

# OPUS2

Grenfell Tower Inquiry

Day 100

March 3, 2021

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Wednesday, 3 March 2021

1  
2 (10.00 am)  
3 SIR MARTIN MOORE–BICK: Good morning, everybody. Welcome to  
4 today’s hearing. As always, I’m joined by my fellow  
5 members of the panel, Ms Istephan and Mr Akbor.  
6 MS ISTEPHAN: Good morning.  
7 MR AKBOR: Good morning, everyone.  
8 SIR MARTIN MOORE–BICK: Today we’re going to hear from  
9 another witness from BRE, Mr Tony Baker.  
10 I think the next step is to check that Mr Baker is  
11 there and that he can hear me and see me.  
12 Good morning, Mr Baker.  
13 MR TONY BAKER (called)  
14 THE WITNESS: Good morning, I can hear you and see you,  
15 although my screen is not on full screen at the moment.  
16 SIR MARTIN MOORE–BICK: Right. Well, we will deal with that  
17 straightaway.  
18 If you look at the top right–hand corner of your  
19 screen, you may have a button which says "View".  
20 THE WITNESS: Okay, yeah, got that.  
21 SIR MARTIN MOORE–BICK: If you press that, it will offer you  
22 full screen.  
23 THE WITNESS: Okay, yeah.  
24 SIR MARTIN MOORE–BICK: Is that better?  
25 THE WITNESS: Yes, that’s fine, thank you.

1

1 SIR MARTIN MOORE–BICK: Very good.  
2 Now, you should have on the screen in front of you  
3 the words of the affirmation, which I understand you’re  
4 willing to make. Has that come up?  
5 THE WITNESS: Yeah.  
6 SIR MARTIN MOORE–BICK: Very good. Could I ask you, then,  
7 please, to make the affirmation by reading the words on  
8 the screen.  
9 (Witness affirmed)  
10 SIR MARTIN MOORE–BICK: Very good, thank you very much  
11 indeed.  
12 Now, there are one or two small matters we have to  
13 deal with before you actually start answering questions.  
14 Can I ask you please to confirm that you are alone  
15 in the room from which you’re giving evidence?  
16 THE WITNESS: I am alone, yes.  
17 SIR MARTIN MOORE–BICK: Thank you.  
18 Can you confirm that you have no documents or other  
19 materials with you?  
20 THE WITNESS: I have no documents.  
21 SIR MARTIN MOORE–BICK: Or anything else that might be --  
22 THE WITNESS: Or other materials, no.  
23 SIR MARTIN MOORE–BICK: No, good, thank you.  
24 Can you confirm that your mobile phone is in another  
25 room and that you don’t have any other electronic device

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1 with you that is capable of receiving messages?  
2 THE WITNESS: I can confirm that, mobile phone and other  
3 implements, equipment, is in another room.  
4 SIR MARTIN MOORE–BICK: Very good, thank you very much.  
5 Now, you may like to know that your legal  
6 representatives are following the hearing. They’re in  
7 the virtual hearing room and can follow the evidence.  
8 They have the ability to intervene if they think it  
9 urgently necessary, but apart from that I’ve asked them  
10 to keep their microphones and cameras switched off, and  
11 we have another method by which they can contact our  
12 counsel if they think something needs to be picked up.  
13 All right? But they are there looking after your  
14 position.  
15 I hope we’re not going to have any problems with  
16 sound or vision; if we do, we will have a short break  
17 while the technicians iron them out.  
18 We are going to have a short break part–way through  
19 the morning and the afternoon. The morning break will  
20 come at around 11.15, and I might as well mention this  
21 now in case I forget later on: it’s very important that,  
22 once you have started giving your evidence, you don’t  
23 discuss your evidence or anything to do with it with  
24 anyone else, including of course your lawyers.  
25 All right?

3

1 THE WITNESS: Understood.  
2 SIR MARTIN MOORE–BICK: I will try to remember to remind you  
3 of that when we get to the breaks, but if I forget to do  
4 so, please bear it in mind.  
5 Now, is there anything you would like to raise or  
6 questions you would like to ask before we start?  
7 THE WITNESS: No, thank you.  
8 SIR MARTIN MOORE–BICK: Right. Well, if you’re ready to go,  
9 I will invite Ms Grange to put some questions to you.  
10 Yes, Ms Grange.  
11 Questions from COUNSEL TO THE INQUIRY  
12 MS GRANGE: Yes, thank you, Mr Chairman.  
13 Mr Baker, good morning. Thank you very much for  
14 attending the Inquiry today, it’s very much appreciated.  
15 If you have any difficulty understanding anything  
16 that I’m asking you in the course of the questions,  
17 please just ask me to repeat the question or put the  
18 point in a different way. If you feel you need a break  
19 at any point, please let us know, and can you please try  
20 to keep your voice up, and don’t just nod or shake your  
21 head, so that the transcribers get a clear record of  
22 your evidence.  
23 Now, you have made three witness statements to  
24 the Inquiry. I just want to take you through those. If  
25 we can go to your first witness statement, that is at

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1 {BRE00005774}. This is your first witness statement.  
 2 If we go on and look at page 26, we can see that it's  
 3 dated 12 July 2019, and is that your signature?  
 4 A. Yes, it is, yeah.  
 5 Q. Have you read that statement recently?  
 6 A. I have.  
 7 Q. Are the contents of that statement true?  
 8 A. They are, yes.  
 9 Q. If we go now to your second statement, {BRE00032261},  
 10 here we have that second witness statement. If we look  
 11 on page 8, there we have the date, 11 September 2020.  
 12 Again, is that your signature?  
 13 A. It is, yes.  
 14 Q. Have you read that second statement recently?  
 15 A. I have.  
 16 Q. Are the contents of that statement true?  
 17 A. They are.  
 18 Q. Then your third witness statement now, {BRE00035303},  
 19 there's the third statement, and if we go to page 5, we  
 20 can see there the date is 15 October 2020. Again, is  
 21 that your signature?  
 22 A. It is, yes.  
 23 Q. Have you read that third statement recently?  
 24 A. I have.  
 25 Q. Can you confirm that the contents of that are true?

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1 A. They are, yes.  
 2 Q. Have you discussed the contents or the evidence that  
 3 you're going to give to us with anybody before coming  
 4 here today?  
 5 A. No.  
 6 Q. Okay.  
 7 Let's start with some questions, then, about your  
 8 background and your roles and responsibilities.  
 9 If we pull up your first statement again,  
 10 {BRE00005774}, at paragraph 2 you tell us, in the first  
 11 lines there, that you were a test technician and  
 12 engineer with the British Standards Institution between  
 13 1979 and 2004. So you spent a long time with the BSI;  
 14 yes?  
 15 A. That's correct, yes.  
 16 Q. You tell us that your role covered product safety and  
 17 performance tests for a range of products. Is it right  
 18 that a particular specialisation of yours during that  
 19 time was lift safety devices?  
 20 A. That's correct, yes, towards the end of that -- those  
 21 years, yes.  
 22 Q. Yes.  
 23 You then joined the BRE, the British Research  
 24 Establishment, in 2004; is that correct?  
 25 A. That's correct, yeah.

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1 Q. We see you tell us that at the beginning of paragraph 4.  
 2 You began your role in marine equipment directive  
 3 activities; is that right?  
 4 A. That's correct, yeah.  
 5 Q. You subsequently became the certification scheme manager  
 6 for passive fire protection; is that right?  
 7 A. That's correct.  
 8 Q. When did you become that passive fire certification  
 9 scheme manager?  
 10 A. Probably during late 2005. It was a gradual sort of  
 11 transition across due to other members of staff leaving  
 12 the organisation.  
 13 Q. I see. But fairly early on in your career at the BRE,  
 14 you transferred over to that role; yes?  
 15 A. That's correct, yes.  
 16 Q. Yes. And is it right that that role encompassed BS 8414  
 17 testing?  
 18 A. It did, yes, yeah.  
 19 Q. And also testing under the Loss Prevention Certification  
 20 Board scheme?  
 21 A. Yes.  
 22 Q. Were those tests under that scheme -- I think they were  
 23 called LPS 1581/2 tests under that Loss Prevention  
 24 Certification Board scheme -- similar to BS 8414 tests  
 25 but with stricter requirements?

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1 A. They used the same test methodology, it's just the  
 2 criteria that's different, in effect.  
 3 Q. Yes. We heard from Mr Clark that he said the reason  
 4 those tests had additional requirements was because they  
 5 were concerned with insurance loss rather than  
 6 life safety. Do you agree with him about that?  
 7 A. I do, yes, yes.  
 8 Q. Yes.  
 9 If we could go back to your first statement and look  
 10 at page 2 {BRE00005774/2}, paragraph 5, you tell us in  
 11 that paragraph that you spent around five years as  
 12 project manager for BS 8414 testing; do you see that  
 13 there?  
 14 A. Yes.  
 15 Q. When did you spend those five years? What was that  
 16 five-year period?  
 17 A. I can't recall exactly when it started, to be quite  
 18 honest, but it went through until middle of 2013 to late  
 19 2013. It was -- again, it was sort of a gradual  
 20 development of role, as other people moved on or changed  
 21 their activities or roles within BRE.  
 22 Q. I see. So, to the best of your recollection, it was  
 23 five years leading up to 2013; is that right? So from  
 24 around 2008?  
 25 A. That is correct, yes.

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1 Q. Yes. You also tell us in that paragraph 5 on the same  
 2 page that you were the deputy business group manager  
 3 covering passive fire group test and certification  
 4 activities. Was that at the same time that you were  
 5 project manager for 8414 testing?  
 6 A. That's correct, yes.  
 7 Q. You also tell us in paragraph 7 there, on that second  
 8 page of your statement, that you were the  
 9 fire resistance test laboratory manager at the BRE.  
 10 Now, when was that?  
 11 A. That was from approximately October 2013 through  
 12 until -- whilst my statement says to the present date,  
 13 I have recently had a change in role since I made this  
 14 statement, so that went through until November 2020.  
 15 I'm now the head of passive fire protection group.  
 16 Q. Just to be clear, you still work at the BRE; is that  
 17 right?  
 18 A. I do, exactly, yes.  
 19 Q. And you're now the head of passive fire protection?  
 20 A. Yes.  
 21 Q. In 2013 -- is this right? -- the third edition of BR 135  
 22 was published and you co-authored that with  
 23 Sarah Colwell of the BRE.  
 24 A. That's correct, yes.  
 25 Q. You were also involved in drafting BS 8414, parts 1

1 and 2, in 2015; is that correct?  
 2 A. That's correct. It was a redraft. It was sort of the  
 3 next iteration of that standard, yes.  
 4 Q. Yes.  
 5 Can you just help us as to when you were doing  
 6 8414 testing, the project manager, so from 2008 to 2013,  
 7 who did you report to at that time?  
 8 A. That would have been between Stephen Howard and  
 9 Sarah Colwell. They had a joint business manager group  
 10 role during that period. Relating specifically to  
 11 BS 8414, it would have been more to Sarah Colwell.  
 12 Q. Right. Did you have a single line manager or were they  
 13 both line-managing you?  
 14 A. They were both line-managing.  
 15 Q. Yes, and so it follows, does it -- and this was my next  
 16 question -- that Stephen Howard was senior to you; is  
 17 that correct?  
 18 A. Yes, he was, yes.  
 19 Q. Yes.  
 20 What about Mr Clark? Were you senior or junior to  
 21 Mr Philip Clark?  
 22 A. Erm ... I would tend to say that we were on sort of  
 23 equal footing. It was -- we were under different  
 24 sort of management areas, so, yeah, it's difficult to  
 25 say -- to answer that question, really.

1 Q. I see.  
 2 Was there a clear hierarchy of structure at the BRE,  
 3 or was it sometimes not always clear who was senior and  
 4 who was junior?  
 5 A. It was relatively clear.  
 6 Q. Okay.  
 7 Now, I want to ask you some questions about the  
 8 purpose of 8414 testing and reporting.  
 9 A. Yeah.  
 10 Q. And a few questions about BR 135.  
 11 Now, thinking back to when you worked on the redraft  
 12 of BR 135 for its third edition, and that was published  
 13 in 2013, did you and the other author, Sarah Colwell,  
 14 consider that BR 135 second edition from 2003 was clear  
 15 enough that this was a full system test, ie 8414 was  
 16 a full system test? Did you think that had been clear  
 17 enough in the previous edition?  
 18 A. It's the way that we'd -- BRE had always interpreted the  
 19 standard, but I don't think it was necessarily crystal  
 20 clear in the document itself.  
 21 Q. Yes. So was it a deliberate decision in that third  
 22 edition to try and make that clearer, that it was a full  
 23 system test that could only apply to that same system?  
 24 A. Sorry, I misunderstood your last question.  
 25 In terms of system test, yes, part -- the earlier

1 edition of BR 135 was absolutely clear that it was  
 2 always a system test. Sorry, I was thinking about  
 3 something else.  
 4 Q. I see. What was the other thing you were thinking  
 5 about?  
 6 A. I thought you were talking about the 60-minute duration.  
 7 Q. Ah, I see.  
 8 A. Sorry, I --  
 9 Q. Let's just -- sorry, have you finished?  
 10 A. Yes.  
 11 Q. Yes.  
 12 Let's just look at something in the third edition of  
 13 BR 135. If we can pull that up, {BRE00005554/2}. Let's  
 14 just pull the document up for a moment. If we go to the  
 15 second page, we see there the front page of that  
 16 publication. I think that's actually the second  
 17 edition. We will come back to that.  
 18 After the publication of BR 135 third edition in  
 19 2013, did you think that the industry was clear that any  
 20 system which had passed an 8414 test had to be  
 21 replicated exactly in its application on a building, and  
 22 that any deviation would make the system non-compliant?  
 23 A. Yes, I felt the industry should have understood that.  
 24 Q. You say you felt the industry should have understood  
 25 that, but my question wasn't that, it was: did you think

1 the industry did in fact understand that?  
 2 A. Erm ... well, I think during discussions I had with  
 3 various members of the industry, there wasn't always  
 4 full clarity of that. Yeah.  
 5 Q. Yes, and what kind of discussions are you thinking  
 6 about? Discussions with who in industry?  
 7 A. Well, anybody that I came into contact with during my  
 8 sort of role as the project manager. I think in general  
 9 most people understood that being as a full system test,  
 10 but there were some people, and I can't remember  
 11 specifics, but there were some where we had that sort of  
 12 conversation, just to clarify the situation.  
 13 Q. Yes.  
 14 Now, given that the BRE test and classification  
 15 reports refer only to the particular test system  
 16 containing the products installed at the time at the  
 17 test, do you agree that it was vitally important that  
 18 the component parts of the test were fully and  
 19 accurately identified in the test report and any  
 20 classification report?  
 21 A. Yes. It certainly needs to be accurately described, the  
 22 components. There are some IP or intellectual property  
 23 issues relating to some components that clients wish to  
 24 hold out of the test report and classification, which --  
 25 we sort of understood that approach as well.

1 Q. When you say you understood that approach as well, does  
 2 that mean you were sympathetic to the fact that  
 3 sometimes the test sponsor didn't want to fully record  
 4 all the details of the tested system?  
 5 A. Yes, I understood that, yeah.  
 6 Q. Was there a tension there in practice about the need to  
 7 faithfully report the details of the system versus the  
 8 test sponsor's desire to keep certain parts of it  
 9 confidential?  
 10 A. No. We always took the approach that we would describe  
 11 it as fully as is possible, and in terms of what we knew  
 12 of the system. There were occasions when the client  
 13 would then come and ask us if we were able to hold back  
 14 some detail, usually to do with product names or similar  
 15 to that, from the report.  
 16 Q. Right. And if they came back to you and asked for that,  
 17 and you felt that that information was important for  
 18 users of the test report to be aware of, what did you  
 19 do?  
 20 A. Well, if we felt it was critical in terms of describing  
 21 the system, then we would sort of say to the client that  
 22 we felt that had to go in there. But if it was ... if  
 23 we could describe the technical aspects of the product  
 24 without releasing product names, then we felt that that  
 25 was probably okay.

1 Q. Right, I see.  
 2 Now, we know that the BRE was privatised in  
 3 March 1997.  
 4 A. Yes.  
 5 Q. When you started working on BS 8414, was it your  
 6 understanding that the BRE was using the 8414 test to  
 7 BRE's commercial advantage, ie to generate income for  
 8 its other workstreams?  
 9 A. Yes. As you may be aware, BRE is actually a charitable  
 10 trust. We don't actually have any shareholders, so  
 11 we're not making money for shareholders. What we're  
 12 doing is supporting the charitable trust in their  
 13 sort of research and education in the built environment.  
 14 But to be able to do that, BRE has to generate income to  
 15 support the charitable trust.  
 16 So, yes, it was a -- any testing that we do is  
 17 a commercial exercise, but not for shareholder income.  
 18 It's just to put that money back into the charitable  
 19 trust and support the ongoing process of BRE in being,  
 20 as it were.  
 21 Q. Just to be clear, it's right, isn't it, that the  
 22 8414 test was seen as an important source of revenue for  
 23 the BRE?  
 24 A. Yes, as is any testing that we do. I wouldn't say that  
 25 that was specifically targeted as an important stream

1 any more than any other testing that we do.  
 2 Q. Yes.  
 3 To the best of your recollection, did anyone at any  
 4 time take steps to consider the inherent conflict of  
 5 interest in 8414 or indeed other testing being a source  
 6 of revenue for the BRE?  
 7 A. Sorry, I don't really understand the question.  
 8 Q. Were you aware at any stage of any consideration being  
 9 given within the BRE to the potential conflict of  
 10 interest between needing the revenue from these test  
 11 procedures to fund other aspects of the BRE's work? Was  
 12 there ever any serious consideration given to that  
 13 conflict of interest?  
 14 A. No, I don't recall any of that sort of consideration,  
 15 and I don't believe that there is a conflict of  
 16 interest.  
 17 Q. Did anyone ever consider the propriety of commercial  
 18 pressures on a testing house selling tests intended to  
 19 protect life safety?  
 20 A. No, no.  
 21 Q. Now, I want to ask you about the procedures that the BRE  
 22 followed in relation to 8414 tests during your time  
 23 there.  
 24 Does it follow from the explanation you have given  
 25 about your roles that you would have been well aware of

1 the procedures between 2008 and 2013? Is that correct?  
 2 A. Yes, yes.  
 3 Q. And what about after 2013, were you still fully aware of  
 4 what the procedures were around 8414 testing?  
 5 A. I'm fully aware of the procedures, yes, yes.  
 6 Q. Yes.  
 7 A. Just less involved since 2013.  
 8 Q. Yes.  
 9 Now, just some questions on impartiality.  
 10 If we go and look at your first witness statement  
 11 again, {BRE00005774/2}, if we look at paragraph 9 at the  
 12 bottom of that page, you say in the first lines of that  
 13 paragraph:  
 14 "In summary, BRE is an independent and accredited  
 15 testing laboratory, which may be engaged by test  
 16 sponsors to carry out specific standardised  
 17 fire testing."  
 18 Now, you're accredited by UKAS; yes?  
 19 A. That's correct, yes.  
 20 Q. And at all times, were you aware that you were required  
 21 to meet the standards of BS EN ISO 17025?  
 22 A. Yes.  
 23 Q. And there was a 2017 edition of that, but previously  
 24 also a 2005 edition; yes?  
 25 A. Yes.

17

1 Q. Can we just look at that 2005 edition. This is  
 2 {BSI00001726}. So this is the edition which would have  
 3 been in place throughout the periods of time that we're  
 4 particularly interested in, the 2005 edition.  
 5 If we look at page 12 {BSI00001726/12}, and start  
 6 with clause 4.1.4 on that page -- this is under the  
 7 broad heading of "Management requirements" -- it says  
 8 there:  
 9 "If the laboratory is part of an organization  
 10 performing activities other than testing and/or  
 11 calibration, the responsibilities of key personnel in  
 12 the organization that have an involvement or influence  
 13 on the testing and/or calibration activities of the  
 14 laboratory shall be defined in order to identify  
 15 potential conflicts of interest."  
 16 Do you see that there?  
 17 A. Yes.  
 18 Q. Was that something you were aware of during the time you  
 19 were involved in testing activities at BRE?  
 20 A. I can't say that I was aware specifically of that  
 21 clause, but of the general premise of that clause, yes.  
 22 Q. Did you ever read yourself ISO 17025?  
 23 A. Not in full, no.  
 24 Q. If we look at the bottom of page 12, we can see that  
 25 clause 4.1.5 begins with "The laboratory shall", and

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1 then we have a number of subparagraphs.  
 2 If we go over the page to 4.1.5(d) {BSI00001726/13},  
 3 it says there:  
 4 "The laboratory shall ....  
 5 "d) have policies and procedures to avoid  
 6 involvement in any activities that would diminish  
 7 confidence in its competence, impartiality, judgement or  
 8 operational integrity."  
 9 So when we talk about BRE's impartiality in this  
 10 context, was it your understanding that this is what we  
 11 were referring to?  
 12 A. Yes.  
 13 Q. Now, looking at that, the laboratory shall have policies  
 14 and procedures in place that address all of those  
 15 matters, to the best of your knowledge, did the BRE have  
 16 policies and procedures in place which ensured that its  
 17 testing activities were carried out impartially and with  
 18 operational integrity?  
 19 A. Yes.  
 20 Q. Can you just explain to us what those procedures were?  
 21 Were they written down or were they communicated orally?  
 22 A. They're written policies through our central quality  
 23 systems department.  
 24 Q. Right.  
 25 When you were involved with BS 8414 testing, did you

19

1 read those policies?  
 2 A. As far as they were relevant to what I was doing, yes.  
 3 Q. Did they assist you in terms of explaining how in  
 4 practice you should maintain impartiality and  
 5 operational integrity?  
 6 A. Yes.  
 7 Q. Can you help us, in what way did you receive guidance on  
 8 that? Can you remember something specific you were told  
 9 about how you were to do that?  
 10 A. Well, I can't remember any specific wording, but the  
 11 general premise of ... requiring -- or, you know, the  
 12 separation of testing and providing clients with  
 13 specific information on design or -- be that design of  
 14 a product or a system or suchlike, you know, we can't go  
 15 into that sort of area if we're involved into -- in the  
 16 testing.  
 17 Q. Was that actually written down in a policy that you were  
 18 using and aware of, or was that just an understanding  
 19 that you had?  
 20 A. That's an understanding that I've had for many, many  
 21 years, even in my time at BSI prior to coming to BRE.  
 22 It's a general premise that all test and certification  
 23 organisations work on.  
 24 Q. Yes.  
 25 A. Now, I'm sure it must be written down somewhere, but

20

1 I could not point in the direction of that particular  
 2 wording.  
 3 Q. Yes. Just to be clear, you can't yourself remember  
 4 looking up guidance from time to time that helped you in  
 5 terms of maintaining impartiality and operational  
 6 integrity?  
 7 A. Not specifically, no. But it's worth remembering that,  
 8 as mentioned earlier, we are a UKAS accredited  
 9 organisation and, as such, we are regularly audited by  
 10 UKAS, and this is exactly the type of thing that they  
 11 would be looking at in detail.  
 12 Q. I see. So they would ask questions, would they, about  
 13 how you'd maintained your integrity and operational  
 14 independence?  
 15 A. Yeah, absolutely, yes.  
 16 Q. Yes.  
 17 Mr Philip Clark told us in his evidence that he had  
 18 never received any training on impartiality or where the  
 19 line was to be drawn between impartiality and, say, the  
 20 giving of consultancy or advice. For the transcript,  
 21 that's {Day97/88} to {Day97/89}. Did you ever have such  
 22 training?  
 23 A. Erm ... I can't specifically recall it, but I'm sure  
 24 there has been some training modules in that vein.  
 25 Q. I see. But you have no specific recollection of

21

1 training on that topic?  
 2 A. No, no.  
 3 Q. Now, I want to ask you some questions now about  
 4 recording and checking of systems that are involved in  
 5 8414 testing.  
 6 If we could go at this point to {BRE00005773/2}. If  
 7 we look at the second email down on this page, it's sent  
 8 to you and Tom Lennon and copying in others, including  
 9 Stephen Howard. He says there:  
 10 "Tony/Tom, I have looked at the cladding procedure  
 11 and have updated some of the SOP and drawings."  
 12 Is that standard operating procedure?  
 13 A. It is.  
 14 Q. "Please could you have a look at the attached documents  
 15 and let me know if you have any comments and or  
 16 addition. When we are all back in I will convene  
 17 a meeting to discuss moving the cladding forward."  
 18 Now, he is talking about 8414 cladding testing  
 19 there; yes?  
 20 A. That's correct, yes.  
 21 Q. Do you remember this happening, where he updated some of  
 22 the standard operating procedures and drawings?  
 23 A. I don't specifically remember this occurrence, but, as  
 24 with all the testing we do, there is sort of a natural  
 25 progression and moving forward and trying to improve

22

1 things, and this was just a typical example of that.  
 2 Q. Let's look at some of the documents he was referring to.  
 3 This is {BRE00005773/3}. Here we can see a cladding  
 4 test data file and report preparation sheet, and it's  
 5 got a checklist. You can see, for example, in the  
 6 second item down, it says "Received client system  
 7 specifications"; in the fifth item down it says,  
 8 "Undertaken component check and obtained samples"; in  
 9 the sixth item down, "Undertaken construction survey and  
 10 obtained photos (each major layer)"; and then ninth item  
 11 down you can see there is a line, it's just before the  
 12 halfway point on this page, it says "Final construction  
 13 photographs taken". Do you see that?  
 14 A. Yes.  
 15 Q. Now, this is effectively a checklist, and it requires  
 16 a date and a sign-off for each of these stages; is that  
 17 correct?  
 18 A. Yes, yeah.  
 19 Q. Did you have anything like this before this time? So  
 20 this is in May 2013.  
 21 A. Not that I recall, no.  
 22 Q. So were these checks done prior to May 2013?  
 23 A. Yes, I think the checks were done, but it was not in  
 24 such a regimented process of recording.  
 25 Q. Following the introduction of this suite of documents,

23

1 were these checks in your experience diligently carried  
 2 out?  
 3 A. As far as I'm aware, yes.  
 4 Q. When you say, "As far as I'm aware", why do you say that  
 5 in terms of caveating your answer?  
 6 A. Only because I don't recall seeing these documents  
 7 completed in project files after that, the introduction  
 8 of this. I'm not quite sure when it was finally  
 9 introduced.  
 10 Q. Right. Okay.  
 11 If we can look at page 7 {BRE00005773/7} of this  
 12 document run, this is another of the documents that  
 13 Mr Clark attached, we can see here there's also a system  
 14 and components photo collection sheet. That says:  
 15 "To ensure photographs of the relevant and important  
 16 components are taken the following sheet is to be used  
 17 to collect and log images of the system and its  
 18 components."  
 19 Now, again, were photographs regularly taken prior  
 20 to this point when you were project manager for  
 21 8414 testing?  
 22 A. Yes, they were, yeah.  
 23 Q. And after this point?  
 24 A. Yes.  
 25 Q. Was it your understanding that photographs were

24

1 diligently taken to include images of the relevant and  
 2 important components?  
 3 A. Yes.  
 4 Q. If we can also go to another document, this is  
 5 {BRE00005769/302}, this is another document from  
 6 Mr Clark's exhibits. We have here a -- it's called  
 7 "Standard procedures for undertaking BS8414 parts 1 & 2  
 8 Tests", do you see that?  
 9 A. Yes.  
 10 Q. Again, it has a checklist of actions with different  
 11 officers in charge.  
 12 Now, did you have a system like this before 2013?  
 13 A. Not that I recall.  
 14 Q. And did you see in test files after 2013 that documents  
 15 like this were being diligently completed?  
 16 A. No, because after 2013 I wasn't regularly looking at the  
 17 test files.  
 18 Q. But you would have looked at some test files after 2013;  
 19 yes?  
 20 A. I would have looked at some, yes, but --  
 21 Q. And those that you looked at, did you ever see  
 22 checklists like this being completed?  
 23 A. Not that I recall.  
 24 Q. Now, drawings now, just some questions about drawings  
 25 and 8414 tests.

25

1 Can we look at your first statement at page 4, so  
 2 it's {BRE00005774/4}, and if we look at paragraph 16,  
 3 you have been asked the question:  
 4 "What role, if any, does the BRE play whilst a test  
 5 rig is being installed by a test sponsor?"  
 6 You say in paragraph 16:  
 7 "While a test rig is being installed by a test  
 8 sponsor, BRE will take notes and photographs of the  
 9 system being installed by the relevant contractors).  
 10 Where the test sponsor has provided drawings of the  
 11 system, these will be compared with the system being  
 12 installed. Any deviations noted between the drawings  
 13 and the installation will be discussed with the test  
 14 sponsor."  
 15 Now, that's what you told us in your statement.  
 16 Can you help: was there a practice of requiring  
 17 drawings of systems prior to installation when you were  
 18 in charge of 8414 testing?  
 19 A. There's always been a practice of requesting the  
 20 drawings from clients. Unfortunately it's not always  
 21 been a -- not always been the case that we've always  
 22 received those drawings in time for the installation to  
 23 take place.  
 24 Q. Right. So if you hadn't received them in time for the  
 25 installation to take place, did you nevertheless let the

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1 installation go ahead?  
 2 A. Yes, yes.  
 3 Q. And how would you know, then, that that installation was  
 4 consistent with the way the test report would ultimately  
 5 report that system, if you didn't have any drawings?  
 6 A. Well, quite frequently the sponsor would be -- would  
 7 prepare drawings in relation to the system as built, as  
 8 opposed to providing drawings prior to the installation.  
 9 So it would be a case of comparing the build notes to  
 10 the drawings that may have been received after the  
 11 installation from the sponsor.  
 12 Q. I see. Was that diligently done by the BRE, that you  
 13 would compare the as-built rig with the as-built  
 14 drawings that came afterwards?  
 15 A. Yes, as far as we could do that, yes.  
 16 Q. When you say, "As far as we could do that", were there  
 17 some aspects of that job which would be more difficult,  
 18 for example bits of the rig that were covered up?  
 19 A. Well, in respect of cladding, BS 8414 test, there should  
 20 always be a case of full information being available  
 21 during the build, in terms of the drawing -- in terms of  
 22 photographs and build notes.  
 23 Q. Yes, precisely. So those photographs and build notes  
 24 would become very important, wouldn't they, if you  
 25 didn't have drawings in advance?

27

1 A. That's correct, yes.  
 2 Q. Was it your experience that that process of taking build  
 3 notes and photographs was a careful and diligent one  
 4 when you were involved with 8414 testing?  
 5 A. I believe that was the case, yes.  
 6 Q. But do you accept that not requiring drawings in advance  
 7 gives rise to an obvious risk of the system being  
 8 misdescribed, either accidentally or deliberately, in  
 9 a later test report?  
 10 A. Erm ... yes, there is a potential risk there.  
 11 Q. Just pulling your statement back up, the same passage we  
 12 were just looking at {BRE00005774/4}, in the final  
 13 sentence you say:  
 14 "Any deviations noted between the drawings and the  
 15 installation will be discussed with the test sponsor."  
 16 For what purpose would you be having those  
 17 discussions about those deviations?  
 18 A. Well, in some cases the contractor may well have not  
 19 been an employee of the test sponsor, they may be  
 20 a subcontractor of the test sponsor, and therefore we  
 21 needed to ensure that the contractor was actually  
 22 building in accordance with the test sponsor's  
 23 requirements, even though they may be different to  
 24 what's on the drawing. So we're just raising that as  
 25 a point, to understand the test sponsor's requirements.

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1 And also, if we're aware of differences , then we would  
 2 be asking the test sponsor to provide updated drawings  
 3 in relation to those differences .  
 4 Q. Yes. I mean, you say "we're just raising that as  
 5 a point", but isn't that precisely the problem, that you  
 6 must need updated drawings, surely, where that occurs?  
 7 A. Yes, that's correct, yes.  
 8 Q. Did the BRE always do that, or did they sometimes allow  
 9 the rig to go up slightly different from the drawings in  
 10 practice?  
 11 A. Yeah, well, there are occasions where the test sponsor  
 12 decides to change the design slightly during the  
 13 installation process, and that's what I meant in terms  
 14 of trying to understand whether it was a requirement of  
 15 the test sponsor to change, make that change, or whether  
 16 it -- you know, in some instances it may simply be  
 17 a mistake by the contractor during the build. So we  
 18 needed to understand whether that was -- you know, which  
 19 side that was, whether it was a mistake by the  
 20 contractor or a change of design from the test sponsor.  
 21 Q. Where that occurred, where there was a change of design  
 22 during the installation process, were there very clear  
 23 procedures within the BRE as to what should happen in  
 24 those circumstances?  
 25 A. Well, as I say, we would ask for drawings to be

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1 re-issued with those updated details.  
 2 Q. And were those always provided?  
 3 A. Er ... to my knowledge, yes. Yes.  
 4 Q. Right. You don't sound completely sure about that.  
 5 When you say "to my knowledge", what do you mean  
 6 exactly?  
 7 A. Well, we'd always request them. I couldn't say  
 8 categorically that 100% of the time we'd always receive  
 9 those.  
 10 Q. Can you recall any instances where you didn't receive  
 11 those but nevertheless the test procedure went ahead?  
 12 A. Well, it would be -- you know, the test procedure would  
 13 invariably go ahead anyway, because we're up against  
 14 schedules in terms of the test facility , so generally  
 15 the test would continue if the client was happy with  
 16 what he -- what had been built was reflected to what he  
 17 wanted to be built. But there would be an ongoing  
 18 discussion after the event, after the test, with the  
 19 client as to provision of those updated drawings.  
 20 Q. Right, I see.  
 21 In his oral evidence, Mr Clark was asked about the  
 22 purpose of including assembly drawings within 8414 test  
 23 reports, and for the record this was at {Day97/72} and  
 24 {Day97/73}. He said that he understood the drawings to  
 25 be a representation of how the system should be put

30

1 together on a building, rather than being representative  
 2 of the rig as tested.  
 3 Now, do you agree with that, or do you disagree with  
 4 that?  
 5 A. I would disagree with that in part, in that the test --  
 6 the BS 8414 test rig, whilst it tries to represent  
 7 a building as best as it can, it can never, you know,  
 8 accurately represent a building. It's a test  
 9 methodology, and therefore the system tested on there  
 10 needs to be designed around the particular test rig,  
 11 BS 8414 test rig, and therefore there may be some  
 12 details that would be slightly different to what would  
 13 go on a building.  
 14 Q. Yes, but it does sound like you would disagree that the  
 15 drawings would be only representative of how it goes on  
 16 to a building rather than being representative of the  
 17 rig as tested?  
 18 A. Yes, there needs to be a close association between the  
 19 two, for obvious reasons. But, in effect , the BS 8414  
 20 test is structured around a specific test rig rather  
 21 than a building.  
 22 Q. Yes, I understand that. So, for example, you might get  
 23 a window in the as-built that's not there in the test .  
 24 But let's assume the test is the same as a bit of the  
 25 building that is, you know, pretty much similar to the

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1 building as-built, but the cladding system itself needs  
 2 to be a very close, in fact I would say identical,  
 3 representation; would you agree?  
 4 A. Yes, yes, I would agree from that point of view.  
 5 Q. Yes.  
 6 A. There are some aspects of a BS 8414 test that requires  
 7 joints in specific positions for the test.  
 8 Q. Yes.  
 9 A. And those joints would not necessarily be representative  
 10 of those positions on a building --  
 11 Q. Right.  
 12 A. -- for example.  
 13 SIR MARTIN MOORE-BICK: Just to clarify this, Mr Baker,  
 14 I think the question really is: is the drawing that you  
 15 expect to receive from the client which relates to the  
 16 rig meant to be a drawing of exactly what is on the rig  
 17 rather than a drawing which reflects what would go on to  
 18 a building?  
 19 A. It should reflect what's on the test rig.  
 20 SIR MARTIN MOORE-BICK: Thank you very much.  
 21 MS GRANGE: Yes, thank you.  
 22 Now, monitoring during the 8414 test process. If we  
 23 can look at page 4 of your first witness statement  
 24 {BRE00005774/4}, and paragraph 17, you tell us there:  
 25 "Such monitoring by BRE is also required to ensure

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1 that health and safety aspects are being adhered to and  
 2 to provide any additional support (in terms of waste  
 3 disposal provisions, etc.) that the test sponsor or its  
 4 contractor(s) may require.”  
 5 Then you say this:  
 6 "BRE's monitoring will not run for the entire  
 7 duration of the installation but will generally be at  
 8 key points."  
 9 Now, focusing on that last sentence, where you say  
 10 that BRE's monitoring will generally be at key points of  
 11 the installation, in what circumstances would the  
 12 monitoring not extend to monitoring at key points?  
 13 A. Erm ... well, I must admit I think my wording is  
 14 probably a little bit woolly in using the word  
 15 "generally". It should always be at key points of the  
 16 build. But to a certain extent we are reliant on the  
 17 contractor or the test sponsor in advising us when they  
 18 get to those key points.  
 19 Q. I see. So would those key points vary depending on the  
 20 build?  
 21 A. Yes, absolutely they would, yes.  
 22 Q. You tell us something else about these key points. If  
 23 we can stay with this topic and look at page 5 of your  
 24 statement {BRE00005774/5} and look at paragraph 19.  
 25 You're being asked:

1 "Who, if any one, is responsible for any checks of  
 2 or comparison between the actual test rig as installed  
 3 and the detailed drawings provided by the test sponsor?"  
 4 You say:  
 5 "The Test Engineer or Principal Consultant nominated  
 6 as responsible for a specific test would normally have  
 7 responsibility for monitoring and checking the detail of  
 8 the build for reporting purposes. Other BRE staff  
 9 members may also be asked to assist, as the installation  
 10 process can often take several days and sometimes even  
 11 weeks. This checking/monitoring does not cover  
 12 one hundred percent of the build process but is  
 13 conducted by means of spot checks at random intervals  
 14 during the build and at key points when requested by the  
 15 test sponsor/contractor."  
 16 A. Yes.  
 17 Q. Now, looking at that last sentence, just breaking it  
 18 down, you say it's conducted by means of spot checks at  
 19 random intervals; is that right?  
 20 A. Yes.  
 21 Q. Was that an established procedure that was written down  
 22 somewhere, that you would do random spot checks during  
 23 the installation process?  
 24 A. It's probably not written down.  
 25 Q. So that was just the convention, was it?

1 A. It was just convention, yes.  
 2 Q. So then you say, "spot checks at random intervals ...  
 3 and at key points when requested by the test  
 4 sponsor/contractor".  
 5 My question is: did you only check at key points  
 6 when you were requested to do so by the test sponsor, or  
 7 did BRE have a clear policy of checking at key points?  
 8 A. Well, what we would normally be doing is talking to the  
 9 sponsor and contractor during the installation process,  
 10 and they would give us some guidance in terms of their  
 11 timelines of their build, and at those points -- or at  
 12 that point we would ask them to advise us to -- when  
 13 they get to those points so we can take the relevant  
 14 measurements or photographs as required.  
 15 Q. I see. So there wouldn't be any internal guidance to  
 16 BRE personnel explaining what the key points were likely  
 17 to be and when those key points ought to be checked?  
 18 A. Erm ... well, the ... usually the people involved in the  
 19 installation or monitoring of the installation would be  
 20 quite experienced personnel, and they would be aware of  
 21 what those key points were. Yeah.  
 22 Q. So it was just left to those who were in charge of the  
 23 particular 8414 test to determine, what, case by case,  
 24 what those key points were?  
 25 A. Yes, depending on the system that was being installed at

1 the time, yes.  
 2 Q. Just looking at your first witness statement, or staying  
 3 with that, page 2 {BRE00005774/2}, paragraph 9, I want  
 4 to look at the last part of what you say in paragraph 9,  
 5 four lines up from the bottom. You say:  
 6 "The test sponsor designs and installs their own  
 7 test sample; BRE has no role in this due to its  
 8 requirement to remain independent and impartial."  
 9 Now, I appreciate that the BRE's not involved in the  
 10 design, you say, of the test sample, but in terms of the  
 11 installation of the system, can we agree that the BRE  
 12 would have an important role in monitoring and checking  
 13 the installation of the system being tested?  
 14 A. Yes, I would agree with that.  
 15 Q. Now, in terms of the checking of reports, I just want to  
 16 ask you some questions about the process for authorising  
 17 a test report following that report being written. If  
 18 we look at page 6 of your first statement  
 19 {BRE00005774/6}, so this statement, page 6, at  
 20 paragraph 26, this is where you're addressing what  
 21 documents are provided to the person writing or  
 22 approving a BS 8414 test report. You say there:  
 23 "The author of a BS 8414 report will have access to  
 24 the full project file, including test sponsor  
 25 drawing(s), build notes, photographs (during

1 installation , test and post–test), test videos and test  
 2 data, etc. This information will be a mix of paper and  
 3 electronic form.”  
 4 Then in the following paragraph, where you’re asked  
 5 the question:  
 6 “What checks are carried out by the BRE before any  
 7 BS 8414 test report is approved?”  
 8 You say this:  
 9 “After the author has completed a draft of the test  
 10 report, that draft will then be sent to another member  
 11 of the BRE team for an initial checking process.  
 12 A ‘secured’ draft (i.e. a draft in pdf format) will  
 13 usually be sent to the test sponsor so that they can  
 14 check the system description. Any comments received  
 15 from the test sponsor will then be considered and  
 16 verified by BRE before any amendments are made to the  
 17 draft report. The report then goes through a final  
 18 checking and approval process by the relevant report  
 19 authoriser.”  
 20 Now, I want to ask you: did the people carrying out  
 21 these internal checks and, indeed, the report  
 22 authoriser, also have access to the full project file?  
 23 A. Yes.  
 24 Q. Would you expect the checker and the authoriser to read  
 25 the documents on that project file as part of that

1 checking and approval process?  
 2 A. During the checking process, yes. The authoriser is not  
 3 usually quite as an in–depth technical check.  
 4 Q. Can you help us, what is the purpose of the  
 5 authorisation process?  
 6 A. It’s sort of more of an oversight to ensure that key  
 7 clauses are included, correct process has been used,  
 8 test standards, et cetera, are correctly used. There  
 9 would be some review of the system tested and a review  
 10 of the specification and system tested. As I say, it  
 11 wouldn’t be quite as a deep check as the previous  
 12 checks.  
 13 Q. I see. So you would expect the person who had checked  
 14 it before the authoriser, the initial checker, to do  
 15 a deep check, including checking back against all the  
 16 contemporaneous test documents, reports, photographs?  
 17 A. Yes, that’s what I’d normally expect, yes.  
 18 Q. Then the authorisation process is a shorter process;  
 19 yes?  
 20 A. Yes, yes.  
 21 Q. And a more cursory process; yes?  
 22 A. I don’t know that I would use the word “cursory”, but  
 23 yes, in essence, that’s right, yeah.  
 24 Q. 8414 and the early termination criteria now, I want to  
 25 ask you some questions about that.

1 If we can look at your first witness statement on  
 2 page 2 {BRE00005774/2}, paragraph 9. We were looking at  
 3 this paragraph, we were looking four lines up from the  
 4 bottom; I now want to look two lines up from the bottom.  
 5 You say there:  
 6 “BRE then carries out the large–scale fire test to  
 7 record time and temperature details as expressly set out  
 8 in BS 8414 Parts 1 and 2, written observations of the  
 9 general performance of the system under test are also  
 10 taken during [the] test, these observations will also  
 11 determine any early termination of the test due to  
 12 flaming beyond the confines of the test rig or on health  
 13 and safety grounds.”  
 14 Then you say:  
 15 “If requested by the test sponsor, BRE will produce  
 16 a test report confirming the nature of the test and  
 17 recording the relevant time and temperature data. Such  
 18 a test report will not of itself constitute any sort of  
 19 classification .”  
 20 Now, just thinking about that early termination  
 21 criteria , can we go to {BS10000097/11}, which is a copy  
 22 of BS 8414–2. Here we go, so this is 8414–2, it’s 2005,  
 23 you can see that in the top right–hand corner.  
 24 A. Yes.  
 25 Q. And paragraph 8.5 has the “Test termination criteria”,

1 if we can just read that, it says:  
 2 “Extinguish the heat source 30 min after ignition .  
 3 If no part of the cladding system is still burning,  
 4 terminate the test. If flaming or monitored  
 5 temperatures are still rising, continue taking records  
 6 for an additional 30 min, up to a maximum test duration  
 7 of 60 min.”  
 8 Then it says:  
 9 “The test shall also be terminated:  
 10 “a) if flame spread extends above the test facility ;  
 11 or  
 12 “b) if there is a risk to the safety of personnel or  
 13 impending damage to equipment.”  
 14 So that’s the test termination criteria in 8414  
 15 itself .  
 16 Can we agree that there is no room for discretion in  
 17 the wording at 8.5(a)? It says there:  
 18 “The test shall also be terminated:  
 19 “a) if flame spread extends above the test  
 20 facility ...”  
 21 That’s a mandatory requirement, isn’t it?  
 22 A. It is, yes.  
 23 Q. Can you help us, what’s your understanding of why that  
 24 particular wording is included in the test standard?  
 25 Why should the test be terminated if flame spread

1 extends above the test facility ?  
 2 A. Well, if you sort of consider that the test sample is of  
 3 a finite height, then if you get flaming above that, you  
 4 can't then monitor any flame -- surface spread of flame  
 5 or flaming in cavities or anything beyond that point.  
 6 So you don't know from that point onwards whether any  
 7 other occurrences would happen.  
 8 So at that point you have no -- you can gain no  
 9 further information from the test, and in effect you  
 10 have got uncontrolled flame spread on the system.  
 11 Q. Yes.  
 12 Can you help us as to whether there was ever  
 13 a practice at the BRE to use its discretion when it came  
 14 to that paragraph, paragraph 8.5(a), if the flames were  
 15 only short-lived?  
 16 A. Erm ... discretion in terms of actually putting out the  
 17 crib is --  
 18 Q. No, discretion in terms of stating that that test was  
 19 a termination pursuant to 8414.  
 20 A. No, there's no discretion on that, no.  
 21 Q. So I think we heard Mr Clark explain that sometimes it  
 22 would be terminated but you would let the rig burn on;  
 23 yes?  
 24 A. Yes, yes.  
 25 Q. In your experience, did you ever come across any

1 instances where it wasn't terminated officially, even  
 2 though the flames had reached the top of the rig,  
 3 because those flames were only transient or temporary?  
 4 A. No, I'm not aware of a situation like that.  
 5 Q. If that happened, what would your approach be to that  
 6 part of 8414? Would it have failed the test or not?  
 7 A. If we considered that the flaming went above the rig,  
 8 then as far as we're concerned, it is termination of the  
 9 test.  
 10 Q. Yes, okay.  
 11 Now, I want to ask you some questions now about  
 12 Kingspan, with particular reference to the K15 phenolic  
 13 insulation product.  
 14 We're going to start back in 2005. We know that  
 15 Kingspan carried out a test to 8414-1 on 31 May 2005 on  
 16 a system incorporating K15.  
 17 Now, I think you told us that this was around the  
 18 time that you became involved in this kind of testing;  
 19 is that right?  
 20 A. Erm --  
 21 Q. Did you have any involvement in that test?  
 22 A. No, I didn't have any involvement in that test. I think  
 23 that was probably a bit early for my involvement.  
 24 Q. Right, I see. Yes, sorry, I think you said 2008 --  
 25 A. Yeah.

1 Q. -- you were certainly project manager for 8414.  
 2 A. Yes, that's correct.  
 3 Q. Is it possible that you were involved with 8414 a little  
 4 bit before that, 2008?  
 5 A. Yes, I was, but not in a formal way.  
 6 Q. Can we go to {KIN00008847}. This is an internal  
 7 Kingspan report by Mr Ivor Meredith. It's dated  
 8 7 January 2008, we can see that at the bottom of this  
 9 page. I just want to ask you about some of the things  
 10 Mr Meredith has put in this internal report.  
 11 If we can go to page 5 {KIN00008847/5} and look at  
 12 the second paragraph, I'm just going to read that to  
 13 you. So he says this:  
 14 "In 2005 Kingspan tested to the new British Standard  
 15 formally known as Fire Note 9 BS 8414-1 and based on the  
 16 advice of BRE we used a non combustibile board as  
 17 cladding as the BRE stated 'if you test with  
 18 a non combustibile cladding then you could state [your]  
 19 system works with all non combustibile cladding systems.'  
 20 After successfully passing this test the BRE moved the  
 21 goal posts and stated that we could only say that our  
 22 system works with that specific non combustibile board.  
 23 However the test result met the criteria of BS 8414-1  
 24 and BR 135 and is a very useful document when securing  
 25 specifications for facades above 18m where the substrata

1 is masonry. The reason for this shift in the BRE's  
 2 opinion is that they are still learning about this test  
 3 and Kingspan were one of the first to test a ventilated  
 4 rainscreen construction."  
 5 Now, just by way of some context, in his oral  
 6 evidence to us Mr Meredith said that he thought he would  
 7 have had this conversation with David Hoare or possibly  
 8 Sarah Colwell, this conversation about: if you  
 9 successfully pass with a non-combustible board then you  
 10 can say your system works with all non-combustible  
 11 cladding systems.  
 12 You deal with this in your second witness statement.  
 13 If we can look at that second statement,  
 14 {BRE00032261/6}, you cover this in paragraphs 19 and 20.  
 15 If we look first at paragraph 19, you're answering here,  
 16 I think, Mr Meredith's witness statement at this point,  
 17 and you say:  
 18 "[His] statement seems to show that Kingspan sought,  
 19 but failed, to stretch the BR 135 classification process  
 20 to cover cladding systems that had not been tested. In  
 21 his answer to question 9(c) he states that 'I constantly  
 22 sought to get the BRE to expand what they could say  
 23 about K15 in accordance with BS 8414 parts 1 & 2'. Also  
 24 at paragraph 9(c) Mr Meredith states that 'BRE advised  
 25 that if we tested behind a non-combustible building

1 board they would give us scope to say that the system  
 2 tested to could meet the BR 135 requirements when used  
 3 behind all non-combustible cladding types'. He then  
 4 goes on to describe a meeting at which he says that he,  
 5 Kingspan's Philip Heath, my colleague Sarah Colwell and  
 6 I were all present. He states that the conclusion of  
 7 the meeting was that BRE 'could not commit to being able  
 8 to give Kingspan scope of application as they simply did  
 9 not have the knowledge of these systems'."

10 You then say in paragraph 20:

11 "I do not recall that meeting. Yet, I can say that  
 12 Mr Meredith's conclusion from a conversation of that  
 13 type, if it happened, is correct."

14 You go on to say that:

15 "BRE as a test house simply could not and would not  
 16 advise a test sponsor that a system would be classified  
 17 to BR 135 without that specific system being tested."

18 Now, to your knowledge, did you or anyone else at  
 19 the BRE at any stage suggest or advise Kingspan that the  
 20 use of non-combustible boards as the putative rainscreen  
 21 material meant that any non-combustible material might  
 22 also be able to be used, as Mr Meredith has recollected?

23 A. I can't recall anything being said in that vein. I've  
 24 certainly not been party to that conversation, and  
 25 I would be very, very surprised if anybody within BRE

1 would make that sort of statement.  
 2 Q. Is it possible that someone at the BRE gave that advice  
 3 when the BRE itself was on a learning curve about the  
 4 behaviour of these systems? Do you remember a time when  
 5 the BRE was itself learning about system behaviour in  
 6 8414 tests?

7 A. I think we're -- it's fair to say that we're always  
 8 learning, whatever tests that we're doing, and BS 8414  
 9 in those dates were a relatively new test for us. So,  
 10 yes, we were learning in terms of system performance,  
 11 which, you know, from that respect I'd be even more  
 12 surprised if we were to be making those sorts of  
 13 statements. If we don't have the knowledge to do so,  
 14 then we certainly couldn't be making those sorts of  
 15 statements. And it would -- at the end of the day, it  
 16 would be outside our remit to be doing so anyway.

17 Q. So you don't ever recall a time when the BRE internally  
 18 may have thought that if you tested one non-combustible  
 19 cladding board, you would then be able potentially to  
 20 say that any non-combustible cladding board would  
 21 satisfy the BR 135 criteria and could be used in these  
 22 systems?

23 A. No, no, I don't recall anything like that.

24 Q. You have no recollection of that?

25 A. No.

1 Q. Well, can you help us as to what Mr Meredith might have  
 2 been referring to then?

3 A. I'm afraid I can't help you with that.

4 Q. Right. So you can't help us as to how he came by that  
 5 understanding when Kingspan were beginning to carry out  
 6 these 8414 tests with the BRE?

7 A. No. The only thing that I could say, and it's purely  
 8 conjecture on my part, is that my understanding,  
 9 although I wasn't involved with that test for some time,  
 10 is that -- my understanding of that test is -- was the  
 11 system was a fairly indicative system. So I would  
 12 assume from BRE's point of view that, you know, it  
 13 wasn't a representative system, they were trying to  
 14 understand the performance of K15 behind various  
 15 different types of board or system, and therefore,  
 16 you know, there may have been -- as I say, this is  
 17 conjecture on my part -- there may have been a sort of  
 18 general discussion about that -- if -- you know, that  
 19 may be a way to check the performance if you put some  
 20 sort of board in front. But that in no way is saying:  
 21 if you do that, then it is all -- you know, that will  
 22 cover you for any type of non-combustible board.

23 Q. When you say it was a fairly indicative system, can you  
 24 help us with what you mean by that?

25 A. Yeah, well, the -- that as a system is, in my view, not

1 a system that would be used on a building.

2 Q. Yes, and can you help us as to why that's your view?

3 A. Because I don't believe the type of board that was used  
 4 could be used as an external weatherproof board.

5 Q. Yes. So it didn't have any kind of exterior rainscreen  
 6 surface or coating on it?

7 A. No.

8 Q. So you thought at the time, did you, that it was  
 9 an indicative test? Is that right?

10 A. Well, not an indicative test per se, because the test  
 11 was run fully in accordance with BS 8414. The system  
 12 itself I understood as being an indicative system.

13 Q. Yes, I understand.

14 A. Subtle differences, I realise, but --

15 MS GRANGE: No, absolutely, and we are going to come back to  
 16 this topic, actually, when we discuss the BR 135  
 17 classification of that system, but this is helpful.

18 Mr Chairman, I'm midway through this topic, but  
 19 I think this is as good a moment as any for the break.

20 SIR MARTIN MOORE-BICK: Yes, very well.

21 Well, I said we'd have a break during the morning,  
 22 Mr Baker. We'll take it now.

23 We'll come back, please, at 11.30, to continue your  
 24 evidence, and in the meantime, while we're having the  
 25 break, please don't speak to anyone about your evidence

1 or anything relating to it. All right?  
 2 THE WITNESS: Okay, thank you.  
 3 SIR MARTIN MOORE—BICK: See you later, thank you very much.  
 4 (11.16 am)  
 5 (A short break)  
 6 (11.30 am)  
 7 SIR MARTIN MOORE—BICK: Welcome back, everyone. We're going  
 8 to continue hearing from Mr Baker.  
 9 Mr Baker, I hope you can see me and hear me well,  
 10 can you?  
 11 THE WITNESS: Yes, I can.  
 12 SIR MARTIN MOORE—BICK: Good, thank you very much.  
 13 In that case, if you're ready to carry on, I hope,  
 14 I'll ask Ms Grange to continue putting some questions to  
 15 you.  
 16 Yes, Ms Grange.  
 17 MS GRANGE: Yes, thank you.  
 18 Yes, Mr Baker, we had been discussing the 2005  
 19 Kingspan K15 test, and are you aware that the outer  
 20 façade in that test report from May 2005 is recorded as  
 21 cement particle board?  
 22 A. Yes, I'm aware of that.  
 23 Q. When did you become aware of that, do you think?  
 24 A. I can't remember the first time that I looked at that  
 25 report, to be quite honest.

1 Q. Okay, yes.  
 2 Are you aware that Kingspan now say that the test  
 3 report is not accurate and that the material used as the  
 4 outer face was a cellulose fibre cement board?  
 5 A. I've recently become aware of that, yeah.  
 6 Q. Can you help us as to how that confusion might have come  
 7 about, that the report records one thing but Kingspan  
 8 are now saying that something slightly different was  
 9 tested?  
 10 A. I can't really say. We would have reported as advised  
 11 originally by Kingspan. Why the change, I don't know.  
 12 Q. Yes. Mr Meredith has said in his oral evidence — for  
 13 the transcript, that's {Day76/207} — that such a board  
 14 was not traditionally suitable for the outermost layer  
 15 of a cladding system, and it sounds like you agree with  
 16 that. Is that right?  
 17 A. I agree with that, yes.  
 18 Q. If we can look on this point at your third witness  
 19 statement, {BRE00035303/3}, and in particular  
 20 paragraph 12. This is under the heading "Correspondence  
 21 dated 9 September 2015 between myself and  
 22 Vida Gaubsaite". We will come back to that topic in  
 23 relation to the BR 135 classification report, but just  
 24 for now, looking at what you say, you say:  
 25 "This communication relates to a fully compliant

1 BS 8414 test conducted for Kingspan Insulation under BRE  
 2 report number 220876, originally conducted in 2005.  
 3 This test was conducted on a system of which, from my  
 4 perspective, was not a complete system."  
 5 Now, when you say not a complete system, is that  
 6 because of the answer you just gave a moment ago,  
 7 because the board was not a board that you consider  
 8 would have actually been used on high-rise buildings?  
 9 A. Yes, that's correct, yeah.  
 10 Q. I'm going to take you through the K15 story broadly  
 11 chronologically. I want to turn to something from 2006.  
 12 If we can go to {KIN00005350}, this is a flyer produced  
 13 by Kingspan. It's a flyer called "What's lurking behind  
 14 your façade?", and it was produced in 2006, after the  
 15 May 2005 test to 8414—1.  
 16 Were you aware of this kind of promotional  
 17 literature by Kingspan at the time in relation to K15?  
 18 A. I can't say that I was specifically aware about this  
 19 document.  
 20 Q. Were you aware of other Kingspan K15 marketing  
 21 literature?  
 22 A. No, I was more aware of the certification issued by BBA  
 23 and suchlike.  
 24 Q. Yes, and the LABC?  
 25 A. Yeah.

1 Q. Yes, okay, we will come on to that.  
 2 Now, Kingspan at this time did not have a BR 135  
 3 classification report for the May 2005 test, did they?  
 4 A. No.  
 5 Q. If we look at the first paragraph that starts in the red  
 6 text in the second half of that page, you can see it  
 7 says:  
 8 "Kingspan Kooltherm K15 Rainscreen Board has not  
 9 only been tested by the [BRE] and awarded certification  
 10 to BS 8414—1 ... but it has also been assessed and  
 11 approved in accordance with BR 135."  
 12 Now, that's a wholly inaccurate assertion there,  
 13 isn't it?  
 14 A. It is, yes.  
 15 Q. It's also inaccurate in that a product can't be awarded  
 16 that certification, can it?  
 17 A. Exactly, yes, it's a system test, not an insulation  
 18 board test.  
 19 Q. Exactly.  
 20 I just want to turn to an internal Kingspan email  
 21 about this. This is {KIN00005179}. This is an email  
 22 dated 8 June 2006 sent by Mr Meredith to others within  
 23 Kingspan.  
 24 You wouldn't have seen this at the time, but what he  
 25 says in the first two paragraphs is this:

1 "Please note the K15 'What's lurking behind your  
 2 façade?' flyer has been withdrawn by the marketing  
 3 department partly because it's considered not a good  
 4 sales tack tick [sic] to highlight the fact that you  
 5 don't need Class '0' below 18 metres.  
 6 "Also the BRE have complained about the use of the  
 7 word 'approved' and 'certification' in our text. These  
 8 are privileges that would cost us an additional 20K ..."  
 9 Now, just pausing there, it would appear that  
 10 someone within the BRE has seen this "What's lurking  
 11 behind your façade?" flyer; yes?  
 12 A. Yes, yeah.  
 13 Q. Does that help you, can you recall anything more about  
 14 that at this time?  
 15 A. No, but it's probably not something that I would have  
 16 been involved in at that time.  
 17 Q. Do you think it's correct that the BRE would have  
 18 charged an additional £20,000 to issue a classification  
 19 report for this test?  
 20 A. No, I think what he -- I think what Ivor is actually  
 21 referring to there is related to the approval or  
 22 certification. I think he's probably had discussions at  
 23 some stage regarding LPCB approval of the system.  
 24 Q. I see.  
 25 A. And that's likely to -- well, I don't think even that

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1 would cost £20,000, but that might well include a test  
 2 as well. But that's my assumption of what he's talking  
 3 about there. It certainly wouldn't be a cost of that  
 4 for a BR 135.  
 5 Q. Are you able to help us as to who it was at the BRE that  
 6 had complained about the use of the word "approved" and  
 7 "certification" in the text?  
 8 A. Erm ... no, not specific -- I would assume it would be  
 9 either sort of Sarah Colwell or maybe Dr Debbie Smith.  
 10 Q. When Mr Meredith gave oral evidence -- for the  
 11 transcript this is at {Day75/124} -- he wasn't very  
 12 clear, but when asked about this and who it was that had  
 13 complained, he said:  
 14 "Answer: I don't know if it was Tony Baker.  
 15 "Question: You think it could have been him?  
 16 "Answer: I think it could have been him, yeah."  
 17 So is he wrong about that, that it wasn't you that  
 18 complained about this flyer?  
 19 A. No, I didn't have any discussions regarding that.  
 20 Q. Were you ever aware of the BRE complaining about the  
 21 language used in Kingspan's marketing material for K15?  
 22 A. Not specifically about marketing material that I'm aware  
 23 of.  
 24 Q. So are you saying not specifically about marketing  
 25 material because you are recalling conversations or

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1 concerns about certifications it had?  
 2 A. That -- yes, that's it, yes.  
 3 Q. I see. Who do you recall at the BRE having concerns  
 4 about that?  
 5 A. What, about the certification or ...?  
 6 Q. Yes.  
 7 A. Again, I think it was probably through Sarah Colwell,  
 8 potentially Dr Debbie Smith. I think they became aware  
 9 of particularly the BBA certification, and probably the  
 10 LABC certification as well.  
 11 Q. Do you remember discussions taking place within BRE  
 12 about those certifications at that time?  
 13 A. I do remember regarding the BBA certification. I don't  
 14 remember -- I don't recall the issues with the LABC.  
 15 Q. I see.  
 16 Now, do you remember a test to BS 8414-2 on  
 17 a steel-framed structure which was carried out in  
 18 December 2007? That test was sponsored by Kingspan,  
 19 Sotech and Metsec. Do you remember that?  
 20 A. Vaguely.  
 21 Q. Now, if we can go back to that internal report we were  
 22 looking at before from Mr Meredith, {KIN00008847}. This  
 23 is the internal report prepared by Mr Meredith of  
 24 7 January 2008. We looked at that earlier.  
 25 If we can look at page 2 {KIN00008847/2} now -- we

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1 were on page 5 that we were looking at -- and under the  
 2 heading "Test Witnesses" in the middle of that page, can  
 3 you see there is a list of names: John Egginton,  
 4 James Gallear, and then you're there, Tony Baker, and it  
 5 says "LPCB". Do you see that?  
 6 A. Yes, yeah.  
 7 Q. Does that help, do you think you did attend that test in  
 8 December 2007?  
 9 A. Yes, I think perhaps there was some discussion with --  
 10 well, I don't know whether it was specifically Kingspan  
 11 or it may have been Sotech or whoever, regarding  
 12 potential certification to the LPS 1581 or 1582  
 13 standards in relation to that test, so --  
 14 Q. Right. So that was your -- sorry.  
 15 A. So I would have simply been there as an observer from  
 16 the certification perspective.  
 17 Q. Yes. And is it right that Sarah Colwell and Phil Clark  
 18 were also there for the BRE?  
 19 A. Well, to be honest, I don't specifically remember the  
 20 test, so -- but, yeah, that wouldn't be unusual.  
 21 Q. Can you remember that in late 2007 there was significant  
 22 interest amongst BRE employees in attending tests to  
 23 8414-2? Can you remember there being interest in that?  
 24 A. There's general interest in those types of tests anyway  
 25 because they're large-scale tests, and it's useful for

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1 other people within BRE to understand the types of tests  
 2 that we conduct.  
 3 Q. Yes.  
 4 A. And as this is a large-scale test, then yes, that  
 5 wouldn't be unusual, for others to be there just as  
 6 witnesses to -- you know, just from their training  
 7 perspectives.  
 8 Q. Yes.  
 9 Do you have any recollections of the performance of  
 10 the system when it was tested, then, in December 2007?  
 11 A. I don't specifically. Obviously from the -- I've seen  
 12 this document, so I understand that, you know, it didn't  
 13 complete the test.  
 14 Q. Yes. I mean, it was a little bit worse than that.  
 15 If we look at the bottom of this page, "Result", can  
 16 you see it says:  
 17 "By 17minutes the top fire barrier had breached and  
 18 the raging inferno moved up to the top thermocouples and  
 19 pushed them past 600 degrees thus failing the simple  
 20 criteria of BR 135."  
 21 A. Yes.  
 22 Q. Then it says:  
 23 "BS 8414-2 does not have a pass or fail it needs to  
 24 be cross referenced with BR 135."  
 25 Going over the page {KIN00008847/3}, he continues:

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1 "The Phenolic was burning on its own steam and the  
 2 BRE had to extinguish the test early because it was  
 3 endangering setting fire to the laboratory."  
 4 Does that help with your recollection? Can you  
 5 recall a test that was that unsuccessful at that time?  
 6 A. I think it's probably quite flowery wording from Ivor in  
 7 this report, to be honest. But, yeah, when I read those  
 8 comments, it did ring bells, yes.  
 9 Q. Can you recall the test being a spectacular failure?  
 10 A. I can remember a failure, yes.  
 11 Q. Okay.  
 12 A. But obviously in the role that I do, I've seen many,  
 13 many tests, a number of them have been failures,  
 14 a number of them have been passes. It's difficult to  
 15 actually determine in my mind which test was which --  
 16 Q. I see.  
 17 A. -- looking back in time.  
 18 Q. Now, staying with this page, if we can go down to the  
 19 bottom of this page, there is a section that begins  
 20 "Comments from the BRE". Can you see that there?  
 21 A. Yes, yes.  
 22 Q. "Comments from the BRE", and we have the following text,  
 23 it says:  
 24 "The official line:- It's a system failure no  
 25 individual component can be solely held responsible for

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1 the failure.  
 2 "However (unofficial comments): It was apparent that  
 3 the insulation was fully involved in the test. Surface  
 4 spread of flame was apparent and the core continued to  
 5 burn when the flame source had been extinguished. They  
 6 stated they did not remember the product performing like  
 7 that last time."  
 8 Now, are you able to help us as to who made those  
 9 official and unofficial comments?  
 10 A. No, I don't recall being party to that discussion.  
 11 Q. Were you solely there as a representative of the Loss  
 12 Prevention Board, or were you also there because, by  
 13 this time, you were involved in 8414 testing and --  
 14 A. I was certainly getting more involved with 8414 testing  
 15 by that stage, yes. But I think from the perspective of  
 16 this test, I think there was a view to looking at the  
 17 certification process.  
 18 Q. Can you recall who at the BRE was taking main  
 19 responsibility for this test?  
 20 A. I believe it would have been Phil Clark.  
 21 Q. Right. And any comments during the test, would those  
 22 most likely have come from Mr Clark?  
 23 A. Mr Clark or Sarah Colwell, but I --  
 24 Q. Would you -- sorry?  
 25 A. Sorry, I don't agree with the comments of "official

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1 line" and "unofficial comments". That doesn't sort of  
 2 mean anything to me.  
 3 Q. Can you explain why that doesn't mean anything to you?  
 4 A. Well, we don't have a process of issuing official  
 5 comments and unofficial comments. It's just not what we  
 6 do. We may discuss the performance of a test with the  
 7 sponsor, but, you know, they wouldn't be in terms of  
 8 official line and unofficial line.  
 9 Q. I appreciate that when those comments are made, they  
 10 might not be headlined and signposted with, "Here's our  
 11 official comments, here's our unofficial comments", that  
 12 might have been Mr Meredith putting it in those  
 13 categories, but in your experience, particularly  
 14 thinking back to this time, was it common for there to  
 15 be discussions after the test, including comments on how  
 16 different components of the test had behaved in it?  
 17 A. Erm ... I wouldn't say it's common, but if there's  
 18 a clear driver for any particular failure, then that  
 19 might be discussed in general.  
 20 Q. Yes.  
 21 Now, were you aware at the time of this test -- so  
 22 December 2007 -- that the K15 product that was being  
 23 tested was a different product from the one that had  
 24 been tested in 2005?  
 25 A. No, I wasn't aware of that.

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1 Q. Again, in Mr Meredith's oral evidence -- this is, for  
 2 the transcript, {Day75/161} -- said that this change,  
 3 this transfer to a new formulation of K15 that had  
 4 happened in 2006, was something that he thought he might  
 5 have discussed with you. Now, do you have any  
 6 recollections of that?  
 7 A. I have absolutely no recollection of that discussion or  
 8 any such discussion, no.  
 9 Q. Were you in discussions with Ivor Meredith from time to  
 10 time around this time, so 2006, 2007, 2008?  
 11 A. Yes, but probably for a number of different reasons, not  
 12 just BS 8414. Kingspan were looking at a number of  
 13 different projects at different times.  
 14 Q. Did you have any discussions with Mr Meredith either  
 15 during or after this test?  
 16 A. Not that I recall.  
 17 Q. Now, just staying with that same document, that report  
 18 by Mr Meredith, if we could look at page 6 now  
 19 {KIN00008847/6}, under heading 3 there, "The tested  
 20 system", it says this:  
 21 "Following much discussion we agreed on a system  
 22 that we and the BRE believed had the best chance of  
 23 passing.  
 24 "Below details the construction from inside to the  
 25 exposed face ..."

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1 Do you see that?  
 2 A. Yeah.  
 3 Q. Now, can you recall whether there were discussions  
 4 between the BRE and Kingspan about the system that had  
 5 the best chance of passing?  
 6 A. No, it's not the sort of conversation that we would have  
 7 with any client.  
 8 Q. Were you aware of anyone else at the BRE working in  
 9 collaboration with Kingspan at this time on these kind  
 10 of issues?  
 11 A. No, I wasn't aware of anybody.  
 12 Q. Now, in 2009, were you aware that in May 2009 Kingspan  
 13 obtained a system approval certificate from the LABC for  
 14 K15?  
 15 A. I've subsequently become aware, yes.  
 16 Q. When you say subsequently, when did you become aware?  
 17 A. Well, only recently. I wasn't aware -- to my  
 18 recollection, I wasn't aware at that time.  
 19 Q. Well, let's have a look at {BRE00012252}. This is  
 20 an email string, and I want to look at the first email  
 21 in the chain at the bottom of that page, if we could  
 22 expand that. This is from John Raybould. Now, he was  
 23 a BRE employee; yes?  
 24 A. Yes, yeah.  
 25 Q. And it's sent on 14 May 2009 to you, to Sarah Colwell,

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1 to Stephen Howard, and copying in Norman MacDonald and  
 2 Debbie Smith. Do you see that?  
 3 A. Yeah.  
 4 Q. What was Mr Raybould's role within the BRE?  
 5 A. John is a business development manager.  
 6 Q. We can see it reads:  
 7 "Hi Folks  
 8 "I have managed to get an LABC certificate -- from  
 9 Hertfordshire, that says the Kingspan K15 insulation can  
 10 be used in a mixture of insulation thicknesses, masonry  
 11 or steel framed substrates, a min cavity gap of 50mm  
 12 with a range of rainscreen claddings.  
 13 "I am sure that this will be sent to us officially  
 14 by Kingspan when Mark Stevens gets back from the  
 15 Middle East. I would like to think we have tried to  
 16 establish some guide lines like I was proposing, so that  
 17 we could at least give Mark some help with his system  
 18 configurations.  
 19 "Also note that this appears to give automatic  
 20 acceptance for systems over 18m.  
 21 "Let me know how we want to move forward."  
 22 So that's the email.  
 23 A. Yeah.  
 24 Q. Now, you said you don't think you were aware of the LABC  
 25 system approval certificate; does this help you as to

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1 whether in fact you were aware back in May 2009?  
 2 A. Well, clearly I was involved -- I was copied in or sent  
 3 that from John, so yes, I must have been aware at the  
 4 time, but I don't recall it as I sit here at the moment.  
 5 Q. Yes.  
 6 In the second paragraph there's reference to the  
 7 fact that Mr Raybould thinks it will be "sent to us  
 8 officially by Kingspan when Mark Stevens gets back from  
 9 the Middle East". Can you help us, who was  
 10 Mark Stevens?  
 11 A. Mark Stevens worked for Kingspan.  
 12 Q. Yes, he worked for Kingspan Offsite; is that right?  
 13 A. I believe so, yes.  
 14 Q. Yes. Do you have no recollection, following this email,  
 15 of going and reading this LABC certificate to which your  
 16 attention is being drawn?  
 17 A. I must admit I don't have a recollection of doing so.  
 18 I must have done, but I don't recall doing so.  
 19 Q. Was it Kingspan's usual practice to send their product  
 20 certificates, whether that was LABC or otherwise, to the  
 21 BRE? You can see that Mr Raybould is saying that he  
 22 thinks it will be "sent to us officially by Kingspan".  
 23 Was it Kingspan's usual practice to send that kind of  
 24 documentation to the BRE?  
 25 A. No, I wouldn't say so, not specifically.

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1 Q. In that second paragraph, in the second sentence, he's  
 2 there saying:  
 3 "I would like to think we have tried to establish  
 4 some guide lines like I was proposing, so that we could  
 5 at least give Mark some help with his system  
 6 configurations."  
 7 Can you help us as to what these guidelines were  
 8 that had been established to try and give Kingspan some  
 9 help with system configurations?  
 10 A. Yeah, I was aware at the time that John Raybould was  
 11 having discussions with Mark Stevens regarding a number  
 12 of systems that they were looking to get tested, and  
 13 there was some discussions around what systems require  
 14 testing to cover a scope of applications, and it ended  
 15 up quite a large potential test programme. I don't  
 16 think it ever progressed.  
 17 Q. Right. Is that reference to guidelines also a reference  
 18 to the BRE trying to put in place some boundaries for  
 19 Kingspan as to what could properly be claimed about the  
 20 use of K15 over 18 metres?  
 21 A. I'm not so sure that that's what John's referring to.  
 22 I think he's more referring to the -- a test matrix or  
 23 a test plan that he was discussing with Mark Stevens at  
 24 that time.  
 25 Q. But he appears to be saying this in the context of

1 drawing attention to a very broad LABC certificate. Can  
 2 you recall there having been any discussions with  
 3 Kingspan about the need to ensure that its  
 4 certifications were properly accurate based on the test  
 5 evidence?  
 6 A. Well, I believe further up this email chain there was  
 7 potentially further discussion between Sarah Colwell and  
 8 Debbie Smith, and possibly Stephen Howard, but I wasn't  
 9 involved in that. What progressed after that, I don't  
 10 know.  
 11 Q. I see. Are you referring to the email immediately above  
 12 this?  
 13 A. Yes.  
 14 Q. So Sarah Colwell says to Debbie Smith and  
 15 Stephen Howard:  
 16 "Debbie/Steve  
 17 "We need to discuss this urgently."  
 18 You were aware of those discussions at the time,  
 19 were you?  
 20 A. Well, as you see, I wasn't actually copied in to that  
 21 email from Sarah, so I don't know whether I would have  
 22 been aware or not. I guess I would have been, from the  
 23 sidelines point of view, but I didn't -- I wasn't  
 24 involved in any specific discussions.  
 25 Q. From the sidelines, can you help us as to what exactly

1 they were discussing at that time?  
 2 A. Well, I guess it was based on the broad-brush statement  
 3 on the LABC certificate.  
 4 Q. Do you remember there being a concern within the BRE  
 5 about how broad brush that LABC certificate was?  
 6 A. Yeah, well, I've later become -- become aware of it,  
 7 yes. As I say, I don't recall it at this specific time,  
 8 but over time I did become aware of it, yes.  
 9 Q. When you say, "I've become aware of it over time", is  
 10 that because, while you were involved in 8414 testing at  
 11 the BRE, you came to become aware that there had been  
 12 concerns about --  
 13 A. Yes.  
 14 Q. -- certification around this time?  
 15 A. Yes, that's correct, yes.  
 16 Q. But you can't help us as to precisely when you became  
 17 aware of this?  
 18 A. No, I can't tell you on that.  
 19 Q. Let's look at an email chain now from 2010. This is  
 20 {BRE00003327}. If we look at the first email in the  
 21 chain, which is at the bottom of page 1, right at the  
 22 bottom of page 1, we can see an email from Mr Meredith  
 23 to Phil Clark on 25 March 2010 with the subject "BS 8414  
 24 testing". If we go over the page {BRE00003327/2} to see  
 25 the content of that email, he says:

1 "Phil, Clark,  
 2 "I hope all is well.  
 3 "I have two new insulation products that I would  
 4 like to test in the BS 8414. Potentially I would like  
 5 two official tests however it may also be an[sic] two  
 6 indicatives .... this depends on costs."  
 7 He goes and he says:  
 8 "Both tests would need to be on the masonry  
 9 substrate."  
 10 He asks about the dimensions of the rig and other  
 11 questions about the specifics of that. So he has two  
 12 new insulation products he wants to test and potentially  
 13 wants two official tests, however it may also be two  
 14 indicatives .  
 15 Then if we move up the chain, back on page 1  
 16 {BRE00003327/1}, we can see that Mr Clark responds on  
 17 30 March 2010, and he says:  
 18 "Ivor, I am well thanks and am happy to hear from  
 19 you.  
 20 "In terms of the questions below a couple of BS8414  
 21 test is not a problem and we would be able to also do  
 22 some indicative tests as required. I would suggest that  
 23 you speak with my colleague Simon [Ashton-Jones] cc'd  
 24 into this email to speak about costs ..."  
 25 Then if we go to the next email above that, this is

1 sent by you on 30 March at 16.14, it's from you to  
 2 Phil Clark and Stephen Howard, so this is an internal  
 3 email now.  
 4 A. Yes.  
 5 Q. "If we do indicatives how would this be reported? Just  
 6 reading between the lines of Ivor's e-mail it seems as  
 7 though he would try to pass off indicatives as being  
 8 full tests or am I just being a cynic!"  
 9 Then Phil Clark responds and says at the top:  
 10 "I would suggest that the supply of the data and  
 11 a brief letter would suffice but no more than that?"  
 12 Now, just breaking down what you say there, you  
 13 start by saying, "If we do indicatives how would this be  
 14 reported?" What did you mean at the time, when you said  
 15 "If we do indicatives"? What did you mean by that?  
 16 A. Well, I wasn't sure of what level of indicative test  
 17 Ivor was looking for, whether it's similar in vein to  
 18 the test that was done in 2005 or whether it's a test  
 19 with different thermocouples or no thermocouples or  
 20 what. You know, at that stage I didn't know what he was  
 21 actually looking for or referring to.  
 22 Q. You're talking about different levels of indicatives,  
 23 and I think later you draw a distinction between  
 24 an indicative which was, say, a research and  
 25 development --

1 A. Yes.  
 2 Q. -- type indicative, or an indicative which wasn't  
 3 a system you would use in the real world but was one  
 4 that could actually go through the full 8414 test; is  
 5 that right?  
 6 A. That's correct, yes, yeah.  
 7 Q. If an indicative test was done, is there a special way  
 8 in which the results were reported? So let's take  
 9 a test whereby it's not a complete cladding system; how  
 10 would those results be reported?  
 11 A. Well, in that case we would typically do what we would  
 12 class as a short-form letter report, so it would just be  
 13 a brief outline of what was done, what the system  
 14 consisted of, and the results in terms of data or --  
 15 you know, it might just be a simple one or two-page what  
 16 we'd deem as a letter report rather than a formal test  
 17 report, and provide the test data to the client.  
 18 Q. I see. So if you had done a test not on a complete  
 19 cladding system, you might just issue a letter with the  
 20 results in it?  
 21 A. That's correct, yes, yes, or sometimes we might only  
 22 issue the test data itself. Sometimes that's all the  
 23 clients actually require.  
 24 Q. But if it was a complete system, but the manufacturer  
 25 told you that they were using it as an indicative test,

1 would that affect the way in which the 8414 report was  
 2 written?  
 3 A. If we'd -- if it had been commissioned as a full test  
 4 report, or a full test, then typically we would issue  
 5 a full test report.  
 6 Q. And would it record anywhere in that report that that  
 7 was considered to be an indicative test because of some  
 8 factor relevant to that, such as the fact that the  
 9 cladding board was not representative?  
 10 A. I think, yeah, where we are now, yes, that would be the  
 11 case.  
 12 Q. But back then, you say --  
 13 A. I think that's why I was asking the question, because  
 14 I was aware of the 2005 test at that stage, and,  
 15 you know, I was aware that there was confusion over that  
 16 test.  
 17 Q. So are you saying that the BRE's procedures would be  
 18 different now if that 2005 test were run again?  
 19 A. Yes, I believe it would be, yes.  
 20 Q. And in what way would your procedures be different?  
 21 A. We would be clearer in the type of report that we  
 22 issued.  
 23 Q. And it would make it clear, would it, that it was in  
 24 some senses an indicative test?  
 25 A. Yes.

1 Q. Now, going back to your email that we were just looking  
 2 at, we looked at just the very first part of your short  
 3 email, if we can have that back up {BRE00003327}, you  
 4 start by saying:  
 5 "If we do indicatives how would this be reported?"  
 6 So is it right you're raising the very question  
 7 we've just been discussing?  
 8 A. Exactly that, yes, yeah.  
 9 Q. You go on and say:  
 10 "Just reading between the lines of Ivor's e-mail it  
 11 seems as though he would try to pass off indicatives as  
 12 being full tests or am I just being a cynic!"  
 13 Can you help us, what was the basis for that concern  
 14 at the time?  
 15 A. Well, as I say, I think I had in my mind the test was  
 16 2005, and my belief that that was an indicative system  
 17 as opposed to a full marketable system.  
 18 Q. So does it follow that, by this time, you were aware  
 19 that Kingspan had been trying to pass that off as being,  
 20 you say, a full test there; is that what you meant at  
 21 the time?  
 22 A. Yes, I believe that's what I was referring to, yeah.  
 23 Q. And how had you come to know that, that Kingspan were  
 24 trying to pass off indicatives as being full tests?  
 25 A. Erm ... well, I'm struggling to sort of remember actual

1 timelines , but, you know, we were aware that the 2005  
 2 test was being used for basically -- Kingspan basically  
 3 stating that the -- their K15 test had -- insulation had  
 4 passed the test and had been, you know, effectively  
 5 given a classification .  
 6 Just -- you know, the wording used there is not my  
 7 normal style, to be quite honest, so ... I was just  
 8 a bit -- maybe I was just a bit unsure of where this one  
 9 was going.  
 10 Q. Yes, understood.  
 11 Did Mr Howard have the same awareness as you at the  
 12 time, that Kingspan had been trying to pass off  
 13 indicatives as being full tests?  
 14 A. I believed he did, but I don't know that we ever  
 15 discussed this email chain any further. I think Phil's  
 16 response was probably the correct response, and that's  
 17 the way that we went with it, if that was to be  
 18 progressed.  
 19 Q. Were individuals like Debbie Smith and Sarah Colwell  
 20 also aware that Kingspan had been trying to pass off  
 21 indicatives as full tests?  
 22 A. Indicative in terms of the system as opposed to  
 23 a full -- not a full test, yes, they were aware of that,  
 24 yeah.  
 25 Q. Yes. Do you know whether the BRE ever took any steps to

1 alert anyone else outside its organisation to those  
 2 concerns?  
 3 A. We had discussions with the BBA.  
 4 Q. And anyone else?  
 5 A. I don't recall . Whether discussions were held with LABC  
 6 or not, I don't know.  
 7 Q. Okay.  
 8 If we look at Mr Clark's response to you and  
 9 Mr Howard again at the top that page, can we agree,  
 10 based on his response, that he was aware at the time,  
 11 hence he's suggesting that the supply of data and  
 12 a brief letter would suffice but no more than that?  
 13 A. I don't know whether he was actually aware of, you know,  
 14 the full scope of the issue, but that would lead me to  
 15 believe that he was, yes.  
 16 Q. Why wouldn't he have been aware if you and Mr Howard and  
 17 Debbie Smith and Sarah Colwell were all aware? Why  
 18 wouldn't Mr Clark have been aware too?  
 19 A. Well, as I say, I don't know whether he was or not, but  
 20 Phil -- the way that we were organised at that time,  
 21 I believe, Phil Clark was actually under a different  
 22 line management.  
 23 Q. Who was he line-managed by at that time?  
 24 A. Steven Manchester.  
 25 Q. Right, I see.

1 A. The way that we operated within the passive department,  
 2 we project managed in terms of the front--end enquiry and  
 3 that sort of thing for BS 8414. But, effectively , we  
 4 internally subcontracted the test to the people that  
 5 actually ran the Burn Hall, which was Steve Manchester  
 6 and Phil Clark.  
 7 Q. Right. How proximate were you to them in terms of your  
 8 offices , to Steve Manchester and Phil Clark, were you  
 9 close by or were you in a separate part of the BRE?  
 10 A. I think relatively close by, but to be honest we've  
 11 moved offices so many times I can't recall at any  
 12 particular stage.  
 13 Q. Let's look at another email chain now. This is moving  
 14 forward in time to 2013. If we can go to {BRE00003397}.  
 15 This is an email chain between you and Andy Russell.  
 16 Now, it's right, isn't it, that Andy Russell is also  
 17 an employee of the BRE; yes?  
 18 A. That's correct, yes, he's our assessment engineer.  
 19 Q. And was he a senior consultant in the BRE's passive fire  
 20 protection department around this time, 2013?  
 21 A. Yes, I believe that was his title . He mainly deals with  
 22 desktop assessments.  
 23 Q. Right. I see. Yes.  
 24 Then if we look at his email, just to you, at the  
 25 bottom of that page, on 24 July 2013, he says:

1 "Hi Tony  
 2 "I've had a request to write an assessment for  
 3 a cladding system in Leeds."  
 4 Sorry, I should have noted the subject is  
 5 "Kingspan K15 and BS 8414". So he has had a request to  
 6 write an assessment for a cladding system in Leeds:  
 7 "Basically it is a BS 8414-2 system, i.e. it is  
 8 fixed back to steelwork. However, the only test data  
 9 that I have for K15 was for a BS 8414-1 test where the  
 10 cladding system was fixed back to masonry. My gut  
 11 feeling is that they should test this new system, even  
 12 though I think that the test data that I have is  
 13 probably sufficient to say that the proposed system  
 14 would pass a test to BS 8414- 2. Having said all that,  
 15 I've just come across a report that Norman wrote where  
 16 there was no BS 8414 test data at all ..... Anyway, I'd  
 17 appreciate your opinion as I haven't had much  
 18 involvement with these cladding systems."  
 19 Now, the Norman that he refers to there, was that  
 20 Norman MacDonald, who also worked at the BRE?  
 21 A. Yeah, that's correct, yes.  
 22 Q. Can you help us, what was Norman MacDonald's role at the  
 23 BRE?  
 24 A. Norman worked with Andy on assessments. Or I think at  
 25 that time Norman was -- well, before this time, Norman

1 was previously Andy's line manager.  
 2 Q. Yes.  
 3 If we go up the page, we can see you respond that  
 4 day, from Tony Baker to Andy Russell, and you actually  
 5 make Stephen Howard a main recipient of this reply, and  
 6 you say this:  
 7 "Hi Andy,  
 8 "Strangely enough me and Steve have just come out of  
 9 a meeting with Wintech and this project was mentioned,  
 10 or one very similar. I would need more info on the  
 11 through system build up before commenting but in general  
 12 the answer would be no unless the system to be assessed  
 13 was very similar to that tested. I believe the test  
 14 data available from [Kingspan] would be very limited and  
 15 the market is starting to get very confused through  
 16 clever marketing by [Kingspan]. I know Norman did an  
 17 assessment some time ago but from what I can recall it  
 18 was an enclosed system but from what we understand today  
 19 it wasn't built in accordance with the assessment!  
 20 "Cheers Tony."  
 21 Just looking at that first line of your email, you  
 22 say that you and Steve — presumably that's  
 23 Steve Howard — have just come out of a meeting with  
 24 Wintech; yes?  
 25 A. Yes, that's correct, yes.

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1 Q. What was that meeting about, can you help us?  
 2 A. I don't recall specifically, but Wintech are sort of  
 3 a design company come sort of contract company for  
 4 external cladding systems. I think it was a meeting  
 5 that was set up by Steve Howard.  
 6 Q. Yes. Do you think that meeting was about the use of K15  
 7 on high-rise buildings?  
 8 A. Not specifically. I think it was more general than  
 9 that.  
 10 Q. But could that topic have been discussed at that  
 11 meeting?  
 12 A. It would appear that that was part of that discussion  
 13 for whatever reason.  
 14 Q. Yes. Can you remember — you may not be able to — who  
 15 at Wintech you met at this time?  
 16 A. No, I'm afraid I can't, no.  
 17 Q. Looking at the third line down, you say:  
 18 "I believe the test data available from [Kingspan]  
 19 would be very limited and the market is starting to get  
 20 very confused through clever marketing by [Kingspan]."  
 21 Now, it's right, isn't it, that by July 2013  
 22 Kingspan still only had one test report to 8414 for  
 23 a system incorporating K15 which had been successful;  
 24 yes?  
 25 A. I believe so, yes, yeah.

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1 Q. And to part 1 only; yes?  
 2 A. Yes.  
 3 Q. And that was the May test; yes?  
 4 A. Yes, I believe so.  
 5 Q. Is that what you meant when you say "I believe the test  
 6 data available from [Kingspan] would be very limited"?  
 7 A. Yes, and that seems to sort of agree with what Andy was  
 8 saying in his initial email.  
 9 Q. Can you help us, when you say "and the market is  
 10 starting to get very confused through clever marketing  
 11 by [Kingspan]", what were you referring to there in  
 12 terms of Kingspan's marketing?  
 13 A. Well, it comes back to this issue where I think Kingspan  
 14 were trying to push their insulation rather than systems  
 15 as — you know, sort of generally inferring to the  
 16 market that their insulation was approved to BS 8414 and  
 17 135.  
 18 Q. Yes.  
 19 A. And I do think that was causing some confusion in the  
 20 market in general.  
 21 Q. Again, in general, can you help us as to how you would  
 22 have become aware of that? How did you become aware of  
 23 that at the time?  
 24 A. Well, I think it was probably through the discussions  
 25 that we were having with, you know, the companies such

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1 as Wintech and our awareness of the BBA and LABC type  
 2 certificates and such — and things like that.  
 3 Q. Yes.  
 4 Can we just look at Kingspan's product literature  
 5 that was in date at this time, {KIN00003545}. This is  
 6 the ninth issue of their Kooltherm K15 rainscreen board  
 7 product literature. We can see in that very top  
 8 right-hand corner, if we could expand the screen, the  
 9 ninth issue says March 2011, but you can take it from me  
 10 that this issue was not updated until July 2016, so it  
 11 was current at the time you were meeting with Wintech in  
 12 2013.  
 13 A. Okay.  
 14 Q. Do you think you had seen this literature or previous  
 15 versions of it at around that time, so by 2013?  
 16 A. I think I probably had, yes.  
 17 Q. Yes.  
 18 If we can pan back to the whole page, you can see in  
 19 the text that's highlighted there is a number of bullets  
 20 that give key points about K15. You can see there in  
 21 the third bullet, it's highlighted helpfully for us, it  
 22 says:  
 23 "Successfully tested to BS 8414:2002 ..."  
 24 Note it doesn't tell you which part:  
 25 A. True.

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1 Q. "... can meet the criteria within BR135 and is therefore  
 2 acceptable for use above 18 metres."  
 3 Now, do you agree that that assertion is wholly  
 4 inaccurate?  
 5 A. Yes, I believe that that can be misrepresented,  
 6 basically, yeah.  
 7 Q. Yes. A product can't be successfully tested to BS 8414,  
 8 can it?  
 9 A. Absolutely, yes. No.  
 10 Q. It's a very clear, bold statement, isn't it, at the end  
 11 there: "[it] is therefore acceptable for use above  
 12 18 metres"; yes?  
 13 A. Yes.  
 14 Q. You would have been in no doubt when you read that,  
 15 would you, that that was misleading; yes?  
 16 A. I believe that to be misleading.  
 17 Q. Yes, and you believed that when you read it; yes?  
 18 A. I probably did, yes. As I say, I can't -- I'd probably  
 19 have seen this in the past, I would fully expect that  
 20 I have, and I don't think that I would have changed my  
 21 view.  
 22 Q. Yes, thank you.  
 23 If we go on to page 6 {KIN00003545/6}, under the  
 24 heading "Fire Performance", you can see on the  
 25 right-hand side there is a heading "Fire Performance",

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1 and it says -- sorry, I think it's actually lower than  
 2 we've got there. If we can come back out ... yes. At  
 3 the bottom of that page, at the bottom right -- so it's  
 4 under the big heading "Fire Performance", but there's  
 5 two smaller headings, "Construction" and then "Result"  
 6 on the right-hand side. If we look at that paragraph,  
 7 it reads:  
 8 "The tested product meets the criteria stated within  
 9 BRE 135 (Fire performance of external thermal insulation  
 10 for walls of multi storey buildings) and is therefore  
 11 acceptable for use above 18 metres in accordance with  
 12 the Building Regulations/Standards."  
 13 Now, that's wholly misleading as well, isn't it?  
 14 A. It is misleading, but they've put that against a section  
 15 which gives the construction of the system that was  
 16 tested, so, you know, there would be an argument around  
 17 that.  
 18 Q. I see. But, again, it's starting off saying, "The  
 19 tested product meets the criteria", so it's --  
 20 A. Yeah, yeah, from that respect, yeah.  
 21 Q. We can agree that's misleading; yes?  
 22 A. Yes.  
 23 Q. Going back to that email that we were looking at  
 24 earlier, so {BRE00003397}, in the fourth line, where  
 25 you've said, "I believe the test data available ...

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1 would be very limited and the market is starting to get  
 2 very confused through clever marketing by [Kingspan]",  
 3 who in the market did you consider was starting to get  
 4 very confused?  
 5 A. Erm ... I think designers, as I say, Wintech ... it's  
 6 difficult to say a specific sector of people, really.  
 7 It's more a general understanding or a general feeling.  
 8 Q. Did you say that because you knew of examples where K15  
 9 had been used on high-rise buildings?  
 10 A. No, no, I don't know of specific examples that I could  
 11 state.  
 12 Q. Right. But you were aware, were you, that professionals  
 13 in the construction industry were beginning to get very  
 14 confused?  
 15 A. Yes, yes, as a general statement, that's correct, yeah.  
 16 Q. Yes, and it was confused about whether or not you could  
 17 use K15 over 18 metres; yes?  
 18 A. Yes.  
 19 Q. Can you recall, did other colleagues at the BRE share  
 20 that view? So we can see that you've sent this email to  
 21 Stephen Howard; did he share your view that the market  
 22 was starting to get very confused through clever  
 23 marketing by Kingspan?  
 24 A. Well, I think the only reason I've included Steve in  
 25 that email is because he -- we'd literally just come out

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1 of the meeting together, and I was probably typing this  
 2 on my phone sitting on the train next to him or in a car  
 3 next to him.  
 4 Q. Yes.  
 5 A. But I -- yes, I would be surprised if Stephen wasn't  
 6 aware. I know Sarah Colwell and Dr Debbie Smith were  
 7 aware.  
 8 Q. So they were also aware, yes, that the market was  
 9 starting to get very confused through clever marketing  
 10 by Kingspan?  
 11 A. Sarah Colwell definitely, yes.  
 12 Q. And Debbie Smith?  
 13 A. Debbie Smith, I -- yes, I would assume so, from  
 14 discussions that we'd had, yes.  
 15 Q. Yes. What about Phil Clark by this time? You have been  
 16 involved in 8414 now for some years; yes?  
 17 A. Yes, yes.  
 18 Q. Mr Clark was also involved; yes?  
 19 A. Yes.  
 20 Q. Was he also aware that the market was starting to get  
 21 very confused through clever marketing?  
 22 A. I would assume that by this time he would have been,  
 23 yes, because we would have had discussions, just general  
 24 discussions at some times, yeah.  
 25 Q. Yes. So can we take it that there were discussions

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1 within the BRE about concerns over Kingspan's clever  
 2 marketing?  
 3 A. Yes, I wouldn't say that we scheduled specific meetings  
 4 to discuss it, it's just something that comes up in  
 5 conversation when you're talking about particular  
 6 companies.  
 7 Q. Yes.  
 8 Can you recall -- this is now 2013 -- whether any  
 9 steps had been taken by the BRE to contact anybody  
 10 outside of the BRE to discuss these concerns?  
 11 A. No, as I said earlier, we did have some discussions with  
 12 BBA regarding their certificates. I say "we"; it wasn't  
 13 me specifically, I think that was Sarah Colwell.  
 14 Q. Yes, we're going to come to that in just a moment.  
 15 A. Other than that, no, not that I'm aware of. But we're  
 16 in sort of a difficult position, in that BRE is not  
 17 a regulatory body, and therefore we don't really have  
 18 any power to have those discussions, let's put it that  
 19 way, or we don't feel that we do.  
 20 Q. I appreciate what you're saying about your powers, but  
 21 would you accept that if you had concerns about products  
 22 being cleverly marketed for use for which they were not  
 23 appropriate, and not appropriate on life safety grounds,  
 24 the BRE could have taken it upon itself to contact  
 25 others, couldn't they?

1 A. Potentially, yes, but I'm not sure that we're aware of  
 2 specific instances where the ... you know, clever  
 3 marketing is one thing, but having specific instances  
 4 where we have specific concerns about a building or  
 5 something that's being installed on a building is  
 6 something different, and I think under those  
 7 circumstances, the second instance, yes, we would  
 8 probably make it a point of contacting somebody. But as  
 9 I sit here at the moment, I'm not sure who that somebody  
 10 would be.  
 11 Q. Yes.  
 12 Just going back to Andy Russell's email to you, so  
 13 it's {BRE00003397}, in the third line he says:  
 14 "My gut feeling is that they should test this new  
 15 system, even though I think that the test data that  
 16 I have is probably sufficient ..."  
 17 Now, just to be clear, the subject of desktop  
 18 assessments is one which the Inquiry is going to come  
 19 back to in much greater detail at a later stage, in  
 20 Module 6 of the Inquiry's work. But for now, since  
 21 we're here and looking at this, I just want to ask you  
 22 a few more questions about this.  
 23 Can you help us as to what this assessment is that  
 24 Andy Russell is referring to, carried out by  
 25 Norman MacDonald, with no BS 8414 test data at all? Can

1 you help us about that?  
 2 A. No, I can't, to be quite honest, although, you know,  
 3 from my response in my responding email, it says that  
 4 I know Norman did an assessment some time ago. I don't  
 5 actually recall the -- you know, what that was about or  
 6 what that assessment was now.  
 7 Q. Yes.  
 8 A. It's not something that I've looked back on at all.  
 9 Q. In your response you say it was an enclosed system; can  
 10 you help us as to what you meant there by an enclosed  
 11 system?  
 12 A. Erm ... yeah, I guess it means it's not a ventilated  
 13 system.  
 14 Q. Right. I see.  
 15 A. So it's enclosed panels, I think.  
 16 Q. How did you come to learn that the project was not even  
 17 built in accordance with the assessment? That's what  
 18 you said at the very end.  
 19 A. Yeah, I --  
 20 Q. "... from what we understand ... it wasn't built in  
 21 accordance with the assessment!"  
 22 You have put an exclamation mark there.  
 23 Can you recall how you became aware of that?  
 24 A. I don't recall at all, I'm afraid. I suspect I'd  
 25 recently had a discussion with Norman about assessments

1 for 8414 and he may well have mentioned it during that  
 2 time, but unfortunately I don't recall the circumstances  
 3 now.  
 4 Q. Okay.  
 5 Now, the BBA certificate now, you have touched on  
 6 that and you have mentioned that there was a meeting  
 7 with the BBA, so this is moving forward to January 2014.  
 8 Can we look at your first witness statement now,  
 9 {BRE00005774/24}, and I want to look at paragraph 104.  
 10 You're asked the question, let's look at that first:  
 11 "Were you aware of any such meetings taking place at  
 12 the BRE? Did you seek, or were you aware of any other  
 13 employee of the BRE seeking, advice in respect of the  
 14 use of combustible materials on buildings over 18m or on  
 15 the relevant sections of the Building Regulations and  
 16 associated guidance?"  
 17 You say at 104:  
 18 "I am not aware of any meetings taking place at BRE  
 19 specifically regarding the suitability for use of either  
 20 K15 or RS 5000 on buildings over 18m in height or on the  
 21 relevant sections of the Building Regulations and  
 22 associated guidance."  
 23 Now, I appreciate you say that there weren't  
 24 meetings specifically regarding those issues, but were  
 25 you present at or were you aware of any meetings within

1 the BRE which might not have had as their specific  
 2 intended subject the suitability for use of K15 on  
 3 buildings over 18 metres, but during that meeting that  
 4 subject was nonetheless discussed?  
 5 A. No. I think -- if I can just sort of put this in  
 6 context, to say the suitability of Kingspan or RS5000 --  
 7 I think I probably say later on or earlier on in my  
 8 statement that we can't single out a component such as  
 9 the insulation in such a way. It is a system test. So  
 10 I think that's really what I mean there. There's  
 11 nothing to say that K15 or RS5000 isn't suitable for  
 12 buildings over 18 metres, as long as they're used within  
 13 a system that suitably -- you know, has suitable  
 14 protection.  
 15 Q. Yes, I understand that, but we have been over some  
 16 emails which would tend to suggest that the use of K15  
 17 over 18 metres must have been the subject of  
 18 discussion -- I think you have already accepted that it  
 19 was --  
 20 A. Yes, yes.  
 21 Q. -- from time to time; yes?  
 22 Then if we can look at paragraph 105 that follows on  
 23 from that, you say this:  
 24 "However, I am aware of discussions with the BBA  
 25 regarding certain approvals which the BBA had granted on

1 the basis of the BS 8414 test standard which we  
 2 considered to be a 'non-standard' cladding system which  
 3 incorporated K15. If I recall correctly,  
 4 Dr Sarah Colwell of BRE was involved in these  
 5 discussions."  
 6 You have mentioned these discussions with the BBA.  
 7 Now, at the end of the second line there -- so you  
 8 say you're aware of discussions regarding the BBA and  
 9 the approval they granted, and you refer to the "we",  
 10 you say, "which we considered to be a 'non-standard'  
 11 cladding system". Who is the "we" that you're referring  
 12 to there?  
 13 A. That's myself and Sarah Colwell, Dr Sarah Colwell.  
 14 Q. What about Stephen Howard?  
 15 A. Erm ... well, I understood that Stephen Howard was also  
 16 of the same -- similar thoughts, but obviously I've seen  
 17 his recent evidence and I may have misunderstood his  
 18 thoughts.  
 19 Q. Right.  
 20 Then if we can look at the next page  
 21 {BRE00005774/25} and pick it up at 107 of your witness  
 22 statement, you're asked to describe any interaction you  
 23 had or were aware of with the BBA in respect of either  
 24 the certification of Kingspan K15 or RS5000, and the  
 25 answer you give at 107, you say:

1 "As mentioned in my answer to Q8(c) above [we just  
 2 looked at that], I am aware of some discussions between  
 3 BRE and the BBA regarding our concern over a particular  
 4 BBA approval which appeared to allow the use of Kingspan  
 5 K15 on external cladding systems which was based on  
 6 a test which we considered was not typical of a standard  
 7 system installation. However, I cannot recall the full  
 8 details of these communications. Nor have I seen any  
 9 records or documents regarding these communications."  
 10 Now, just taking it step by step, what can you  
 11 remember about these communications with the BBA about  
 12 the BRE's concerns over K15?  
 13 A. Well, I think our concerns were that, as I say there,  
 14 one, their certification was based on what we considered  
 15 was a non-standard system, and, two, that their  
 16 certification was for K15 insulation, not a system. So  
 17 the inference from -- our understanding of the inference  
 18 of their certificate was that K15 could be used in  
 19 a number of different types of system over 18 metres.  
 20 Q. Yes, and that was not your view, was it?  
 21 A. No, that's not our view.  
 22 Q. Yes. Again, where you're referring to the "we" here, is  
 23 that again Sarah Colwell for sure; yes?  
 24 A. Yes, yes.  
 25 Q. Can you remember whether Stephen Howard had similar

1 concerns about the BBA certificate for K15?  
 2 A. I can't say whether he did or not, I don't know.  
 3 Q. Was the concern about the BBA certificate which was  
 4 current in 2014? Does that help you in terms of the  
 5 timing of this? We will come to look at that  
 6 certificate in just a moment.  
 7 A. No, that doesn't really help, to be quite honest.  
 8 Q. Okay.  
 9 Can you recall, how had this concern arisen? How  
 10 had the BRE become alerted to a problem with the  
 11 BBA certificate?  
 12 A. I don't know how it had originated, to be honest.  
 13 I think it was Sarah that originally brought up, but who  
 14 originate -- who originally spoke to her about it or  
 15 whether it's something she just became aware of, I don't  
 16 recall.  
 17 Q. Yes.  
 18 You referred earlier to the fact that you thought  
 19 there was in fact a meeting with the BBA, between the  
 20 BRE and the BBA; is that right?  
 21 A. I believe there was, yes.  
 22 Q. Yes. Were you present at that meeting?  
 23 A. No, no, I think it was just Sarah Colwell and somebody  
 24 from the BBA.  
 25 Q. Can you help us as to, even in rough terms, when that

1 took place?  
 2 A. I'm afraid not, no. As I say, I've not seen any formal  
 3 documentation or anything relating to that, it was just  
 4 discussions that we had in—house, and I understood that  
 5 Sarah had actually spoken to somebody at the BBA.  
 6 I don't even know who that was at the time.  
 7 Q. Was it your understanding that Sarah Colwell had shared  
 8 with the BBA the view that the test carried out in  
 9 May 2005 was on a non—standard cladding system?  
 10 A. I think she just discussed with them our general  
 11 concerns. I'm sure that, yeah, that came up as well in  
 12 terms of our thoughts on the system that was tested, but  
 13 also that the certification as written inferred that it  
 14 could — K15 could be used in a number of different  
 15 systems.  
 16 Q. Yes, thank you. So, just to be clear, you think she  
 17 discussed the BRE's general concerns about that  
 18 BBA certificate, but also the fact that that 2005 test  
 19 had been on a non—standard system; yes?  
 20 A. I can only say definitely it's the general concerns.  
 21 I can't say definitely she discussed that specific test.  
 22 Q. Yes.  
 23 Now, you said in that paragraph that you hadn't been  
 24 able to find any records or documents relating to this.  
 25 Can we just have a look at an email chain,

1 {BRE00003493}.  
 2 Sorry, just while that's coming up, can you recall  
 3 who it was at the BBA that Sarah Colwell spoke to?  
 4 A. No, I'm afraid not, no.  
 5 Q. So this is an email without any text dated  
 6 7 January 2014 from Stephen Howard to you, and attached  
 7 to it was the BBA certificate for K15. It was attached  
 8 as a pdf, you can see that there in the attachments.  
 9 A. Yeah.  
 10 Q. So it does appear that a specific certificate had given  
 11 rise to particular concerns; yes?  
 12 A. Yes, it would appear to be, yeah.  
 13 Q. Can you recall reading the BBA certificate?  
 14 A. Yes. I can't remember when, but I can remember reading  
 15 it, yes.  
 16 Q. Let's look at that attachment, {BRE00003492}. So this  
 17 is the attachment that Mr Howard sent you in  
 18 January 2014. Does that help as to whether that looks  
 19 like a certificate you would have read at some point  
 20 about K15?  
 21 A. Yes, yeah.  
 22 Q. Yes, and looking at page 1, if we look at the bottom  
 23 left—hand side, we can see that it says the date of  
 24 first issue was 27 October 2008, and then there has been  
 25 an amendment. In the much smaller text underneath it

1 says, "Certificate amended on 6 April 2010". Can you  
 2 see that?  
 3 A. Yes.  
 4 Q. Then sticking with that page, that first page, you can  
 5 see a bit further up, under the capital letters "Key  
 6 factors assessed", we've got "Behaviour in relation to  
 7 fire", which is the third bullet point down, or third  
 8 point down, and it says this:  
 9 "The boards will not contribute to the development  
 10 stages of a fire. The product has been tested to  
 11 BS 8414—1:2002 for one specific construction on masonry  
 12 walls ..."  
 13 Now, can you help us, when you read this  
 14 certificate, what did you understand this phrase to  
 15 mean, "The boards will not contribute to the development  
 16 stages of a fire"?  
 17 A. To me, that sounds as if they're saying it's  
 18 a non—combustible or limited combustibility board, which  
 19 it's not.  
 20 Q. Exactly. That's my next question: that's not  
 21 an accurate description of K15 in terms of its  
 22 performance in fire, is it?  
 23 A. No, no.  
 24 Q. Then if we go to section 7 on page 5 {BRE00003492/5},  
 25 about two—thirds of the way down the page, we can see

1 under 7.1 there it says:  
 2 "The product is classified as Class 0 or 'low risk'  
 3 as defined in the documents supporting the national  
 4 Building Regulations."  
 5 Then it says this:  
 6 "The product, therefore, may be used in accordance  
 7 with the provisions of:  
 8 "England and Wales — Approved Document B,  
 9 paragraph 8.4, Volume 1 and paragraphs 12.5, 12.6 and  
 10 12.7, Volume 2 (see also Diagram 40)."  
 11 Now, just looking at that, did you consider that  
 12 there were any circumstances in which K15 could be used  
 13 in accordance with the provisions of paragraph 12.7 of  
 14 ADB?  
 15 A. Only if it was tested within a system to the full  
 16 requirements of BS 8414.  
 17 Q. Just to help you, paragraph 12.7 of ADB is headed  
 18 "Insulation", and it states that all insulation  
 19 materials shall be of limited combustibility.  
 20 A. Mm—hm.  
 21 Q. Do you want to have a quick look at that? Would that  
 22 help?  
 23 A. Yeah, if we could, yeah.  
 24 Q. Let's go to {CLG1000007/96}. There we have 12.7 of  
 25 Approved Document B, and it's headed "Insulation

1 Materials/Products", and it says:  
 2 "In a building with a storey 18m or more above  
 3 ground level any insulation product, filler material ...  
 4 etc. used in the external wall construction should be of  
 5 limited combustibility (see Appendix A). This  
 6 restriction does not apply to masonry cavity wall  
 7 construction which complies with Diagram 34 in  
 8 Section 9."  
 9 Now, just to put the question again: did you  
 10 consider that there were any circumstances in which K15  
 11 could be used in accordance with paragraph 12.7 there of  
 12 ADB?  
 13 A. No, no.  
 14 Q. Can you recall whether Sarah Colwell reported that she  
 15 had discussed the specific language of the  
 16 BBA certificate with the BBA itself?  
 17 A. Well, I think that was the general context of having  
 18 those discussions with the BBA, is to discuss these  
 19 sorts of issues that we felt were incorrect.  
 20 Q. Yes. Yes.  
 21 Did you discuss any of this with Mr Howard? We can  
 22 see he sent you this certificate on 7 January 2014.  
 23 Presumably there were some discussions after he sent it  
 24 to you; is that right?  
 25 A. I think there must have been some discussion. I don't

1 recall that particular circumstance. I don't recall why  
 2 he sent it to me on that particular date. Obviously  
 3 there's no text on there, so maybe I'd just said that  
 4 I don't have a copy of the certificate to hand or  
 5 anything, so he sent me a copy. So I guess from that we  
 6 must have been having a discussion about it, but I don't  
 7 recall the circumstances of that discussion.  
 8 Q. Right. And you can't even recall whether it was  
 9 a discussion about concerns that you or others in the  
 10 BRE had about the content of that BBA certificate?  
 11 A. I'm afraid I can't recall. I -- you know, clearly we've  
 12 had concerns for some time in terms of the way the  
 13 certificates are being represented -- or, sorry, the  
 14 insulation performance is being represented in  
 15 certificates, to put it the correct way.  
 16 So putting timelines and who those discussions were  
 17 with and the context of those discussions, I'm afraid  
 18 I really can't say.  
 19 Q. Yes.  
 20 Just to complete what we have in the documents, if  
 21 we can go to {BRE00015007}. So all we have after that  
 22 certificate's sent is a message back from you to  
 23 Mr Howard, 7 January 2014, on the same day, and you say:  
 24 "See attached, I assume this is the basis of the  
 25 BBA certificate."

1 And we can see you've attached a document with the  
 2 number 220876, and that was the May 2005 test to  
 3 BS 8414-1; yes?  
 4 A. Yes, yes.  
 5 Q. Again, seeing that, does that help you as to what you  
 6 discussed with Mr Howard?  
 7 A. No, I'm afraid it doesn't, no. Clearly we were having  
 8 a discussion around, you know, that particular  
 9 certificate and the testing, but I don't recall  
 10 specifically what those discussions were.  
 11 Q. Right.  
 12 Let's move forward in time again now to August 2015,  
 13 and if we can go to a series of emails at {BRE00004085}.  
 14 This is quite a long chain and we won't go through all  
 15 of it at this stage in the Inquiry, but for now I want  
 16 to ask you about an email you sent to Phil Clark.  
 17 If we can go to page 3 {BRE00004085/3}, there is  
 18 an email of 6 August 2015, about halfway down the page.  
 19 We can see, picking it up, there is an email from  
 20 Andy Russell to you, 6 August 2015 at 12.24 and the  
 21 subject is "BRE135 Certificate", and he says:  
 22 "Hi Tony  
 23 "Another BS 8414-2 test enquiry. They are looking  
 24 for a test of a Steni panel system [and then he gives  
 25 some details of that system]: SFS inner leaf (lined

1 internally with plasterboard and not lined externally),  
 2 Kingspan Kooltherm K15 insulation, cavity, Steni panel  
 3 facade. They need it pretty urgently as the handover is  
 4 in September. Could you please provide a quote to him  
 5 and copy Gita in as he is on holiday for the next  
 6 two weeks."  
 7 Then if we can go up to page 2 {BRE00004085/2}, to  
 8 the very end of the page, Mr Clark responds to you and  
 9 to others on 6 August 2015, and if we look at the top of  
 10 page 3 {BRE00004085/3} at what he is saying, he says:  
 11 "Gents, The system looks like a usual build up, the  
 12 only unknown for me is the Steni panel, I have a feeling  
 13 we tested some similar and it got through. The main  
 14 issue may be the hardened acrylic face and how that  
 15 performs, as well as structural integrity of the panels.  
 16 I would suggest that as this is again K15 and it appears  
 17 that Kingspan systems are being heavily questioned by  
 18 the NHBC (second in two days and having spoken to Ivor  
 19 recently there may be more to come) that it may be  
 20 worthwhile asking Ivor Meredith to see if we could  
 21 [utilise] the wall 1 which already has a partially built  
 22 Kingspan SFS [steel-framed system] in place. If he  
 23 agrees this could be done by sept."  
 24 Then if we look up again, your response on the same  
 25 day, 6 August, on page 2 {BRE00004085/2} at 14.09, you

1 say this back to Phil Clark and others, the same list:  
 2 "Thanks Phil, yes I think the message is finally  
 3 getting through that we can't assess everything based on  
 4 one old test."  
 5 Now, just to be clear, what exactly did you mean by  
 6 that, "the message is finally getting through that we  
 7 can't assess everything based on one old test"?  
 8 A. Well, we was getting a lot of requests for assessments  
 9 for systems outside those that had been tested, so,  
 10 yeah, I think I just ... we're now getting people  
 11 actually saying that they need a test as opposed to  
 12 an assessment, because, you know, we were basically  
 13 having to say -- turn round to people and say, "No, we  
 14 can't assess this based on that single test that has  
 15 been done".  
 16 Q. And are these desktop assessments that they're looking  
 17 for?  
 18 A. Yes, that's correct, yes.  
 19 Q. Yes. Can you give us some indication of for how long  
 20 assessments had been being requested based on only that  
 21 one old test?  
 22 A. No, I don't know, to be honest.  
 23 Q. Are we talking years, are we talking months?  
 24 A. Probably years as opposed to months.  
 25 Q. Yes.

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1 You say, "yes I think the message is finally getting  
 2 through" that you can't assess in that way; what had  
 3 been done to try and get the message through that you  
 4 weren't prepared to be doing that?  
 5 A. Well, I think probably just in terms that we're having  
 6 to refuse to do these assessments.  
 7 Q. Who was that message being communicated to?  
 8 A. Those that were asking.  
 9 Q. Right.  
 10 A. I think in my first statement I've mentioned a couple of  
 11 occasions where Andy Russell has asked me my opinion on  
 12 doing assessments for various different people, and in  
 13 some cases my response is, you know, "I don't think we  
 14 can do this".  
 15 Q. Right.  
 16 A. So we were having to turn more away than we was actually  
 17 enabling to do.  
 18 Q. Was that communicated to Kingspan as well and to  
 19 Mr Meredith, that that was the situation?  
 20 A. Well, no, not necessarily, because the enquiries weren't  
 21 coming from Kingspan, they were coming from other  
 22 companies, be they designers or contractors or who else.  
 23 Q. Yes.  
 24 Can we agree that by this time, by January 2014, you  
 25 had a good awareness of the way in which Kingspan was

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1 using that one test from 2005 to market K15 and to  
 2 achieve certifications for the product; yes?  
 3 A. Yes, we had a good understanding of how they were  
 4 marketing it, yes.  
 5 MS GRANGE: Yes.  
 6 Now, Mr Chairman, I note the time and I'm about to  
 7 move to a new topic.  
 8 SIR MARTIN MOORE-BICK: Would it be sensible to break there?  
 9 MS GRANGE: Yes, because I'm making good progress with this  
 10 witness, so that would be a good moment for the  
 11 lunchtime break.  
 12 SIR MARTIN MOORE-BICK: Well, that's what we'll do.  
 13 Mr Baker, we're going to have a break now so that we  
 14 can all get some lunch. We will resume, please, at  
 15 2 o'clock. Once again, please don't talk to anyone  
 16 about your evidence or anything relating to it over the  
 17 break.  
 18 THE WITNESS: Okay, thank you.  
 19 SIR MARTIN MOORE-BICK: Thank you very much, see you later.  
 20 2 o'clock, please.  
 21 (12.55 pm)  
 22 (The short adjournment)  
 23 (2.00 pm)  
 24 SIR MARTIN MOORE-BICK: Welcome back, everyone. We're going  
 25 to continue hearing evidence from Mr Baker this

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1 afternoon. So I'm going to check first that Mr Baker  
 2 can see me and hear me clearly.  
 3 Are you there, Mr Baker?  
 4 THE WITNESS: Yes, I can hear you and see you.  
 5 SIR MARTIN MOORE-BICK: Thank you very much. And are you  
 6 ready to carry on?  
 7 THE WITNESS: Yes.  
 8 SIR MARTIN MOORE-BICK: Good, thank you.  
 9 Well, Ms Grange, when you're ready, I think we can  
 10 continue.  
 11 MS GRANGE: Yes, thank you.  
 12 Yes, Mr Baker, continuing with the K15 story now,  
 13 the Kingspan K15 story, and staying on the subject of  
 14 Kingspan's test to 8414-1 in May 2005, I want to move  
 15 now to the classification of that test system to BR 135,  
 16 which happened ten years later in September 2015. Yes?  
 17 A. Yes.  
 18 Q. Now, when did you become aware that no BR 135  
 19 classification report had been issued for the 2005 test?  
 20 Did you know that right from the get-go, right from  
 21 May 2005?  
 22 A. Well, I wasn't involved in the original test, but as --  
 23 once I was aware of that test, I was then aware that no  
 24 classification was issued for it.  
 25 Q. Yes, and when you became aware of the absence of

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1 a BR 135 classification report, what was your  
 2 understanding about why there was no such report for  
 3 that system that --  
 4 A. Well, as I said earlier in my evidence, my understanding  
 5 was it was only ever tested as an indicative system.  
 6 Although the test was a full test, it was only tested as  
 7 an indicative system, and therefore wouldn't really be  
 8 applicable for a BR 135.  
 9 Q. Yes.  
 10 Now, can we go to {BRE00011446}, please, and I want  
 11 to look at the end of page 1. This is an email from  
 12 Alan Macklin of Kingspan to a BRE Global Enquiries email  
 13 address, at the end of page 1, we can see that there at  
 14 the bottom.  
 15 A. Yeah.  
 16 Q. Do you have that? Yes. It's on 8 July 2008, this  
 17 email. We can see he says there:  
 18 "Good afternoon."  
 19 And if we go on to page 2 {BRE00011446/2}, he says  
 20 there:  
 21 "Would it be possible to obtain written confirmation  
 22 of successful completion of the above test carried out  
 23 in 2005 for issuing to prospective clients. We are  
 24 reluctant to issue the entire test report so a letter  
 25 from yourselves would be of great benefit. The test

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1 reference was 220876, dated 8th December 2005.  
 2 "I would greatly appreciate your earliest response."  
 3 That request is passed to you. If we move up to the  
 4 next email in the chain at 15.42 on page 1  
 5 {BRE00011446/1}, we can see that someone called  
 6 Simone McIntyre has passed this on to you the same day.  
 7 Do you see that?  
 8 A. Yeah.  
 9 Q. Sorry, I should have noted the subject was,  
 10 "BS 8414-1:2002 test on Kingspan Kooltherm K15 ..."  
 11 Then if we move up to the top of page 1, we can see  
 12 that you forward this to Sarah Colwell, and you say:  
 13 "See request from Kingspan below."  
 14 Now, can you help us with what happened at that time  
 15 when they made this request, "confirmation of successful  
 16 completion of the above test"?  
 17 A. To be quite honest, I don't recall that -- those  
 18 communications at all, but I would have sent it on to  
 19 Sarah, knowing that she was involved in those tests at  
 20 that time, sort of on the understanding that Sarah would  
 21 deal with it as appropriate.  
 22 Q. Yes.  
 23 If we can now move forward to what happened in 2015.  
 24 If we bring up {BRE00005071}, and again we start at the  
 25 bottom of page 1, we can see right at the very bottom

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1 that Adam Heath of Kingspan has contacted  
 2 Vida Gaubsaite --  
 3 A. Gaubsaite, yeah.  
 4 Q. -- at the BRE, and he says:  
 5 "Thanks for the prompt response. On a slightly  
 6 related topic, it has come up in discussions recently  
 7 that we never commissioned a classification report for  
 8 our BS 8414-1 test (attached for reference). This test  
 9 was originally completed in 2005".  
 10 He says he has three questions, if we just go to  
 11 those on the next page {BRE00005071/2}:  
 12 "Can a classification report be issued for this  
 13 test?  
 14 "How much will it cost?"  
 15 Then he asks about the timescale for delivery, and  
 16 he says at the end:  
 17 "Any guidance you can offer here would be much  
 18 appreciated ... "  
 19 If you go to the next email in the chain on page 1  
 20 {BRE00005071/1}, we can see that Ms Gaubsaite says to  
 21 you, 8 September 2015:  
 22 "Dear Tony,  
 23 "Please, be so kind to advice[sic] regarding our  
 24 client request below.  
 25 "Regards,

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1 "Vida."  
 2 So it would appear that she is seeking an opinion  
 3 from you as to whether or not she should be preparing  
 4 this classification report; is that correct?  
 5 A. Yes. Well, it's not something that at that time Vida  
 6 would have been involved with specifically, although  
 7 I knew she became involved later on.  
 8 Q. Yes.  
 9 A. Yeah, I think she's just asking for advice on it.  
 10 Q. Yes, and why would she be coming to you at that point,  
 11 do you know?  
 12 A. Well, I think Vida is -- was aware that I had  
 13 involvements with BS 8414 tests for some time.  
 14 Q. Yes, I see.  
 15 We can see the advice you gave at the top of this  
 16 page. In fact, I'm going to pick that up in another  
 17 email. If we bring up now {BRE00005773/557}, what we  
 18 can see in the second half of this page is that what  
 19 Vida does is she sends an email to Stephen Howard --  
 20 A. Yeah.  
 21 Q. -- saying:  
 22 "Good morning Steven[sic],  
 23 "Please, can you check the quotation for  
 24 Kingspan Insulation (but also please see below Tony  
 25 notes)."

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1 And what she has done is she has cut and paste your  
 2 email into this one. So just looking at that here, you  
 3 can see you have said:  
 4 "This is not a straight forward one; in theory we  
 5 could issue a classification document, however I can  
 6 understand why one was not issued for this test as it  
 7 seems like an indicative type test.  
 8 "BS 8414 and BR135 is a system test and  
 9 classification system and from what I can see from this  
 10 report, there is no external weather protection system  
 11 included (e.g. render system or rain screen cladding).  
 12 Whilst they have a cement board overcladding, I doubt  
 13 this would be considered a complete system. Data such  
 14 as this has been misrepresented in the market in the  
 15 past."  
 16 Then you say:  
 17 "I suggest this question should be passed by  
 18 Steve Howard and/or Debbie Smith before a response is  
 19 sent.  
 20 "Regards  
 21 "Tony."  
 22 So that's the advice that you gave.  
 23 You have already explained to us I think earlier why  
 24 you felt that this wasn't a complete cladding system,  
 25 and you've explained it here, that it didn't have

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1 an external weather protection system included, render  
 2 system or rainscreen cladding; that's right, yes?  
 3 A. Yes, that was how I considered the system, yeah.  
 4 Q. And you didn't consider that the cement particle board  
 5 was representative of a real-world external cladding  
 6 panel; yes?  
 7 A. Exactly, yeah.  
 8 Q. Yes.  
 9 In the final line of that second paragraph, you  
 10 said:  
 11 "Data such as this has been misrepresented in the  
 12 market in the past."  
 13 Can you just help us as to exactly what you meant by  
 14 that when you wrote this?  
 15 A. It goes back to our earlier discussions regarding  
 16 the ... that Kingspan were using this to cover a number  
 17 of different systems that had not been tested.  
 18 Q. Yes. So can I be clear that you were thinking back to  
 19 the confusion in the market that you'd observed earlier  
 20 that we looked at in your emails this morning?  
 21 A. Yes, it's a very similar scenario, yeah.  
 22 Q. Were you also thinking of the content of the  
 23 BBA certificate for K15?  
 24 A. Yes, it's all of those bits mixed up together really,  
 25 yeah.

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1 Q. Was it normal in your experience for clients to come and  
 2 ask for a classification report a decade after the test  
 3 and having been selling that product for that decade?  
 4 A. No, a very unusual circumstance.  
 5 Q. Did you have any suspicions about why Kingspan would now  
 6 want a classification report after so long?  
 7 A. No, I didn't really consider it further than sort of my  
 8 comments in the email.  
 9 Q. Did you think that the passage of time in and of itself  
 10 was concerning? I appreciate you've not said that in  
 11 the email, but was that something that was concerning  
 12 you at the time?  
 13 A. No, not specifically, because a test report is  
 14 a statement of fact of the system tested at that time.  
 15 I'd no sort of reason to believe that anything had  
 16 changed.  
 17 Q. Were you aware of guidance that recommended that tests  
 18 ought to be re-run after five years because of the risk  
 19 that the product might have changed in the intervening  
 20 years?  
 21 A. Erm ... I'm aware of the FTSG guidance, but that -- in  
 22 my view, that's not recommending re-testing every  
 23 five years, it's a review of the report.  
 24 Q. I see.  
 25 Why did you suggest to Ms Gaubsaite that she should

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1 pass this question by Debbie Smith or Stephen Howard?  
 2 Why did you refer it to those two particular  
 3 individuals?  
 4 A. Well, two-fold, really: one, I wasn't directly involved  
 5 in the cladding at that point; and, secondly, I felt it  
 6 needed oversight from somebody higher up the chain.  
 7 Q. Yes. But you were a co-author of BR 135 third edition.  
 8 A. Yes.  
 9 Q. Were you not someone within the organisation that had  
 10 particular knowledge and expertise in this area?  
 11 A. Yes, but I -- within my email, I'd given my -- I'd  
 12 stated my concerns.  
 13 Q. I see. Yes.  
 14 In terms of Stephen Howard, what was the rationale  
 15 for passing it on to him? Was it simply because he was  
 16 senior to you?  
 17 A. Well, Stephen Howard was the business group manager  
 18 looking after, amongst other things, the BS 8414 testing  
 19 at that time.  
 20 Q. Right.  
 21 Having given your comments, did you hear back from  
 22 Ms Gaubsaite or anyone else as to what the decision had  
 23 been on whether to classify to BR 135?  
 24 A. No, I didn't hear anything further.  
 25 Q. Did you ever discuss your concerns with Stephen Howard?

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1 A. No, no.  
 2 Q. Or with Debbie Smith?  
 3 A. No.  
 4 Q. So you don't recall any discussions at all following you  
 5 sending that email?  
 6 A. No, there was no response back to me about it at all.  
 7 Q. Did you ever discover what had happened subsequently and  
 8 whether a BR 135 classification report had been issued?  
 9 A. Yes, I have -- yeah, I subsequently was told that one  
 10 had been issued, yeah.  
 11 Q. And how soon after this were you told that?  
 12 A. Well, it was some time later, I think. I don't recall  
 13 exactly.  
 14 Q. Did you find that surprising, when you learnt of that?  
 15 A. Erm ... surprising, yes, but it was explained to me that  
 16 it was felt that as the test had been conducted fully in  
 17 accordance with BS 8414, and it wasn't really for the  
 18 BRE to make a judgement as to whether the system was  
 19 marketable as a cladding system, that was the reasoning  
 20 that was -- that one was issued. And, you know,  
 21 I understood those reasons, so I had -- you know, I took  
 22 no further action on it.  
 23 Q. You say it was surprising, yes, "but it was explained to  
 24 me", you say. Who was it who explained that to you?  
 25 A. I think it was Dr Debbie Smith at that time.

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1 Q. Right. So did you raise the matter with her when you  
 2 found out --  
 3 A. Oh, I think it just came up in conversation at another  
 4 stage, as a general conversation.  
 5 Q. Right. Did you express any concerns when you heard that  
 6 news about that step?  
 7 A. No, the view was put to me quite succinctly and  
 8 I understood that approach and, you know, I was fine  
 9 with that really, so ...  
 10 Q. Would you have expected those taking the decision to  
 11 have discussed the matter with Philip Clark, who carried  
 12 out the 8414 test in 2005?  
 13 A. No, I don't think so. It was clear that the system as  
 14 tested had passed, so there was no risk -- nothing in  
 15 respect of the technical aspects of the test or -- and  
 16 the results were within the scope of BR 135. It was  
 17 just a discussion as to whether the system could be  
 18 considered as a system.  
 19 Q. When the position was explained to you and the  
 20 justification was provided for giving the 135 report,  
 21 did you agree with those reasons?  
 22 A. Erm ... yes, I guess. As I say, I accepted those  
 23 reasons, that, you know, there were justifiable reasons  
 24 for doing so, on the basis that we -- BRE are not  
 25 policing the market and it's not for us to determine

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1 what is a marketable -- a system, in effect. So on that  
 2 basis, it was -- yeah, it was justifiable.  
 3 Q. I appreciate you accepted those reasons, but what did  
 4 you think at the time were the counterarguments in  
 5 favour of not issuing a BR 135 classification report?  
 6 A. Well, I didn't -- at that time, once it was explained to  
 7 me, I didn't really have a counterargument other than  
 8 what I'd previously expressed, which was my opinion.  
 9 Q. Yes.  
 10 Did you think that it was technically appropriate,  
 11 under 8414 itself, to be issuing a classification report  
 12 for a system which wasn't a complete cladding system?  
 13 A. Well, as I say, it was explained to me that it's not for  
 14 us to determine what's a complete cladding system and  
 15 what isn't. So on that basis, it was justifiable to  
 16 issue.  
 17 Q. Let's look at your third witness statement, this is  
 18 {BRE00035303/1}. We haven't looked at these paragraphs  
 19 yet, although we have been discussing this topic from  
 20 time to time.  
 21 If we look at paragraph 4, I want to pick up what  
 22 you say in paragraph 4 and then read on. So you say:  
 23 "In respect of BS 8414 tests specifically,  
 24 an indicative test would apply to systems installed that  
 25 are non-compliant with the standard, for example due to

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1 the positional requirements of joints or other  
 2 dimensional tolerances not being satisfied and/or early  
 3 extinguishment of the fuel source (timber crib). These  
 4 differences would always be in the full knowledge of the  
 5 client (test sponsor)."  
 6 Then you say at paragraph 5:  
 7 "In contrast, BRE's clients (i.e. test sponsors)  
 8 often use the term 'indicative' where they wish to test  
 9 a product that is not at full production stage, or  
 10 a product that is not typical of a product or system  
 11 that is to be placed on the market. This test would  
 12 generally be for research or development purposes. As  
 13 explained in paragraph 16 of my second witness  
 14 statement, 'Test sponsors sometimes engage a test house,  
 15 such as BRE, to carry out what are colloquially known as  
 16 "indicative tests" or tests on "indicative systems" for  
 17 their own purposes. This means that the sponsor has no  
 18 intention of installing that particular cladding system  
 19 on a building, but instead wants to see how a component  
 20 within a system, or a type of system, performs in order  
 21 to assist with their product development'.  
 22 Then you say at paragraph 6:  
 23 "In circumstances where BRE conducts testing  
 24 described by its clients as indicative (i.e. per  
 25 paragraph 5 above), the client may not require a full

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1 test report and may instead request only test data  
 2 and/or observations to be provided, or request no  
 3 further information/data from the test house at all.  
 4 Notwithstanding this, the test laboratory (i.e. BRE)  
 5 would still conduct the test fully in accordance with  
 6 the test method in the applicable part of BS 8414 and  
 7 would still utilise all the standard quality systems and  
 8 procedures as would otherwise be required pursuant to a  
 9 full test. In this respect, the test would not be  
 10 termed as an 'indicative test' from BRE's perspective,  
 11 although the term indicative may still be used in  
 12 discussions/communications with the client, especially  
 13 where this is their recognised terminology."  
 14 So you helpfully describe the ways in which people  
 15 have referred to indicative tests, and you've drawn this  
 16 distinction here between what the BRE might consider  
 17 an indicative test, one where the full 8414 test  
 18 standard has not been adhered to, and then an indicative  
 19 test as described by test sponsor, where they may be  
 20 testing a research and development product and they have  
 21 no intention of using it; yes? That's a clear  
 22 distinction you're drawing.  
 23 A. Yes, that's correct, yeah.  
 24 Q. Now, in the first case, a BRE-defined indicative test  
 25 where there has been a deviation from the test standard,

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1 is it right that the BRE would not ordinarily provide  
 2 a test report?  
 3 A. We would ... if the test was not conducted fully in  
 4 accordance with BS 8414 or whatever standard we're  
 5 testing to, then we would issue a short-form report or  
 6 a letter report and test data.  
 7 Q. Yes.  
 8 A. It would -- we wouldn't -- well, we wouldn't normally  
 9 issue a full report.  
 10 Q. You said not normally; are there any circumstances in  
 11 which the full requirements of the test standard have  
 12 not been complied with but a report will nevertheless be  
 13 supplied to the sponsor?  
 14 A. There may be circumstances where we'd do that, it would  
 15 be relatively rare, I would guess, but the test report  
 16 itself would clearly state that it was an indicative  
 17 test and it would be clear within the text of the report  
 18 why it was indicative.  
 19 Q. Yes.  
 20 In that second category that you were describing  
 21 there where, according to the test sponsor's  
 22 terminology, they consider it to be indicative, such  
 23 that it includes components not typical of a system on  
 24 the market, what would be the BRE procedure in those  
 25 circumstances? Would a full test report still be

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1 issued?  
 2 A. Erm ... not normally. Not normally.  
 3 Q. I see.  
 4 I think you said to us earlier on today that your  
 5 procedures had now changed within the BRE in relation to  
 6 these indicative tests.  
 7 A. Mm.  
 8 Q. Can you just explain to us exactly how they've changed?  
 9 Do you always caveat reports now, whether they're  
 10 indicative in the first category or the second category?  
 11 A. Well, to be honest, it's not always -- we're not always  
 12 aware in the first category. If it's an indicative  
 13 system, we're not necessarily aware that that is the  
 14 situation.  
 15 Q. I think you mean in the second category, you mean --  
 16 A. Sorry.  
 17 Q. -- the manufacturer.  
 18 A. Yeah. It's only if the manufacturer declares to us  
 19 that, you know, this is --  
 20 Q. Yes, and if you were aware of that -- sorry.  
 21 If you were made aware that the manufacturer  
 22 considered it an indicative test because it was on  
 23 a research and development product or was on  
 24 an incomplete system, as far as they were concerned,  
 25 what would happen now about that test report?

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1 A. Well, that would be -- the test report would be clearly  
 2 identified in terms of the way that the client has  
 3 declared that system to us.  
 4 Q. Yes. So if now a BR 135 classification report were  
 5 being written for the 2005 test, are you saying that it  
 6 would make clear that BRE's understanding was that that  
 7 cladding board was not a representative cladding board?  
 8 A. I think if we were to do the same again, yes, the report  
 9 would be somewhat different to what was actually issued,  
 10 yes.  
 11 Q. When you say somewhat different, can you help us as to  
 12 exactly in what way it would be different now?  
 13 A. Well, I'm not sure that we would actually term it as  
 14 an indicative test, but there would be some commentary  
 15 within the report that states that, you know, the system  
 16 as tested -- I'm not sure that we could say was not of  
 17 a type to be installed on a building, but something  
 18 around that that would make it clear that it was an R&D  
 19 or a system not -- you know, a non-commercial system,  
 20 let's put it that way.  
 21 Q. Yes, thank you, that's helpful.  
 22 Mr Baker, I asked you at the very beginning of your  
 23 evidence a little bit about BR 135 third edition, and in  
 24 particular we're interested in whether it was deliberate  
 25 to make clearer in that that the classification report

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1 only applies to the system as tested.  
 2 Can I just take you to a couple of passages in it .  
 3 If we can bring up {CEL00000584}. So this is the third  
 4 edition of BR 135 which you co-authored with  
 5 Sarah Colwell.  
 6 If we can look within it at page 27  
 7 {CEL00000584/27}, within annex A. This is the  
 8 performance criteria for the 8414-1 in annex A. Can you  
 9 see -- it's halfway down that page -- there is  
 10 a paragraph that begins:  
 11 "The classification applies only to the system ..."  
 12 We have it clearly on the left .  
 13 A. Yes.  
 14 Q. "The classification applies only to the system as tested  
 15 and detailed in the classification report. The  
 16 classification report can only cover the details of the  
 17 system as tested. It cannot state what is not covered.  
 18 When specifying or checking a system it is important to  
 19 check that the classification documents cover the  
 20 end-use application."  
 21 Then we have identical language at page 33  
 22 {CEL00000584/33} in annex B for dealing with 8414-2.  
 23 A. Yes.  
 24 Q. It's here on the right-hand side, after the bullets .  
 25 Can you see it there at the top of that page?

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1 A. Yes.  
 2 Q. "The classification applies only to ..."  
 3 Can you help us, was that -- well, it clearly was  
 4 deliberate because the words are in there, but we're  
 5 interested to know whether there was kind of detailed  
 6 consideration given at the time of drafting this third  
 7 edition to the need to be clearer in this edition that  
 8 the classification only applied to the system as tested?  
 9 A. Yes, I think that the predecessor to this document  
 10 wasn't quite as clear as it could have been, so we  
 11 inserted those clauses just to clarify that situation .  
 12 In fact, we actually put that wording in the  
 13 classification report as well .  
 14 Q. Yes. Yes.  
 15 Was that also done because of a concern that the  
 16 industry, the construction industry, wasn't fully  
 17 appreciating that the classification only applied to the  
 18 system as tested?  
 19 A. Yeah, that had certainly -- we'd become aware of that,  
 20 although I ... personally I think if the industry had  
 21 thought about it a bit more, they would have been aware  
 22 anyway. But clearly the message wasn't getting through  
 23 previously, so we felt that it was prudent to put that  
 24 sort of wording in the BR 135.  
 25 Q. Yes. Does that in part link back to some of the emails

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1 and exchanges we've seen over the K15 product this  
 2 morning?  
 3 A. Yes.  
 4 Q. The concerns that you had?  
 5 A. Yes.  
 6 Q. I now want to move to a different topic, which is your  
 7 involvement with the Celotex testing of RS5000 in 2014.  
 8 If we can just pick up your involvement pre-testing,  
 9 this starts in November 2012. If we can go to  
 10 {BRE00005775/127}.  
 11 So in the top email, on 27 November 2012, Mr Howard  
 12 forwarded to you an email from Paul Evans at Celotex,  
 13 and he just says "Yours". Can you see that?  
 14 A. Yes.  
 15 Q. Then we can see below the email that he sent you from  
 16 Paul Evans, where he said, "Hi Stephen/Carol", so  
 17 Stephen Howard and Carol Rock. That's someone else at  
 18 the BRE; is that right?  
 19 A. Yes.  
 20 Q. Yes:  
 21 "Trust you are both well. Not sure who to direct  
 22 this enquiry so have copied you both in.  
 23 "I would be interested in obtaining a quotation to  
 24 test our products so they can be used in buildings above  
 25 18 metres in height. I believe the relevant standard

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1 are BS 8414 & BR135."  
 2 Then he says:  
 3 "Is someone from BRE able to visit Celotex for  
 4 a meeting so we can fully understand the requirements,  
 5 timescales and costings for this approval."  
 6 So Mr Howard simply forwarded this to you. Did you  
 7 understand him to be suggesting that you should meet  
 8 with Celotex for the purposes of such a meeting?  
 9 A. Yes, that was Steve's shorthand for saying basically can  
 10 I deal with it, yes.  
 11 Q. Yes.  
 12 Would you regularly carry out visits to potential  
 13 clients to discuss their testing requirements? Was that  
 14 a common thing that occurred?  
 15 A. Not common, not regular, but it happens on occasions, or  
 16 clients come to us at BRE, or ... but, yeah.  
 17 Q. Yes.  
 18 If we look at your first witness statement now,  
 19 {BRE00005774/11}, and if we look at paragraph 45, we can  
 20 see that you tell us there that in December 2012 you had  
 21 a meeting with Rob Warren and Paul Evans of Celotex at  
 22 their offices in Hadleigh, and you say:  
 23 "I do not have any notes or minutes of this meeting  
 24 but to my recollection there was a general discussion  
 25 regarding test principles and methods of BS 8414 and

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1 BR 135."  
 2 Do you see that there?  
 3 A. Yes.  
 4 Q. Now, can you remember what you discussed at that meeting  
 5 in December 2012 with representatives of Celotex?  
 6 A. Erm ... I think -- well, I do recall having some  
 7 discussion over -- or particularly relating to the  
 8 requirement to test a number of systems. I think their  
 9 original thoughts, similar to our earlier comments, they  
 10 felt that if they did one test, they would be for --  
 11 cover all. But during that meeting, I made it fairly  
 12 clear to them that, you know, a number of tests would be  
 13 required to cover a number of different systems.  
 14 Q. Yes. Yes.  
 15 We note that you say you don't have any notes or  
 16 minutes of the meeting. Were you required to keep notes  
 17 of meetings like that? Was that something that was said  
 18 to you, that you ought to keep notes of such meetings?  
 19 A. Erm ... I don't think it was a specific requirement.  
 20 Yes, I'm aware that perhaps I should do, but I'm never  
 21 very good at speaking and writing at the same time,  
 22 I'm afraid, so ...  
 23 Q. We've got some Celotex notes of that meeting,  
 24 {CEL00002544}. These are notes taken by Paul Evans at  
 25 the meeting. So these are his handwritten notes. You

1 can see at the very top it says 15 December 2012, and it  
 2 says, "Tony Baker -- BRE".  
 3 If we look at point 3 on that first page, he's  
 4 recorded:  
 5 "BRE most popular system is rendered -- a few for  
 6 rainscreen cladding."  
 7 Then just to the right-hand side then he's written,  
 8 "Rainscreen systems" and then "Aluminium". Do you see  
 9 that?  
 10 A. Yes.  
 11 Q. Do you recall discussing specific types of rainscreen  
 12 cladding materials in that meeting with Celotex?  
 13 A. No, I don't recall talking about specifics. I think  
 14 they might just be sort of additional notes that  
 15 Mr Warren was making sort of in terms of his thoughts on  
 16 the discussion, but ... no, I don't think I had  
 17 sufficient knowledge of the systems market at that stage  
 18 to actually start discussing specific system types, and  
 19 I don't -- I wouldn't do anyway, to be quite honest.  
 20 Q. Right. So you can't remember saying something about the  
 21 most popular system being a rendered system in terms of  
 22 those that were being tested?  
 23 A. Well, it's quite possible that I made some comments  
 24 about the types of systems that we were typically  
 25 testing at that time in terms of rendered systems and

1 some rainscreen cladding systems, but that's very  
 2 generically as opposed to giving detail.  
 3 Q. If we go over to the next page {CEL00002544/2}, about  
 4 halfway down page 2, we can see there's a note. It's  
 5 just above the halfway point. We can see it says:  
 6 "Tony Baker -- keep a watch on any potential  
 7 partners."  
 8 A. Right.  
 9 Q. Do you see that there?  
 10 A. Yeah.  
 11 Q. Now, Mr Evans explained in his oral evidence -- for the  
 12 transcript, we don't need to go to it, it's {Day71/99}  
 13 to {Day71/100} -- he said that you advised Celotex to  
 14 watch out for potential partnering opportunities. Is  
 15 that right? Did you say that to them?  
 16 A. Well, I think I suggested that they might need to  
 17 partnership with other organisations, because I got the  
 18 feeling during the meeting that they were struggling to  
 19 understand the totality of the system. You know, in  
 20 effect, they're an insulation manufacturer and don't,  
 21 you know, manufacture a complete system. So I think as  
 22 part of the meeting I think I probably suggested that  
 23 they probably need to look at partnership with other  
 24 companies to be able to come up with suitable systems  
 25 for testing.

1 Q. Was that based on your understanding following,  
 2 for example, some of the Kingspan testing, that  
 3 combustible insulations were unlikely to pass without  
 4 good support from other elements of the cladding system,  
 5 including the external cladding boards?  
 6 A. No, I wouldn't say that that's the reasoning behind the  
 7 discussion. It's more that, as an insulation  
 8 manufacturer, they haven't got the expertise in putting  
 9 a complete system together, and we were ... we'd had  
 10 other discussions with -- I'm not sure whether it was  
 11 external or internal, that to enable particularly the  
 12 rainscreen industry, that they needed to do  
 13 partnerships, because each element, it seems, was  
 14 actually provided by a different company.  
 15 Q. Right.  
 16 A. So to have a sort of complete build-up, you needed  
 17 multiple companies to be involved.  
 18 Q. I see, yes.  
 19 Just a final question on this document, Mr Evans'  
 20 notes. You can see above the solid line there is  
 21 a heading "Considerations", and we can see it says:  
 22 "Considerations:  
 23 "Outer substrate.  
 24 "Insulation.  
 25 "Cavities (drainage & ventilation)

1 "Fixings."  
 2 Were those matters that you raised that they needed  
 3 to go away and consider?  
 4 A. I think it was just -- I was just sort of going through  
 5 a general sort of -- a typical build--up. They're the  
 6 sort of elements that they will need to be looking at  
 7 for a full system.  
 8 Q. Yes.  
 9 A. As I said, you know, in my previous comment, as  
 10 an insulation manufacturer, they were not experts in  
 11 what made up a complete system.  
 12 Q. Yes.  
 13 Now, following that meeting, we know that you had  
 14 another meeting, this time with Jonathan Roper, in  
 15 March 2013; is that right?  
 16 A. Yeah. I've seen that from my notes. I don't actually  
 17 recall that meeting, to be quite honest.  
 18 Q. No, yes. We've seen some correspondence where the  
 19 meeting is set up.  
 20 A. Yeah.  
 21 Q. For the transcript, that's {CEL00002082}, but we don't  
 22 have any record of what was discussed at the meeting,  
 23 either from the BRE or Celotex.  
 24 Can you recall, even in general terms, what you  
 25 discussed with Mr Roper at that time?

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1 A. I don't, unfortunately, I don't recall the meeting,  
 2 as I say. From the email trails, obviously there was  
 3 a meeting set up, and I've got no reason to believe it  
 4 didn't happen.  
 5 Q. Right.  
 6 A. I do wonder whether it was just a simple case of  
 7 Mr Roper coming down to BRE, perhaps just to see the  
 8 test rigs.  
 9 Q. Yes.  
 10 Now, if we can go to {CEL00001185}, we can see  
 11 an email from Mr Roper on 3 May 2013. This is an email  
 12 from Jonathan Roper to you, this is 3 May 2013, and he  
 13 alludes to the fact that there has been a meeting before  
 14 that, so you can see he says:  
 15 "Hi Tony,  
 16 "Hope you are well.  
 17 "Thanks again for your time a couple of months ago  
 18 when I came down to discuss Celotex & above 18m  
 19 fire testing."  
 20 So we can see that that appears to be referring to  
 21 the meeting you were just referring to; yes?  
 22 A. Yes, I guess so, yeah.  
 23 Q. He goes on to ask about which part of BS 8414 would  
 24 cover particular applications. If you look in the third  
 25 paragraph, third main paragraph, he says:

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1 "We've discovered that many of our lost  
 2 opportunities in the past regarding above 18m have  
 3 involved an [steel--framed system] frame as the inner  
 4 leaf with a brick outer face. This construction is  
 5 common up to a certain level, with the remaining storeys  
 6 constructed with a rainscreen cladding system on  
 7 steel frame."  
 8 Now, had you explained in your meetings with  
 9 Celotex, including at that March meeting, that the BRE  
 10 was unable to provide advice if acting in its role as  
 11 a test house?  
 12 A. I'm sure I would have done, but I don't recall  
 13 specifically. Yeah, I ... it's sort of a general  
 14 commentary in any meetings, where if a client starts  
 15 asking about specifics, we would say, "I'm sorry, we  
 16 can't help you with the specific design of your  
 17 product".  
 18 Q. Right, yes.  
 19 If we can go to {CEL00001343}, this is your reply of  
 20 the same day. We can see this at the top there. This  
 21 is you back to Mr Roper, and we can see that you say:  
 22 "Hi Jonathan,  
 23 "I'm well thanks.  
 24 "This type of system would come under the scope of  
 25 BS 8414--2 and classification to BR 135 Annex B. It

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1 could be argued that with the brick external face there  
 2 wouldn't be any external spread of flame but in line  
 3 with AD--B, B4 section 12.5 you also need to consider the  
 4 cavities and hence the potentially combustible  
 5 insulation materials.  
 6 "Different authorities may have different views on  
 7 the applicability of the test on this type of system but  
 8 bottom line if you have lost business by not having the  
 9 classification then the investment is probably  
 10 worthwhile."  
 11 This is advice, isn't it? You are giving him advice  
 12 on under what part of 8414 this type of system would  
 13 come, and more advice about external spread of flame and  
 14 you need to consider cavities and the combustible  
 15 insulation materials under ADB. That is a form of  
 16 advice, isn't it?  
 17 A. It's a form of advice in terms of the test standards and  
 18 the Building Regulations or ADB specifically, but yes,  
 19 I wouldn't -- that to me wouldn't be outside of the  
 20 confidentiality or impartiality rules, it's just advice  
 21 on regulations and standards.  
 22 Q. Right. Yes.  
 23 If we go now to {CEL00000617}, there is a further  
 24 email from Mr Roper of 21 June 2013. This is another  
 25 email back to you a month later. I want to look in

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1 particular at what he says in the second paragraph. He  
 2 says:  
 3 "I could do with a quick catch up over the phone  
 4 next week also regarding the purpose of this test."  
 5 You can see the subject is "BR 135 Testing" from the  
 6 subject. He says:  
 7 "I'm sceptical having sat down with Sotech about how  
 8 a particular competitor of ours has passed BR 135. My  
 9 understanding is that the purpose of this test is to  
 10 determine the behaviour of the flame and therefore the  
 11 performance of the insulation within the cavity between  
 12 an external facade and the inner face. Would preventing  
 13 the flame entering the cavity altogether be acceptable  
 14 when considering the design of our specimens?"  
 15 Now, did you respond to this email?  
 16 A. Erm ... I don't recall doing so.  
 17 Q. We haven't been able to find an email response, but he  
 18 is asking for a quick catch-up over the phone about  
 19 these issues; do you recall discussing these topics with  
 20 Mr Roper on the phone on or after June 2013?  
 21 A. No, I don't recall that. I would say that he's starting  
 22 to err on the side of the areas that we couldn't advise  
 23 on.  
 24 Q. Yes, quite. So do you remember speaking to  
 25 Mr Roome(sic) and saying, "I'm afraid what you're asking

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1 for is advice and we're a test house, we're not  
 2 a consultant to you, and we have independence and  
 3 impartiality obligations, we can't give you this  
 4 advice"? Do you remember having that conversation --  
 5 A. I don't remember having a conversation about this email  
 6 at all.  
 7 Q. Do you remember discussing with him "how a particular  
 8 competitor of ours has passed BR 135"? We understand  
 9 from other witnesses that that's referring to Kingspan.  
 10 Do you remember having discussions with him about how  
 11 Kingspan had managed to pass BR 135?  
 12 A. No, absolutely not. I would definitely not be  
 13 discussing anything about another client with a client.  
 14 Q. Do you remember ever having a discussion with him about  
 15 trying to prevent the flame from entering the cavity  
 16 altogether when considering how the specimen was  
 17 designed?  
 18 A. No, as I say, I don't recall having a discussion with  
 19 him about this email at all.  
 20 Q. If we go on now to {BRE00003477/2}, this is now  
 21 November 2013, and what happens is Mr Howard forwards  
 22 another email to you from Mr Roper.  
 23 So we can see that email from Jon Roper to  
 24 Stephen Howard, and he says:  
 25 "Steve,

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1 "As discussed earlier find below a list of  
 2 requirements that ideally we would like to get out the  
 3 test report."  
 4 And you can see he then goes on:  
 5 "I understand that all of these will not be possible  
 6 but broadening the scope as much as possible is critical  
 7 to us."  
 8 Then he goes on, and if we look at the third point,  
 9 he says at 3:  
 10 "Most importantly is the cladding panel scope. We  
 11 are looking to test a fibre cement eternit panel but as  
 12 discussed we would like as much scope as possible. If  
 13 the BRE won't accept a variation of panels used on one  
 14 rig, then we would like some suggestions on how we can  
 15 cover as much of the most commonly used systems as  
 16 possible. Trespa, Marley Eternit, Rockpanel, ACM  
 17 panels, terracotta etc.  
 18 "If you could come back to me on this, with the  
 19 generic details too, would be much appreciated."  
 20 So Mr Roper is looking for more advice, in  
 21 particular on how they can get the most out of the scope  
 22 of the test to cover as many cladding panels as  
 23 possible; do you see that?  
 24 If we go to the next email up from Mr Roper's email  
 25 {BRE00003477/1}. Yes, so we can see that at 14.29, at

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1 the bottom of that page, on 18 November 2013,  
 2 Stephen Howard forwards this to you and to  
 3 Sarah Colwell, and he says this:  
 4 "If I was trespa, marley, rockpanel, I would be  
 5 coming up with generic offerings .....  
 6 "Until that day comes (if ever), any comments?"  
 7 Now, given what you said about the BRE's inability  
 8 to give advice on design, why was Mr Howard asking for  
 9 your comments on this? Can you help us?  
 10 A. Erm ... no, I don't really know. I can't recall, to be  
 11 quite honest. This was a period where I'd actually  
 12 sort of taken on other responsibilities, and  
 13 Stephen Howard had started taking over the  
 14 responsibility of BS 8414 from a managerial point of  
 15 view, so I think he's just looking for a bit of advice  
 16 and understanding in terms of the -- you know, of what  
 17 it is that Mr Roper is asking.  
 18 Q. Yes.  
 19 A. I don't think he's -- he's not actually saying that  
 20 that's what he was going to be telling Celotex.  
 21 Q. No, I appreciate that, but he's not saying, "Clearly  
 22 I can't give any advice, but I would be interested in  
 23 your comments anyway", is he? He seems to be forwarding  
 24 this because -- well, we've asked Mr Howard about this,  
 25 but was your understanding that he was proposing to

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1 engage with Celotex over these issues?  
 2 A. Yeah, I don't -- I can't really say what  
 3 Stephen Howard's intentions were, to be quite honest.  
 4 Q. Is the reality that BRE did on occasions provide  
 5 comments to manufacturers in the form of advice which  
 6 did stray into these kind of design issues?  
 7 A. No, I don't believe so. We would occasionally have  
 8 discussions with manufacturers in terms of defining  
 9 a scope of testing which would then allow -- well,  
 10 assuming they achieved the results that they needed to  
 11 achieve, would then allow them to have assessments to  
 12 cover a wider scope.  
 13 Q. Yes.  
 14 A. That's ... we're not saying, "This is how to design your  
 15 system". In the first instance, we have to understand  
 16 what systems they have in the market. It's like  
 17 a matrix system, in effect. They tell us the full scope  
 18 of their marketable systems, and then from that we would  
 19 determine a test -- we would determine as best as we  
 20 could, sometimes it's not possible, but we would try to  
 21 determine a test plan to cover those variables, but  
 22 without having to test every different iteration.  
 23 Q. Yes. So you're advising on how they can do one test and  
 24 get the maximum out of that test because you may be able  
 25 to, what, issue desktops for other arrangements?

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1 A. Well, just taking your point there, advising them from  
 2 one test, I don't think we'd ever be in a position to  
 3 say, "Do one test and you could do this scope". It  
 4 would probably be multiple tests --  
 5 Q. Yes.  
 6 A. -- but that would then hopefully allow them to have  
 7 a desktop study to cover a wider range.  
 8 Q. Yes. So, just to be clear, you can recall instances,  
 9 can you, where you said to manufacturers, "Well, if we  
 10 do these multiple tests, we will then be able to give  
 11 you a scope of application, an assessment, which would  
 12 cover a broader range of systems"; yes?  
 13 A. Yes, that -- yes, and that's a fairly typical  
 14 arrangement for multiple types of different products in  
 15 the fire industry.  
 16 Q. Right. Yes.  
 17 Now, we can see that you reply to this email, we've  
 18 got it right in the middle of this page here,  
 19 18 November 2013. You say:  
 20 "I'm about to write to CLG ..."  
 21 Is that the Department for Communities and Local  
 22 Government?  
 23 A. Yes.  
 24 Q. "... on behalf of Trespa regarding cladding tests, it's  
 25 best we wait to see what comes back before making any

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1 comment."  
 2 Now, Trespa are cladding manufacturers; yes?  
 3 A. A board manufacturer.  
 4 Q. Cladding board manufacturer?  
 5 A. Yes, yeah, yeah.  
 6 Q. Can you help us as to why you were writing to the DCLG  
 7 or CLG on Trespa's behalf at that time?  
 8 A. Well, a question had been raised as to what boards of  
 9 a Trespa type, what they would be considered as in terms  
 10 of the way that the building -- or the ADB is written.  
 11 ADB includes and excludes some components, and there was  
 12 some discussion over what Trespa or what the cladding  
 13 board would be deemed as under that scope.  
 14 Q. Right. So you were writing on behalf of Trespa to the  
 15 CLG asking, what, for clarification over how their  
 16 cladding panels would be viewed?  
 17 A. Yes, yes.  
 18 Q. Right.  
 19 Involvement with the February and May 2014 tests  
 20 now, the Celotex RS5000 tests, I want to turn to that.  
 21 If we can go in your first witness statement to  
 22 page 10 {BRE00005774/10} and look at paragraph 39,  
 23 you're being asked about the test report for the test  
 24 that incorporated RS5000 that was carried out on  
 25 2 May 2014. We can see at paragraph 39 you say this:

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1 "As I explain below, I had some preliminary  
 2 discussions with Celotex in 2012/2013 regarding BS 8414  
 3 testing. However, by the time the testing was conducted  
 4 my responsibilities had changed within BRE and, as such,  
 5 any subsequent involvement I had with Celotex and  
 6 BS 8414 was confined to authorising Test Report  
 7 295369 ..."  
 8 A. Yes.  
 9 Q. So is it right, and does it follow from that, that you  
 10 were not actively involved with either the February or  
 11 the May 2014 tests beyond authorising the 8414 report  
 12 from the second May 2014 test?  
 13 A. That's correct, I had no involvement with those tests at  
 14 all, apart from the authorising of the second test  
 15 report.  
 16 Q. Were you there when those tests were carried out? Were  
 17 you in the Burn Hall?  
 18 A. No.  
 19 Q. No, so you didn't witness those tests?  
 20 A. No.  
 21 Q. Did you see the rig being constructed or the rig being  
 22 dismantled?  
 23 A. No.  
 24 Q. So looking now at your involvement with the authorising  
 25 of that 8414 report, if we can go to {BRE00005775/158},

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1 and I want to look at the second email down. We can see  
 2 that on 1 August 2014 at 8.36 in the morning, you email  
 3 Phil Clark, subject, "Celotex report". You say:  
 4 "I've got the Celotex report now, I will have a look  
 5 today."  
 6 Then we can see at the top of that page that  
 7 Phil Clark responds back to you within ten minutes and  
 8 he says:  
 9 "Tony I have updated the final draft to include  
 10 a diagram showing the fire breaks. The final version  
 11 for signing v4 (electronic) is in the following file."  
 12 Then he gives a link to an S drive there with the  
 13 test report. Then he says:  
 14 "Any problems I am happy to help resolve."  
 15 So we can see that.  
 16 We don't need to turn to it, but you say in your  
 17 first statement at paragraph 53 on page 13  
 18 {BRE00005774/13} that there may have been, you say, up  
 19 to four revisions of this test report. Did you ever  
 20 discover how many versions there had been prior to you  
 21 authorising it?  
 22 A. Erm ... no. I don't think so. I think on the one that  
 23 I looked at, the final one that I looked at, I think it  
 24 had, I can't recall exactly, v4 or v5 written on there,  
 25 which would indicate that it had been through five

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1 revisions, four or five revisions.  
 2 Q. Yes. Were all of the previous revisions and previous  
 3 versions on file and there for you to look at if you  
 4 wanted to?  
 5 A. Yes, probably, but I don't recall whether I did or  
 6 whether they were, to be quite honest.  
 7 Q. Should they have been? Was it the BRE's practice to  
 8 have all the previous drafts available to the authoriser  
 9 of the report so that they could review it as necessary?  
 10 A. Yes, normally they would be there, yeah.  
 11 Q. Do you have any memory of reviewing any of the previous  
 12 versions when you came to authorise this version 4?  
 13 A. I don't have any memory of doing so. That doesn't mean  
 14 that I didn't, I just don't recall.  
 15 Q. Okay. But you can't remember being interested to see  
 16 what had changed and looking to earlier drafts before  
 17 you came to the final one?  
 18 A. No, but a typical sort of scenario if I'm doing  
 19 an authorisation, I would look at the last or the  
 20 previous to the last one, in effect. So if I'm looking  
 21 at version 4, then I would look back at version 3 as  
 22 well, just to ensure that updates have been made from  
 23 that version to the latest version.  
 24 Q. Do you have a memory of doing that with this test  
 25 report? We're going to take you to version 4 in

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1 a moment, so you'll be able to see it.  
 2 A. Yeah, as I say, I don't physically recall doing so, but  
 3 that doesn't mean that I didn't.  
 4 Q. If we can go to {BRE00005851}, this is the draft that  
 5 was sent to you by Mr Clark. You can see it's dated  
 6 2 June 2014, it says "Issue 1", and then at the bottom  
 7 of this page we can see somebody's written "V4 for  
 8 signing", and then underneath that there's some red  
 9 writing, and I think we've got your initials, is that  
 10 right, "TB"?  
 11 A. Yes, that's my writing, the red writing is mine.  
 12 Q. Yes, and you've put the date, 1 August 2014, and you  
 13 have also put, "See pages 5, 7, 8 & 11-13". Is that you  
 14 signalling where in the report you have made handwritten  
 15 annotations?  
 16 A. Yes, yes.  
 17 Q. Was that the BRE's practice at the time, for you to do  
 18 any changes in handwriting on -- was this on a pdf  
 19 version of the report; yes?  
 20 A. Well, this would be a printed version. It would have  
 21 been printed out and I would have gone through it in  
 22 paper form.  
 23 Q. Right. So you go through the hard copy, you make  
 24 handwritten annotations and then, what, it just gets  
 25 handed back to --

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1 A. I would have handed that back together with any other  
 2 documents that Phil sent to me as a full file to  
 3 Phil Clark.  
 4 Q. Yes. So it goes back to Mr Clark, and were you aware of  
 5 who else within the BRE had been reviewing this draft  
 6 prior to it coming to you?  
 7 A. Yes, I know Stephen Howard had reviewed this a number of  
 8 times before I had.  
 9 Q. And did you know that at the time that you were doing  
 10 your authorisation?  
 11 A. Yes, yes.  
 12 Q. Now, if we go to page 8 of this report {BRE00005851/8},  
 13 and I want to look at the changes you're suggesting on  
 14 this page. If we look at the top half of the page, we  
 15 can see that you're obviously paying attention to ensure  
 16 that the text identified the right figures, because  
 17 you've changed the figure references, yes, at the top?  
 18 That's the first change, you have gone from 10 to 9.  
 19 A. Yeah.  
 20 Q. And you have obviously found a number of places where it  
 21 just says "Error! Reference source not found" and you  
 22 have put those figures in; yes?  
 23 A. Yes, yeah.  
 24 Q. You also appear to have taken care to ensure that the  
 25 temperatures recorded in this table below match the

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1 temperatures in the thermocouple graphs; is that  
 2 correct?  
 3 A. That's correct, yes.  
 4 Q. So you're sometimes flagging that it doesn't tie up  
 5 with, say, figure 12, 13 or 14, and you have highlighted  
 6 some changes; yes?  
 7 A. That's correct, yes.  
 8 Q. There's some blue pen on this page. Can you help us,  
 9 would that blue pen have been there when you reviewed?  
 10 A. No, I think that's Phil Clark's writing. He's probably  
 11 written that in, in relation to my comments.  
 12 Q. Yes. I see. When he has got this back, this is him  
 13 writing some notes in response to your comments; yes?  
 14 A. Yes, yes.  
 15 Q. Yes, and if we look at page 6 {BRE00005851/6}, we can  
 16 also see there you've made some minor changes to  
 17 section 3.2, the description of the products.  
 18 A. Yes.  
 19 Q. Can you see that? So you have looked at the list of  
 20 components and you have made some tiny suggestions  
 21 there. But you haven't commented on the fact that only  
 22 one type of Marley Eternit board was identified in this  
 23 list, that's the 12-millimetre Marley Eternit decorative  
 24 rainscreen board as the very last bullet point there.  
 25 Can you see that?

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1 A. Yes.  
 2 Q. Now, that's despite the fact that, if we turn to page 13  
 3 {BRE00005851/13} -- we know that this is a page that  
 4 you've looked at because you've amended the figure in  
 5 red pen from 2 to 3 -- we can see from this photo, can't  
 6 we, that there were plainly different colours of  
 7 cladding panel; yes?  
 8 A. Yes.  
 9 Q. And those ruby boards at the top of the rig are very  
 10 clear in this photograph; yes?  
 11 A. Yes.  
 12 Q. They also appear, if we could look at pages 26  
 13 {BRE00005851/26} and 27 {BRE00005851/27}, that's  
 14 a photograph of the test as it's happening, that's 26,  
 15 and 27, we can see the ruby boards clearly there after  
 16 the crib has been extinguished; yes?  
 17 A. Yes.  
 18 Q. But you haven't queried in that component list, if we  
 19 can go back to that component list on page 6  
 20 {BRE00005851/6}, despite those photographs --  
 21 A. No, I don't comment.  
 22 Q. -- the 12-millimetre Marley Eternit Natura decorative  
 23 rainscreen board. Can you help us as to why not?  
 24 A. Well, I think I asked Phil verbally at that -- or it  
 25 might have been at the -- an earlier stage, I don't

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1 know, why there were different colours, and I'm fairly  
 2 sure it was relating to this test report, it might well  
 3 have been a different report, I don't know, but I've  
 4 commented verbally regarding different colours, and  
 5 Phil's told me that it was only because that's all that  
 6 were available in the thickness.  
 7 Q. I see. So you have a recollection of specifically  
 8 querying the different coloured boards with Phil Clark;  
 9 yes?  
 10 A. Yes.  
 11 Q. Can you remember what it was you were querying about  
 12 those boards?  
 13 A. Just why they were different colours.  
 14 Q. And what did he tell you?  
 15 A. That they were all the same board, just different  
 16 colours, because that's all they could get in time for  
 17 the test.  
 18 Q. And did he tell you that there was anything else at the  
 19 location of that ruby board?  
 20 A. No.  
 21 Q. Did he refer to any magnesium oxide on the test rig?  
 22 A. Apart from the sheathing board, no.  
 23 Q. Now, just looking at paragraph 65 of your first  
 24 statement on page 16 {BRE00005774/16}, you're talking  
 25 about here what approving an 8414 test report involves,

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1 and you say that approving it involved:  
 2 "... a final review of the draft report against the  
 3 information available in the project file and ensuring,  
 4 as far as possible, that it is an accurate  
 5 representation of the product description, that the test  
 6 data has been presented correctly and that there are no  
 7 typographical errors in the report."  
 8 A. Yes.  
 9 Q. Now, did you check the test file when you were  
 10 authorising this report?  
 11 A. I would have done, but not a detailed check.  
 12 Q. Because you've told us there that it would involve  
 13 a review against the information available in the  
 14 project file. That's the same as the test file; yes?  
 15 A. Yes, yeah.  
 16 Q. And do you have any recollection of checking the  
 17 delivery notes for the products?  
 18 A. No, I don't have a recollection of that.  
 19 Q. So even though you know there are different coloured  
 20 boards, you didn't think to check what the delivery  
 21 notes told you about those boards?  
 22 A. No.  
 23 Q. But is it right that you did have access to those  
 24 delivery notes if you had wanted to do that check?  
 25 A. If they were in the file, then I would have had access

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1 to them.  
 2 Q. How could you check that the product description was  
 3 accurate without checking the delivery notes?  
 4 A. Erm ... well, I've ... the fact that this -- that the  
 5 report, draft report, had already been through a number  
 6 of different iterations, I had clearly incorrectly made  
 7 the assumption that it was a fairly accurate  
 8 description, and I'd checked it maybe too casually in  
 9 this respect.  
 10 Q. Yes. So you think you were relying on the fact that it  
 11 had gone through other people before you; yes?  
 12 A. Yes, yes.  
 13 Q. Can we look at the delivery note for the Marley Eternit,  
 14 this is at {BRE00032372/3}.  
 15 If we can just blow this up a little more, this is  
 16 the delivery note. It's dated, you can see on the top  
 17 right-hand side, 14 April 2014, and then we have the  
 18 product description, and we can see here from the first  
 19 line that it's describing an 8-millimetre ruby Natura  
 20 product; yes?  
 21 A. Yes.  
 22 Q. Then some cream/white and another form of Natura Plus  
 23 12-millimetre products below that; yes?  
 24 A. Yes.  
 25 Q. So if you'd checked that delivery note, you would have

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1 appreciated that the ruby panels were a different  
 2 thickness, wouldn't you?  
 3 A. Yes.  
 4 Q. Now, turning back to the report, if we go back to  
 5 {BRE00005851/29} -- actually, sorry, just before I ask  
 6 you about that figure, which we'll do in a moment, would  
 7 you have expected those that were working on the report  
 8 before you, that's Mr Clark and Mr Howard, would you  
 9 have expected both of them to have checked the delivery  
 10 notes against the product description?  
 11 A. I would have expected somebody to have checked that  
 12 process, probably at the original drafting of the  
 13 report, it's at that level.  
 14 Q. But you wouldn't have expected that to have been checked  
 15 when the report was reviewed?  
 16 A. Not to that much detail, no.  
 17 Q. Why not? Wasn't that a very important part of the  
 18 report, reporting accurately on the product  
 19 descriptions?  
 20 A. Yes, it is. I had no reason to believe that anything  
 21 other than what was written in the report description  
 22 was ... that was different.  
 23 Q. When you had this conversation with Mr Clark verbally  
 24 about why there were different colours, did you ask him  
 25 about whether those different colours had different fire

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1 performance, or whether there was any reason to think  
 2 that they might be so different that they needed  
 3 describing differently in the test report?  
 4 A. No, I don't recall that thought going through my head.  
 5 Q. Now, if we can back to the report, {BRE00005851/29},  
 6 this is a photograph which is here at figure 18 in this  
 7 draft report that you reviewed, but it becomes figure 19  
 8 in the issued report, due to the rearrangement of  
 9 figures that you suggested.  
 10 What did you think the white board was at the top of  
 11 the rig when you reviewed the report?  
 12 A. To be honest, I don't know. I don't know that I even  
 13 sort of took it in that it was there.  
 14 Q. If we could keep that on the page and bring up  
 15 figure 16, which appears just two pages earlier in the  
 16 report, which is page 27 {BRE00005851/27}, if we could  
 17 put page 27 side by side with this. So here we can see  
 18 figure 16 and then figure 18.  
 19 Didn't it occur to you, when you were looking  
 20 through these figures, that the board in this area had  
 21 been red but now was white, in the figures showing the  
 22 dismantling of the rig?  
 23 A. It should have done, but clearly it didn't.  
 24 Q. That should have alerted you to the fact that this was  
 25 a different board or there was an additional board in

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1 those areas, shouldn't it?  
 2 A. It should have done, yes.  
 3 Q. And there was nothing in the list of components which  
 4 could explain what that was, was there?  
 5 A. No.  
 6 Q. Can we agree that that was a very basic error in the  
 7 checking of the report?  
 8 A. Yes, in hindsight, yes, it is, yes.  
 9 Q. Can you help us as to how that error could have  
 10 occurred?  
 11 A. Erm ... no, I can't, I'm afraid. I don't know how I've  
 12 made a fundamental omission -- error such as that.  
 13 Q. Did you ever have any discussions with any of your  
 14 colleagues, including Mr Clark, about those white boards  
 15 as shown in this photograph?  
 16 A. No, as I say, I don't think I even recognised that that  
 17 white board was there. I don't know why, but ...  
 18 Q. You say you had a conversation with him about why the  
 19 different colours. You clearly did ask about -- is this  
 20 right? -- the difference between the white board and the  
 21 ruby board; yes?  
 22 A. Yes, and the grey board down on the wing wall.  
 23 Q. You remember that, do you, talking about the grey board?  
 24 A. Well, not specifically, but just generally, you know,  
 25 that we've got different colours on the system.

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1 Q. But you don't have any recollection of a conversation  
 2 about the white boards in these locations?  
 3 A. No.  
 4 Q. Did Mr Clark ever say to you that those boards had had  
 5 no effect on the system passing the test and therefore  
 6 that's why they weren't mentioned in the test  
 7 description in the report?  
 8 A. No, absolutely not. If we were aware that they were  
 9 there, we would have included it in the detail of the  
 10 report, irrelevant of whether they may or may not have  
 11 had any different -- made any difference to the  
 12 performance.  
 13 Q. Can you help us to understand how a situation has come  
 14 about whereby, despite being shown clearly in this  
 15 photograph, there is no reference to these magnesium  
 16 oxide boards in the test report?  
 17 A. No, I can't explain that. Obviously the test report has  
 18 been to the client as well and they haven't highlighted  
 19 the issue. I would expect -- yes, I would expect us to  
 20 pick it up, but I would also expect the client to pick  
 21 it up as well. But it would seem that there was  
 22 a concerted effort to seek to hide it from us, although  
 23 from the photo 18 there, obviously it's not hidden that  
 24 well.  
 25 Q. When you say, "It would seem there was a concerted

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1 effort to seek to hide it from us", what makes you say  
 2 that?  
 3 A. Just having read their subsequent witness statements.  
 4 MS GRANGE: Right.  
 5 Mr Chairman, I'm midway through this topic and  
 6 I have more questions on this report, but I think that's  
 7 as good a time for a break as any.  
 8 SIR MARTIN MOORE-BICK: I wasn't going to stop you because  
 9 I realised it was all running on, but if you think  
 10 that's sensible, we will stop there.  
 11 MS GRANGE: Yes, I will carry on with this line after the  
 12 break.  
 13 SIR MARTIN MOORE-BICK: All right, thank you very much.  
 14 Well, now, Mr Baker, we're going to have a short  
 15 break at this point. We will resume at 3.35, please.  
 16 Again, I must ask you not to talk to anyone about your  
 17 evidence or anything relating to it, and we will see you  
 18 in quarter of an hour.  
 19 THE WITNESS: Okay, thank you.  
 20 SIR MARTIN MOORE-BICK: Thank you very much.  
 21 (3.21 pm)  
 22 (A short break)  
 23 (3.35 pm)  
 24 SIR MARTIN MOORE-BICK: Welcome back, everyone. We're going  
 25 to resume the evidence of Mr Clark.

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1 Mr Clark, can you hear me and see me clearly?  
 2 THE WITNESS: Mr Baker, not Mr Clark.  
 3 SIR MARTIN MOORE-BICK: Mr Baker, I'm very, very sorry,  
 4 I must have been reading something else in the interim.  
 5 THE WITNESS: Not a problem. Yes, I can see you and hear  
 6 you.  
 7 SIR MARTIN MOORE-BICK: Thank you very much.  
 8 Well, in that case, Ms Grange, on you go, thank you.  
 9 MS GRANGE: Thank you, yes.  
 10 Mr Baker, you told us just before the break that you  
 11 did ask Mr Clark verbally why there were different  
 12 colours on the rig and you got an explanation for that.  
 13 Why were you trusting of the answer that he gave you?  
 14 Why not go to the file and check, for example, the  
 15 delivery note so you can see for yourself what the  
 16 dimensions of the product were?  
 17 A. I have no reason to disbelieve what Mr Clark tells me --  
 18 told me. It was a simple explanation. It's not  
 19 something that we haven't seen in the past. So,  
 20 you know, it's a perfectly reasonable response.  
 21 Q. I see.  
 22 Can we have a look at a photograph that was taken as  
 23 the rig was being dismantled. This is {CEL00010626}.  
 24 Now, this is a photograph that Mr Patrick Jones took  
 25 as the rig was being dismantled on or around

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1 19 May 2014. It's not a particularly clear photograph,  
 2 but if we zoom in, can you help us with the man in the  
 3 red hardhat on the right?  
 4 Can you help us, first of all, would that be a BRE  
 5 employee wearing a red hardhat and a high visibility  
 6 yellow jacket?  
 7 A. I don't recognise him. It would be unusual to be  
 8 wearing high vis in the -- it's usually contractors that  
 9 are wearing high vis.  
 10 Q. Right, okay. You don't recognise that face? I know  
 11 it's not that clear.  
 12 A. No. Not that I -- no, I don't wish to put a name to it  
 13 if I'm not absolutely clear.  
 14 Q. Yes.  
 15 Can we go back to the draft of the test report that  
 16 you reviewed, back to {BRE00005851/8}, now. This is the  
 17 page that we did look at previously, but I now want to  
 18 look at the section beginning "Visual Observations" at  
 19 the bottom of that page. Can you see there is  
 20 a table 1, "Visual Observations", and what you've got is  
 21 the time into the test and then observations of what was  
 22 happening.  
 23 If we can go over the page {BRE00005851/9}, we see  
 24 the continuation of this table. We can see that in red  
 25 pen, at the point 20 minutes and 20 seconds into the

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1 test, where the author, Mr Clark, has written "Flames  
 2 out from back of board at 2.5m", you have written,  
 3 "? which board?", do you see that?  
 4 A. Yes.  
 5 Q. Now, just note that before that, say at 15:44, there has  
 6 been reference to the board, "Visible crack in lower  
 7 board at 0 to 1.2 m and at 2.0 m". Then at 16 minutes,  
 8 "Flames visible behind board at 1.5 m". But at  
 9 20 minutes into the test, despite the use of "board"  
 10 singular having been used up to that point, you're then  
 11 querying which board.  
 12 Now, can you help us as to why you asked for that to  
 13 be clarified?  
 14 A. Yes, I wasn't sure whether he meant out the back of the  
 15 rig, which would potentially be burn-through, if he is  
 16 talking about the plasterboard at the back of the rig,  
 17 test rig. That's the only reason I'm asking that.  
 18 Q. So these are visual observations, what, recording  
 19 observations as you stand in front of the test rig?  
 20 A. At the front and around, you know, you need to have  
 21 a look at the back as well.  
 22 Q. What, so when someone is taking these visual  
 23 observations, they're meant to walk around the rig, are  
 24 they?  
 25 A. Yes, yes.

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1 Q. So you're saying that they might have been flames coming  
 2 out the back of the rig at this point; yes?  
 3 A. That was the basis of my question, yes, because it just  
 4 says "Flames out from back of board", and I was just  
 5 questioning: does that mean out of the back of the board  
 6 at the back of the rig, or is it one of the other  
 7 boards? That was the only reason I was questioning.  
 8 Q. Right. So why are you querying it there but not at  
 9 16 minutes, "Flames visible behind board"?  
 10 A. Because it's behind the board, not coming out.  
 11 Q. Right.  
 12 Is it possible that that comment, "Which board?",  
 13 was in fact you referring to the different coloured  
 14 boards that you can see on the rig?  
 15 A. No, no, no, I'm fairly clear that that's what I mean.  
 16 I was just questioning whether it could be potential  
 17 flaming through the system as opposed to flaming behind  
 18 boards.  
 19 Q. Right, I see.  
 20 What's happened is if we go to the final issued  
 21 version of the report, {BRE00002497/2}, we can see that  
 22 you authorised that, this is the final version, there is  
 23 your name.  
 24 If we look at the table again on page 9  
 25 {BRE00002497/9}, we can see that someone's put that it's

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1 Eternit board, if we look at page 9. Do you see at  
 2 20:20 --  
 3 A. Yes.  
 4 Q. -- someone's put, "Flames out from the back of the  
 5 Eternit board at 2.5m".  
 6 A. Yes, as opposed to the plasterboard at the back of the  
 7 system. That was my sort of question.  
 8 Q. Yes.  
 9 Now, I want to take you now to Dr Lane's Phase 1  
 10 report at {BLAS0000026/40}. At paragraph E4.5.21 at the  
 11 bottom of that page, this is where Dr Lane is  
 12 considering the test reports for the RS5000 test in  
 13 May 2014 and she says there that:  
 14 "The provision of cavity barriers is different in  
 15 the photograph (Figure 2 in BRE report) relative to the  
 16 design drawings (Figure 7 in BRE report)."  
 17 And in particular she notes that:  
 18 "a) Additional vertical cavity barriers were  
 19 installed in the test above level 1, but are not shown  
 20 on the test drawings;  
 21 "b) An additional 3rd horizontal cavity barrier was  
 22 installed in the test, but is not represented in the  
 23 test drawings."  
 24 So she's pointing out discrepancies between the  
 25 diagram that appeared in the final version of the report

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1 and the photographs in terms of the cavity barriers,  
 2 both vertical and horizontal. Do you see that?  
 3 A. I can, yes.  
 4 Q. I think you deal with this in your first statement, if  
 5 we can look at this, {BRE00005774/18}, and I want to  
 6 look at what you say at paragraph 75 of your statement.  
 7 If we just look at the first four lines of paragraph 75  
 8 you say:  
 9 "In the case of Test Report 295369 [that's the one  
 10 we have been looking at], it is apparent that some of  
 11 the drawings included in the report, which had been  
 12 supplied by the test sponsor, did not reflect the final  
 13 build for this system in certain respects (e.g. the  
 14 number of vertical and horizontal fire breaks) and  
 15 therefore can only be used as general guidance."  
 16 So that's what you say in your report.  
 17 Now, does it follow from that that you accept  
 18 Dr Lane's criticism that the diagram that's been  
 19 included in the final report -- and we'll go to it in  
 20 a moment -- doesn't match the cavity barriers shown in  
 21 the photographs?  
 22 A. Yes, I do accept that. Now we would actually put  
 23 a comment on the drawing itself, stating something along  
 24 the lines that the fire barriers are not representative  
 25 of actual installation.

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1 Q. Did you pick up that discrepancy at the time, that the  
 2 cavity barriers shown in the photos did not match the  
 3 cavity barriers shown in the final figure -- in the  
 4 drawing?  
 5 A. I can't recall doing so, but I think, had I done so,  
 6 I would have commented on it in the report.  
 7 Q. When you say there that the drawings therefore can only  
 8 be used as general guidance, what do you mean by that?  
 9 A. That they're not fully representative of the actual  
 10 install, but the text within the report should be.  
 11 Q. Yes. And that's a serious error, isn't it, because if  
 12 the diagrams purport to show the tested system, it's  
 13 vital that they accurately reflect it, isn't it?  
 14 A. Yes, but it is a problem that we have in all forms of  
 15 our testing that we do, is getting clients to actually  
 16 provide accurate drawings representing what they've  
 17 actually built.  
 18 Q. I see.  
 19 Again, has the BRE changed its procedures now in  
 20 terms of now requiring accurate drawings representing  
 21 what they've actually built in the test rig?  
 22 A. Yes, we're more insistent with clients, but even then it  
 23 still doesn't work sometimes, so we'll put a commentary  
 24 in the report on the drawings themselves if there's  
 25 anything that's significantly different.

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1 Q. Right.  
 2 Now, if we can look at that final version of the  
 3 report which Dr Lane is commenting on, if we go back to  
 4 {BRE00002497}, so this is the copy of the report as  
 5 actually issued and authorised by you on 1 August 2014,  
 6 and if we go first to page 12 {BRE00002497/12}, and look  
 7 at figure 2, this is the photograph that Dr Lane's  
 8 referring to where you can see the horizontal  
 9 cavity barriers in green and the vertical  
 10 cavity barriers in blue.  
 11 A. Yes.  
 12 Q. If we go to figure 7, on page 17 {BRE00002497/17}, if we  
 13 blow this up, what Dr Lane has said is that some of the  
 14 barriers that are in figure 2 are not in the drawing,  
 15 including vertical cavity barriers, and she said one of  
 16 the horizontal ones is not there; yes?  
 17 A. Yeah, it is difficult to tell because I can't actually  
 18 read some of the text there. I accept what she's  
 19 saying, yes.  
 20 Q. Yes, it's not a very good drawing. There are some  
 21 labels, but what she has spotted is that none of the  
 22 vertical cavity barriers are there and one of the  
 23 horizontal ones is missing.  
 24 A. Yeah.  
 25 Q. Now, we just want to ask you about where figure 7 comes

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1 from, because you can take it from me that that figure,  
 2 figure 7, does not appear in the draft version 4 of the  
 3 test report which you reviewed with your red  
 4 handwriting. That figure's just not there.  
 5 Now, if we could go back to the email that Mr Clark  
 6 sent you when he emailed you the report, if we go back  
 7 to {BRE00005775/158}, and if you look at the top email,  
 8 Phil Clark back to you, we can see he says this:  
 9 "Tony I have updated the final draft to include  
 10 a diagram showing the fire breaks. The final version  
 11 for signing v4 (electronic) is in the following file."  
 12 So can you see there that he does appear to be  
 13 telling that you he's inserted a diagram showing the  
 14 firebreaks; yes?  
 15 A. Yes.  
 16 Q. But, as I've just mentioned, that version 4 with your  
 17 red handwriting on doesn't have that figure 7 in it.  
 18 Now, can you help us as to whether you did in fact  
 19 see a version with a diagram showing the firebreaks in  
 20 it?  
 21 A. I can't recall, to be honest. Phil's saying there the  
 22 final version for signing, v4. Well, the version that  
 23 I was looking at was indicated as being v4, so I took it  
 24 as being one of the same, but I hadn't noted that there  
 25 was different drawings.

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1 Q. Yes. I mean, shouldn't that version with the diagram  
 2 showing the firebreaks have been version 5, which did  
 3 come to you for checking with that diagram in it; yes?  
 4 A. Yes, it should have been updated to a different version,  
 5 if it was changed, yeah.  
 6 Q. Is that right? Would you ever have a situation whereby  
 7 the author of the report would add, say, an additional  
 8 figure after the authorisation process but before the  
 9 final report goes out? Did that happen at the BRE?  
 10 A. I'm not aware of it happening before.  
 11 Q. Should it have happened? Should there have been  
 12 a situation whereby the author of the report could add  
 13 in a diagram, but that that wasn't reviewed by you?  
 14 A. No, I should be notified in that process.  
 15 Q. Now, you also signed the classification report. It was  
 16 numbered 295255, which was the classification report for  
 17 this test to BR 135. That's right, isn't it?  
 18 A. Yes, I believe so.  
 19 Q. We've got two issues of that report: there was issue 1  
 20 dated 4 August 2014 and issue 2 dated 11 August 2014,  
 21 and both are signed by Mr Jones and by yourself; yes?  
 22 A. Yes.  
 23 Q. Yes.  
 24 If we go to {BRE00005775/225}, we can see an email  
 25 from you. So this is an email at the top from you to

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1 Debbie Kent. Was she someone within the BRE admin  
 2 staff? Is that right?  
 3 A. Yes, that's correct, yes.  
 4 Q. It's on 11 August 2014 and she's copying in Mr Howard.  
 5 She says -- sorry, it's from you to her, and you say:  
 6 "I've corrected and up-issued the classification  
 7 report, copied attached.  
 8 "Can you/Steve double check please."  
 9 There was a problem with the formatting, is that  
 10 right, that Mr Roper had identified that was then  
 11 corrected?  
 12 A. Yeah, that's correct. We sometimes found that, when  
 13 pdfing from a Word document to a pdf document, secure  
 14 pdf document, some of the references changed.  
 15 Occasionally that wasn't picked up before being sent  
 16 out.  
 17 Q. Right, I see.  
 18 Then you say in the third line there:  
 19 "I have left Dick's signature in ..."  
 20 So that was Richard Jones, yes?  
 21 A. Yes, yes.  
 22 Q. "... but this could be changed to Steve if preferred."  
 23 Was Steve Stephen Howard?  
 24 A. Stephen Howard, yes.  
 25 Q. And had Richard Jones or Stephen Howard actually been

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1 involved in finalising this classification report?  
 2 A. What, the issue 2, do you mean?  
 3 Q. Yes. I mean, what's curious is you appear to be saying  
 4 that you have left Richard Jones' signature in, but it  
 5 could be changed to Stephen Howard. How was it  
 6 appropriate simply to change the names of who appeared  
 7 on this classification report?  
 8 A. Sorry, I didn't know whether Dick or Richard Jones was  
 9 in that particular day, because by that time he'd  
 10 semi-retired and was only working certain days.  
 11 Q. Right, I see.  
 12 A. But if he wasn't in, it may have been appropriate to  
 13 change the signature to Steve, Steve Howard, to take  
 14 responsibility for the report, or for the issue 2  
 15 report.  
 16 Q. Right, and had Stephen Howard actually looked at the  
 17 issue 2 report before you suggested that?  
 18 A. No, but I'd copied Stephen into that email, so I assume  
 19 that if he wished to -- if Dick Jones wasn't around and  
 20 Steve then was going to put his signature in, I assume  
 21 that he would have then done his relevant checks.  
 22 MS GRANGE: I see, okay.  
 23 Mr Chairman, I've come to the end of my questions.  
 24 SIR MARTIN MOORE-BICK: Right.  
 25 MS GRANGE: It would probably be appropriate to have a break

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1 to see if there are other questions from elsewhere for  
 2 this witness.  
 3 SIR MARTIN MOORE-BICK: Right, thank you.  
 4 Well, Mr Baker, Ms Grange thinks she has got to the  
 5 end of her questions, but we always have a break at this  
 6 stage to give her a chance to check, and also to give  
 7 other people who are following the evidence from  
 8 elsewhere the chance to suggest further questions that  
 9 we ought to ask you.  
 10 So we're going to have a break now, I'm going to say  
 11 until 4.10.  
 12 THE WITNESS: Okay.  
 13 SIR MARTIN MOORE-BICK: And then we will see if there are  
 14 any further questions for you.  
 15 As before, please don't talk about your evidence  
 16 over the break. We will see you a bit later on.  
 17 THE WITNESS: Okay, thank you.  
 18 SIR MARTIN MOORE-BICK: Thank you very much.  
 19 (3.56 pm)  
 20 (A short break)  
 21 (4.10 pm)  
 22 SIR MARTIN MOORE-BICK: Well, welcome back, everyone. We're  
 23 now going to see whether there are any further questions  
 24 for Mr Baker.  
 25 So, Mr Baker, are you there? Can you see me and

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1 hear me all right?  
 2 THE WITNESS: Yes, I'm here, I can see you and hear you.  
 3 SIR MARTIN MOORE-BICK: Thank you very much. Now we'll find  
 4 out whether there are any more questions for you.  
 5 Ms Grange?  
 6 MS GRANGE: No, Mr Chairman, we don't have any further  
 7 questions for Mr Baker at this stage, thank you.  
 8 SIR MARTIN MOORE-BICK: Right.  
 9 Well, Mr Baker, I think it only remains, then, for  
 10 me to thank you very much indeed for coming to give your  
 11 evidence, it's been really helpful to us to hear what  
 12 you have to tell us, and we are very grateful for your  
 13 giving us the time to appear before us.  
 14 So thank you very much, and that's all, as far as  
 15 you're concerned.  
 16 THE WITNESS: Okay, thank you.  
 17 SIR MARTIN MOORE-BICK: Thank you very much indeed.  
 18 Goodbye.  
 19 THE WITNESS: Goodbye.  
 20 (The witness withdrew)  
 21 SIR MARTIN MOORE-BICK: I think, as far as the rest of us  
 22 are concerned, that's the point at which we call a halt  
 23 for the day, I think. Is that right, Ms Grange?  
 24 MS GRANGE: That's correct, yes, thank you, Mr Chairman.  
 25 SIR MARTIN MOORE-BICK: And we will sit again at 10 o'clock,

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1 tomorrow, then, please.  
 2 MS GRANGE: Yes, thank you.  
 3 SIR MARTIN MOORE-BICK: Thank you very much.  
 4 (4.11 pm)

5 (The hearing adjourned until 10 am  
 6 on Thursday, 4 March 2021)  
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