, given that the development product which
 4 had passed tests wasn't available to market, it would
 5 have been all of those people that were aware the
 6 product hadn't been launched.
 7 Q. And including Mr Gene Murtagh as well, who NHBC had been
 8 writing to?
 9 A. I don't have -- I wouldn't be aware either way.
 10 Q. Right.
 11 A. I don't know what he was informed.
 12 Q. But Mr Pargeter?
 13 A. I can't recall the extent of the meetings that Adrian
 14 was involved in over this period. He was in a marketing
 15 role which did have an involvement in these discussions.
 16 Q. And what about Mr Burnley? Did he have any input at
 17 this time into how this response was written and --
 18 A. Yes, he will have had.
 19 Q. And was he made aware that what was tested was not that
 20 which was being sold?
 21 A. I don't know that he was specifically made aware. That
 22 information would have been available to him.
 23 Q. Yes. I think earlier you said it was common knowledge
 24 within Kingspan; yes?
 25 A. Yes. Around the people that attended those meetings

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1 with the fire focus group.
 2 Q. Was that your own view at the time, that the NHBC's
 3 proposed statement to builders was unjustifiable? Did
 4 you hold that view?
 5 A. I recognised and understood their concerns. My efforts
 6 at the time were directed towards finding a resolution.
 7 I don't believe that we stopped communication with the
 8 NHBC, and therefore ... it's not my opinion that there
 9 was no justification; it is my view that we were
 10 continuing to try and work collaboratively to reach
 11 an agreement.
 12 Q. Right.
 13 The basis for the assertion that the NHBC's position
 14 was unjustifiable appears on page 2 of the letter
 15 {KIN00008283/2}, at bullet points 1 and 2 particularly.
 16 We can see there it says:
 17 "As regards the specific points made in your letter,
 18 we make the following points ...
 19 "1. Our client's statement ..."
 20 And then we have the same statement that the product
 21 "has been successfully tested to BS 8414":
 22 "... remains true and accurate. In support of this,
 23 our client relies upon fire tests undertaken. By way of
 24 example, we refer you to BRE test reports numbered
 25 220876 and PN297099."

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1 So that's 2005 and July 2014. So you're relying on
 2 the July 2014 to say it remains true and accurate, even
 3 though the K15 that was tested is different to the K15
 4 you're selling; yes?
 5 A. Yes.
 6 Q. Then it goes on:
 7 "2. Cladding systems comprise a number of different
 8 a number of different components. Such cladding systems
 9 as a whole are tested and assessed ... not their
 10 individual components. As we understand the position,
 11 your concern is that a cladding system which includes
 12 (among numerous other components) Kingspan's K15 boards
 13 has failed a fire test."
 14 Now, that wasn't their concern, was it? They
 15 weren't concerned that there had been one system failed
 16 test; they were concerned that there was absolutely no
 17 test data that could support K15 in the wide range of
 18 situations that you were trying to sell it. That's
 19 right, isn't it?
 20 A. They were concerned there wasn't sufficient data, yes.
 21 Q. Yes.
 22 Then if you look at point 4 on this page, it says:
 23 "4. Even where systems have not satisfied the
 24 acceptance criteria of BR135, it is clear that this has
 25 been as a result of the outer layer being combustible

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1 ... Systems incorporating non-combustible outer layers
 2 have been shown to comply with the assessment criteria.
 3 Accordingly, the insulating layer is not the determining
 4 factor in whether the system meets the acceptance
 5 criteria or not."
 6 Now, just taking those first few lines:
 7 "Even where systems have not satisfied ... 135, it
 8 is clear that this has been as a result of the outer
 9 layer being combustible ..."
 10 Again, that's simply not right, is it? There had
 11 been prolonged burning of the K15 noticed in a number of
 12 tests, both in 2014 and 2008 and 2007, so how can it be
 13 said that it's as a result of the outer layer being
 14 combustible?
 15 A. I think an outer layer being combustible will
 16 contribute.
 17 Q. But that's not my question. It's about in fact what had
 18 happened about K15. And, as we've seen, the NHBC
 19 themselves had noticed the K15 with ongoing burning; we
 20 had that back in 2007 and 2008 with ongoing burning. So
 21 how come Kingspan are writing this letter saying it's
 22 clear it's been as a result of the outer layer being
 23 combustible?
 24 A. The ongoing burning doesn't preclude demonstrating
 25 compliance to the test. I believe this is pointing out

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1 that an outer layer can contribute.
 2 Q. I see.
 3 Now, I want to take you back to your witness
 4 statement now and look at page 49 {KIN00020821/49},
 5 paragraph 10.4. You tell us about a meeting you
 6 attended at the NHBC with Richard Burnley and
 7 Ivor Meredith on 5 March 2015. You say:
 8 "At the meeting I attended, there were three
 9 Kingspan personnel (Ivor, me and Richard), and between
 10 six and twelve NHBC personnel. There were a number of
 11 specific construction types on which the NHBC were
 12 looking to us to retrospectively validate the use of
 13 K15. We agreed to a programme of fire performance
 14 testing to provide that information for the NHBC. I do
 15 not remember the specific construction types that the
 16 NHBC was interested in but all were in relation to the
 17 use of K15 on buildings over 18m."
 18 Now, can you remember anything else about what was
 19 discussed at that meeting with the NHBC on 5 March 2015?
 20 A. Yes. I think that there was representations from NHBC,
 21 I don't recall the specific content, and I believe that
 22 the culmination of the meeting was to move forward with
 23 an agreed test programme that they would have input to.
 24 Q. Right.
 25 Let's look at an email you sent after that meeting,

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1 it's {KIN00002204}. I want to start with the second
 2 email from the top which you send on 5 March 2015 at
 3 17.08 to Richard Burnley, Mr Meredith, Peter Wilson,
 4 Tommy Reilly -- who is Tommy Reilly?
 5 A. I believe he works for Lorcan Dowd at Group. I'm not
 6 entirely sure on his title.
 7 Q. When you say "at Group", what does "at Group" mean?
 8 A. Kingspan Group.
 9 Q. Right, yes, I see.
 10 Then John Garbutt and Toby Randle, so that's
 11 Fenwick Elliott, are copied in, and you say:
 12 "All this is a very brief summary of today's
 13 meeting. To me this somewhat differs from the tone of
 14 the meeting and I would suggest is due to not wanting to
 15 concede anything in writing. If I could have any
 16 comments I will consolidate a reply."
 17 Now, what do you mean by that? You say it's a very
 18 brief summary of the meeting, and we will go to that
 19 summary in a moment. You say:
 20 "To me this somewhat differs from the tone of the
 21 meeting and I would suggest is due to not wanting to
 22 concede anything in writing."
 23 What do you mean by that?
 24 A. I could only mean that I don't believe the content of
 25 their summary exactly reflected my experience at the

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1 meeting.
 2 Q. Can you help us in what way you didn't think the summary
 3 reflected your experience of the meeting?
 4 A. I seem to recall that the meeting ... I believe the
 5 meeting started quite combative, if that's the right
 6 word. I don't think it is, but ... it was by no means
 7 uncomfortable but there was definitely a firm opening to
 8 the meeting, and as is often the case, the meeting
 9 concluded much more amicably, in that we agreed how we
 10 could try and move things forward.
 11 Q. I see.
 12 What was it that you thought the NHBC would not want
 13 to concede in writing? Do you see you have said that
 14 there?
 15 A. Yes.
 16 Q. Can you help us as to what you mean by those words?
 17 A. No. It may help if I could see --
 18 Q. Yes, sorry, let's go to the summary, {NHB00000977}.
 19 This summary records five members of the NHBC being
 20 present. You said in your witness statement it's
 21 between six and 12 NHBC personnel. On this note it
 22 looks like there were five members of the NHBC there.
 23 Does that sound right?
 24 A. No, honestly, to me it felt like there were more than
 25 that there.

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1 Q. Right.
 2 A. I only knew a couple of the people in attendance.
 3 Perhaps somebody was part-time in the meeting, I'm not
 4 sure.
 5 Q. Was what you were alluding to in your email that the
 6 NHBC themselves were in difficulty, having signed off
 7 hundreds of high-rise buildings with K15 and then having
 8 become aware that there was no test evidence to support
 9 that? Is that one of the things you think was going on
 10 in this meeting?
 11 A. Yes. To me, that would be the most obvious concern that
 12 they would have, the existing liability.
 13 Q. Yes.
 14 Then there's a number of actions, agreed actions.
 15 Action point 1 says:
 16 "Details of test programme (wall typologies,
 17 timescales/duration and sequencing) to be provided to
 18 NHBC."
 19 That's got your initials, "TM/IM". So that was
 20 further upcoming testing in 2015; yes?
 21 A. Yes.
 22 Q. Then action point 4:
 23 "Available test data and assessments to be
 24 finalised, consolidated and shared with NHBC."
 25 A. Yes.

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1 Q. Can you help us as to what the agreement was on that,
 2 "Available test data and assessments to be finalised,
 3 consolidated and shared", is that new test data, old
 4 test data, can you remember?
 5 A. Not specifically. I would assume it would mean just
 6 to -- the consolidation part rings the strongest bell,
 7 that it was about just making sure that everything we
 8 had, they had, and in one place, so that it was clear
 9 and obvious.
 10 Q. Then action point 3 in this document is:
 11 "NHBC to discuss widening/amending scope of options
 12 for demonstrating compliance stated in BCA Guidance
 13 Note."
 14 So just to put it in context, by this time we've got
 15 BCA Technical Guidance Note 18 issue 0 which was in
 16 June 2014. The next issue came out in June 2015. Is it
 17 right that Kingspan at this meeting were asking for that
 18 technical guidance note to be widened in scope for
 19 options for demonstrating compliance?
 20 A. No, I don't think so. I seem to recall the widening of
 21 the BCA guidance note happened much more quickly than
 22 that from issue 0 to 1. Was there a year within that,
 23 did you say?
 24 Q. Yes.
 25 A. Right. The only recollection I have of that is in

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1 recognising the fire engineering route within that
 2 guidance, which --
 3 Q. Yes.
 4 A. -- wasn't in the original.
 5 Q. Yes. And is it right that it was Kingspan that asked
 6 for that fire engineering route to be put into the next
 7 version of BCA Technical Guidance Note 18?
 8 A. Yes, I believe we pointed that out as we felt it was
 9 an omission.
 10 Q. Yes. You tell us that in your witness statement at
 11 paragraph 4.37 on page 17 {KIN00020821/17}, if we could
 12 go to that. You say:
 13 "I recall that, in 2014, the [BCA] published
 14 a Technical Guidance Note which crystallised three of
 15 the four available routes to compliance under the
 16 building regulations ... We spotted that the BCA had
 17 missed one of the routes to compliance out of this
 18 document - the fire safety engineering route. We
 19 alerted them to this, they corrected it and re-issued
 20 the amended note. I believe that Ivor Meredith handled
 21 this and it would have been dealt with over the phone.
 22 I don't think it was Kingspan solely that alerted this
 23 to the BCA and so contributed to that change. I think
 24 the NHBC had some input."
 25 It would appear from the notes of the meeting that

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1 that was discussed in that March 2015 meeting.
 2 A. Yes.
 3 Q. Would you agree?
 4 I now want to ask you some more questions about
 5 Mr Meredith, his role and his responsibilities and your
 6 relationship with him.
 7 Would it be right that you worked very closely with
 8 him during the period 2010 to mid-2015?
 9 A. Yes, I'd say it got closer the longer that went on.
 10 Q. How would you describe your working relationship during
 11 that time?
 12 A. I would say overall professional, difficult at times,
 13 but productive.
 14 Q. Yes.
 15 It's right, isn't it, that Mr Meredith's role was
 16 extremely wide-ranging and at times onerous in terms of
 17 what he was responsible for? Would you agree?
 18 A. Yes, it was a responsible role.
 19 Q. So he was responsible for all the BS 8414 system
 20 testing, including selecting the materials, designing
 21 the rig, being on site, reporting back.
 22 He was the person with day-to-day responsibility for
 23 some of the BBA certification; yes?
 24 A. In an assisting role, I think, yes.
 25 Q. Yes. Technical advice, he was training teams of

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1 frontline advisers, supporting technical advisers,
 2 dealing with specialist queries.
 3 A. Yes.
 4 Q. Dealing with issues with contractors.
 5 A. Yes.
 6 Q. And he also led up the discussions with the NHBC for
 7 a very long time, didn't he?
 8 A. Yes, at the outset, yes.
 9 Q. Did it ever occur to you that he might have had just too
 10 much to do during that period, it was just too much
 11 pressure?
 12 A. Yes, absolutely, it was something that we discussed very
 13 regularly. Joel Clarke was brought in to assist with
 14 his workload at various times, there were numerous
 15 colleagues that he could delegate and rely on as well.
 16 Q. We know that Mr Meredith's employment with Kingspan was
 17 terminated on 19 August 2015 following disciplinary
 18 proceedings against him. Were you aware of that? You
 19 must have been, presumably.
 20 A. This was after I left.
 21 Q. Actually, sorry, to be fair, yes.
 22 A. But I was aware of it, yes.
 23 Q. Did you ever discuss that at any point with Mr Pargeter
 24 or Mr Burnley?
 25 A. Yes. Sorry, not -- I didn't discuss his dismissal,

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1 I didn't have contact with Kingspan after I left, but
 2 I had raised similar concerns on a number of occasions
 3 prior.
 4 Q. Right.
 5 Did you ever discuss some of the things that
 6 Mr Meredith said during his disciplinary hearings about
 7 what had been happening with K15, the number of
 8 buildings it was on, the difficulties that Mr Meredith
 9 had had in the business trying to maintain Kingspan's
 10 position? Was that ever discussed with you?
 11 A. Within -- as a result of his disciplinary?
 12 Q. Yes.
 13 A. No, not after that, no.
 14 Q. Mr Meredith appealed his dismissal and he met with
 15 Mr Burnley and Elaine Gale, a human resources adviser
 16 for Kingspan, on 3 September 2015. What I want to do,
 17 I'm going to take you to some of the passages from that
 18 disciplinary hearing and just ask you about them.
 19 A. Okay.
 20 Q. In that meeting, he spoke of the stress he had been
 21 under at Kingspan. If we can go to the transcript of
 22 that meeting, it's {KIN00008681}, and I just want to
 23 look at just some of the passages with you. So these
 24 are the notes of the appeal meeting.
 25 If we go to page 5 {KIN00008681/5}, in the third

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1 paragraph it begins "EG", Elaine Gale:
 2 "EG: As I understand it your role, or the work that
 3 you do has been fairly critical. In terms of Kingspan's
 4 product being approved, in terms of fire safety?"
 5 "IM: Yes I would say that I have been put in
 6 a situation where I have had to maintain performance
 7 that perhaps our products don't deserve. I have the
 8 ability to show that our products can be used in areas
 9 where you would normally require material which would be
 10 non-combustible; from a critical lifesaver perspective.
 11 I have performed in a number of tests in 2005, Kingspan
 12 changed the technology of our foam and we couldn't
 13 repeat those tests. We were outed by a consultant who
 14 we then had to fabricate a story to that the product
 15 still said what it did [on] the tin. Although I bucked
 16 at that point and said to my manager, at the time, that
 17 we are stretching the truth here and what we are going
 18 into an area ... where we cannot support the performance
 19 of the product. I wasn't the senior person there, we
 20 produced documentation and we inferred to the industry
 21 that our product could do something that potentially it
 22 couldn't."
 23 Do you have any reason to take issue with anything
 24 that Mr Meredith has said in that paragraph about what
 25 had happened about K15?

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1 A. Only that this wasn't the view that he'd represented to
 2 me. As we said before, Ivor and myself did work very
 3 closely. I believe I had his best interests at heart as
 4 well as the company's. I did accept his position was
 5 challenging. He did have some troubles himself, which
 6 I tried on a number of times to support him through. So
 7 what -- I don't doubt that it was his view, I just don't
 8 recognise that as the way -- our working relationship.
 9 Q. I see.
 10 A. He believed in the product, what we were trying to
 11 achieve, as did I.
 12 Q. When he states in the fourth line up from the bottom:
 13 "... we are stretching the truth here and what we
 14 are going into an area ... where we cannot support the
 15 performance of the product."
 16 That was true, wasn't it? You were constantly
 17 stretching the truth and you had gone into an area where
 18 you couldn't support the performance of the product. He
 19 is not wrong about that, is he?
 20 A. I don't think I would phrase it that way. I think at
 21 all times we were providing the information we had for
 22 others to make a judgement.
 23 Q. If we keep going with this transcript, EG says:
 24 "EG: With respect, this was 10 years ago.
 25 "IM: No this was about 8 years ago now.

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1 "EG: You just said to me that this was 2005.
 2 "IM: This was when the testing was done. What's
 3 happened in the last 18 months, longer than that
 4 actually, a lot of those projects that we have sold into
 5 have started to come back and start to question that
 6 performance."
 7 Now, that's correct, isn't it? In the 18 months
 8 prior to this, in August 2015, a lot of projects had
 9 started to come back and question K15's performance?
 10 A. Yes.
 11 Q. Then he says:
 12 "I have been under a great deal of pressure to
 13 actually maintain that performance when it is evident
 14 through testing that our product struggles with that."
 15 He is right about that too, isn't he?
 16 (Pause)
 17 A. The product wasn't appropriate in every scenario, so
 18 yes, that can be read correctly, yes.
 19 Q. Then he goes on:
 20 "We have obviously had to ... I have been very busy
 21 doing a large amount of at thing, there was technology
 22 that could pass, but we were struggling to get the
 23 technology to pass, to justify our lie."
 24 Again, that's correct, isn't it? There was a large
 25 amount of testing and you were struggling to get the

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1 technology to pass, to justify the lies that had been
 2 told about K15?
 3 A. Obviously this is the first time I've seen any of this.
 4 I wasn't around at Kingspan at this time. I can see
 5 that that's Ivor's point of view.
 6 Q. Well, do you agree with it, sitting here today, given
 7 all that we have been through?
 8 A. I believe, yes, there was a period of time towards the
 9 end of my tenure where it's been shown to be clear today
 10 that the product that we were supplying wasn't
 11 represented by some of the tests.
 12 Q. If we go back up the page, sorry, I had skipped
 13 a passage. So looking at that first main paragraph at
 14 the top of the page, he says:
 15 "I have performed in a number of tests in 2005,
 16 Kingspan changed the technology of our foam and we
 17 couldn't repeat those tests."
 18 That's correct, isn't it? Do you see that in the
 19 middle of that paragraph?
 20 A. From 2005, based on what we know now, yes.
 21 Q. Yes, and then he says:
 22 "We were outed by a consultant who we then had to
 23 fabricate a story to that the product still said what it
 24 did [on] the tin."
 25 Mr Meredith explained that what he is referring to

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1 there is Wintech were the consultants that outed
 2 Kingspan; that's right, isn't it?
 3 A. They definitely represented their concerns, yes.
 4 Q. Yes, then he says:
 5 "Although I bucked at that point and said to my
 6 manager, at the time, that we are stretching the truth
 7 here ..."
 8 Now, is that right, that he bucked at that point and
 9 he said to his manager -- that would be you, wouldn't
 10 it? -- "We're stretching the truth here?"
 11 A. I don't recall that conversation.
 12 Q. So he didn't say that to you at any stage?
 13 A. No, not that I recollect.
 14 Q. Do you recall correspondence where Mr Meredith told you
 15 that he was becoming increasingly concerned about the
 16 fact that Kingspan were having to give specific
 17 confirmation that K15 was suitable for use on high-rise
 18 projects?
 19 A. Could you repeat, please?
 20 Q. Yes, let's look at some correspondence. {KIN00005894}.
 21 I think this is an email we've looked at before. It's
 22 the second email from the top of the chain. We looked
 23 at this early on in your evidence yesterday. He says:
 24 "Tony,
 25 "I'm getting increasingly concerned about the number

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1 of K15 projects that the NHBC are involved in and the
 2 fact that they are referring to us for confirmation that
 3 the product is suitable."
 4 Do you see that there?
 5 A. Yes.
 6 Q. He did raise concerns with you in writing, didn't he,
 7 about the fact that K15 was coming under increasing
 8 pressure to be justified on projects?
 9 A. Yes.
 10 Q. If we then go back to those disciplinary notes,
 11 {KIN00008681/5}, at the very end of the page,
 12 Elaine Gale says:
 13 "EG: But given what you said in that your
 14 difficulties started 18 months ago, the seriousness,
 15 I am para-phrasing, you found it difficult to cope, my
 16 concern here is that with such a critical role, with
 17 your difficulties, that it could cause quite serious
 18 problems for the company could it?"
 19 Over the page {KIN00008681/6} he says:
 20 "IM: Yes, and I was doing everything that I could."
 21 Then he says this:
 22 "My boss was having a troubled time at the time
 23 anyway, he was feeling particularly pressured as his
 24 boss was leaving and he was worrying about what he could
 25 do and he was worried that his old boss would come in

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1 above him."
 2 He appears to be referring to you there.
 3 Were you having a troubled time because you felt
 4 pressured because your boss was leaving? Is that right?
 5 A. No, I wouldn't have described it as a troubled time.
 6 I did at this time go through the process -- I put
 7 myself forward as a replacement for Malcolm Rochefort at
 8 the time. I didn't get that role. He could be
 9 referring to that, that I was obviously, you know, very,
 10 very busy at that time trying to juggle the day job
 11 alongside, you know, putting myself forward for these
 12 things.
 13 Q. And the reference to "he was worried that his old boss
 14 would come in above him", was that a reference to you
 15 being worried that Philip Heath would come in above you?
 16 A. Yes, I think that could be true. The first time I left
 17 Kingspan was on -- part of my thinking -- it's not fair
 18 to say it was the only reason, there was an opportunity
 19 as well, but part of my thinking was that I was stuck
 20 underneath my manager at the time, and, you know,
 21 I didn't see that he was moving on any time soon, so
 22 I was keen to progress my own career.
 23 Q. I just want to look at two more pages of these notes.
 24 If we go to page 7 {KIN00008681/7}, it's quite dense,
 25 this part, but if you look at the part where there has

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1 been a redaction, you can see at the end of the line
 2 where there is a redaction it begins:
 3 "Also my colleague Adam Heath who has dealt with
 4 a lot of the high rise issues, he was suffering stress,
 5 because of the battering we were getting. It was very
 6 difficult, we were aware that anything that we said
 7 could have caused a legal problem for Kingspan we had to
 8 be very careful in what we wrote and to be honest
 9 I didn't have a lot of support and understanding from my
 10 managers at that time because my boss Tony Millichap was
 11 moving to another job role, so in his last month he
 12 removed all of his responsibilities and said 'that's
 13 your choice now'. There was no-one out there ... that
 14 was no specialist in the marketplace. It was on my
 15 shoulders to make all of the decisions ..."
 16 Now, did that occur? Did you say something to the
 17 effect of, "It's your choice now, I'm moving on?"
 18 A. I don't think I'd have used those words, but there would
 19 have been a period that I would have needed to extract
 20 myself from day to day. There was ... I believe
 21 Mr Pargeter was -- you know, it was known he was coming
 22 into the role. So, yes, I could have said something to
 23 that effect, but I don't believe it was those words.
 24 Q. Okay.
 25 If we carry on reading, so he says:

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1 "There was no-one out there ... that was no
 2 specialist in the marketplace. It was on my shoulders
 3 to make all of the decisions, and if anything I kept our
 4 heads above water during that time, and although I might
 5 have been accused of parking some of my important
 6 projects, at least the 230 high rise buildings that were
 7 being, that could have asked to remove the Kingspan
 8 insulation off them, they were never, as far as I am
 9 aware, we managed to evade the problem. Kingspan
 10 couldn't say that we were completely happy with the
 11 construction because we weren't ... we couldn't
 12 high-light it to the person we sold it to and the person
 13 at NHBC that it was an issue, so I mean Adrian was very
 14 busy as soon as he took over the role, sales team."
 15 Do you agree with Mr Meredith that there were at
 16 least 230 high-rise buildings that could have asked to
 17 remove K15 on them because it was non-compliant?
 18 A. Yes, there was a potential for that, if they were
 19 discovered as non-compliant. I don't think -- yes, if
 20 they were non-compliant.
 21 Q. Do you agree that Kingspan couldn't say they were
 22 completely happy with the construction of those, as
 23 Mr Meredith has explained here?
 24 A. Not en masse, no, they would have to be taken on
 25 individual merit.

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1 Q. Then finally in these notes, if we go to page 12
 2 {KIN00008681/12} and look at the third paragraph down,
 3 he says there:
 4 "IM: It's only really that I don't think that Adrian
 5 was aware of my work load ... if you read my previous
 6 arrangements with Philip Heath and Tony, it was just my
 7 diary that represented my location ... Also in my
 8 Improvement Notice from Tony, what he had noted was that
 9 I was going to a meeting and I was staying in that
 10 meeting room after the meeting. I was just working
 11 away ... doing that because when I went back to my desk
 12 I would have a queue of people outside of my office."
 13 Then if you keep going down, if you look on the
 14 right-hand side, there is a word "but".
 15 A. Yes.
 16 Q. He says:
 17 "... but there was a lot of critical stuff going on,
 18 that could have resulted in major claims against
 19 Kingspan; so I had to keep my head above water, and sort
 20 it out for Kingspan."
 21 Now, you instruct Ivor Meredith to defend the
 22 position in writing when the compliance for K15 was
 23 challenged; do you remember that? We looked at that.
 24 A. Is there a specific ...?
 25 Q. We've looked at an email from December 2013 where you

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1 say, "We will need to defend the position in writing.
 2 Ivor, do you have a draft response outlining the
 3 technical position?" Do you want me to take you to
 4 that?
 5 A. No, that's fine. Yes.
 6 Q. Mr Meredith's right about that, isn't he, that there was
 7 a lot of critical stuff going on that could have
 8 resulted in major claims against Kingspan, and so he had
 9 to try and sort that out, didn't he, that significant
 10 problem?
 11 A. Yes. I don't think that was entirely on his shoulders,
 12 but yes, he was a big part of the team.
 13 Q. Would you agree that the figure he's given in these
 14 notes of 230 buildings is quite possibly
 15 an underestimate, given other documents we've looked at
 16 today?
 17 A. Yes.
 18 Q. What would your estimate be of the number of buildings
 19 that K15 went on?
 20 A. There was an outside figure of 400, but I wouldn't --
 21 just in connection with the NHBC. I don't know what
 22 proportion of that ...
 23 MS GRANGE: I see.
 24 Mr Chairman, I have come to the end of my questions.
 25 SIR MARTIN MOORE-BICK: Yes, very well.

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1 MS GRANGE: So if we could have maybe the normal break.
 2 SIR MARTIN MOORE-BICK: I think we will have the normal
 3 break now, and that ought to allow an opportunity for
 4 reflection and collection.
 5 MS GRANGE: That should, yes. Thank you.
 6 SIR MARTIN MOORE-BICK: Well, counsel thinks she has
 7 finished with her questions, but we always have to give
 8 an opportunity not only for her to check, but for other
 9 people to come in with their suggestions for questions
 10 that ought to be put as well.
 11 THE WITNESS: Of course.
 12 SIR MARTIN MOORE-BICK: So we will have the usual 15-minute
 13 break that we have in the middle of the afternoon now,
 14 and that will be the opportunity to do both of those
 15 things.
 16 So we will stop now and come back at 3.45, please.
 17 THE WITNESS: Sure.
 18 SIR MARTIN MOORE-BICK: And once again, please don't talk to
 19 anyone about your evidence while you're out of the room.
 20 THE WITNESS: Of course, thank you.
 21 SIR MARTIN MOORE-BICK: Thank you very much.
 22 (Pause)
 23 Good, 3.45, then, please. Thank you.
 24 (3.30 pm)
 25 (A short break)

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1 (3.45 pm) 1 on Monday, 7 December 2020)

2 SIR MARTIN MOORE-BICK: Right, Mr Millichap. Well, we will 2

3 see if Ms Grange has any more questions for you. 3

4 THE WITNESS: Thank you. 4

5 SIR MARTIN MOORE-BICK: Yes, Ms Grange. 5

6 MS GRANGE: Yes, only one question. 6

7 Mr Millichap, we have been through an awful lot in 7

8 the last two days. 8

9 A. Yes. 9

10 Q. What would you do differently if you had the chance 10

11 again? 11

12 A. It's difficult to collate my thoughts at this time, 12

13 honestly. I know it would be important to make sure 13

14 that the position I'm taking on, I understand that more 14

15 fully in the first place. 15

16 Clearly towards the end of my role at Kingspan there 16

17 were difficult situations which were, I think, pursued 17

18 with the best intentions, but haven't transpired as they 18

19 should have. 19

20 It's difficult to come to any firmer conclusions at 20

21 this point. 21

22 MS GRANGE: Okay. It just goes to thank you for coming to 22

23 give evidence and telling us your story. Thank you. 23

24 THE WITNESS: Thank you. 24

25 SIR MARTIN MOORE-BICK: Mr Millichap, it's right that 25

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1 I should thank you on behalf of the panel for coming to

2 give evidence. I know it's taken up a lot of your time,

3 but we are very grateful and it's been very helpful to

4 hear what you have to tell us, so thank you very much

5 indeed.

6 THE WITNESS: Of course.

7 SIR MARTIN MOORE-BICK: Of course you're now free to go.

8 THE WITNESS: Thank you.

9 SIR MARTIN MOORE-BICK: Thank you very much.

10 THE WITNESS: Thank you.

11 (The witness withdrew)

12 SIR MARTIN MOORE-BICK: Good, thank you very much.

13 Well, that, I take it, is all we have for the day.

14 MS GRANGE: It is.

15 SIR MARTIN MOORE-BICK: That means we will break there and

16 we will resume on Monday at 10 o'clock.

17 MS GRANGE: Yes, for some more Kingspan witnesses.

18 SIR MARTIN MOORE-BICK: When we will hear some more evidence

19 from Kingspan, yes.

20 MS GRANGE: Yes.

21 SIR MARTIN MOORE-BICK: Good.

22 10 o'clock on Monday, then, please. Thank you.

23 MS GRANGE: Thanks.

24 (3.50 pm)

25 (The hearing adjourned until 10 am)

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MR TONY CHRISTOPHER MILLICHAP1
(continued)

Questions from COUNSEL TO THE INQUIRY1

(continued)

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