

OPUS 2

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Grenfell Tower Inquiry

Day 48

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1 Tuesday, 6 October 2020
 2 (10.00 am)
 3 SIR MARTIN MOORE-BICK: Good morning, everyone. Welcome to
 4 today's hearing. Today we're going to continue hearing
 5 evidence from Mr Simon Cash.
 6 Would you like to ask Mr Cash to come in, please.
 7 MR SIMON CASH (continued)
 8 SIR MARTIN MOORE-BICK: Morning, Mr Cash.
 9 THE WITNESS: Morning.
 10 SIR MARTIN MOORE-BICK: Right, all ready to carry on?
 11 THE WITNESS: Yes.
 12 SIR MARTIN MOORE-BICK: Good. Thank you very much. Yes,
 13 just get yourself organised.
 14 (Pause)
 15 Right, yes, Mr Millett.
 16 Questions from COUNSEL TO THE INQUIRY (continued)
 17 MR MILLETT: Good morning, Mr Chairman.
 18 Good morning, Mr Cash.
 19 A. Good morning.
 20 Q. I want to continue the line of examination that we were
 21 on last night and turn to the question of the quantity
 22 surveyor for the Grenfell project.
 23 Now, is it right that that was Chweecheen Lim until
 24 October 2015, when Michelle took over until the
 25 agreement of the final account in June 2017?

1

1 A. Correct.
 2 Q. You are, I think, by profession, a quantity surveyor,
 3 are you not?
 4 A. Correct.
 5 Q. You supervised Chweecheen Lim, didn't you?
 6 A. In capacity as her line manager, yes.
 7 Q. Can you just tell us as briefly as you can what it is
 8 that a quantity surveyor does normally?
 9 A. A quantity surveyor actually estimates the cost of
 10 carrying out works, and then is also responsible in some
 11 instances for procurement of works, and then for
 12 managing the costs during the construction of the works
 13 and agreeing the final account.
 14 Q. What about advising on variations?
 15 A. Yes, that's part of managing the cost of works --
 16 Q. Yes.
 17 A. -- and also any changes in the design that may occur
 18 prior to the appointment of the contractor.
 19 Q. Were there any, to your understanding at the time of the
 20 Grenfell Tower project, any special considerations that
 21 would apply to a design and build contract from
 22 a quantity surveyor's point of view?
 23 A. Nothing particular. It was a standard design and build
 24 contract.
 25 Q. Okay. We will come back to that later on.

2

1 Can we look at Artelia's contract again, please.
 2 That's {ART00005742/55}. Here we see the core
 3 services -- this is page 1 -- and at page 55 we see core
 4 services of a QS, a quantity surveyor. This is the
 5 first page, I think, of the RICS QS standard terms, or
 6 rather this is the first substantive part of it.
 7 If we go down to page 57 {ART00005742/57}, we can
 8 see that there are additional services there,
 9 supplementary services for design and build contracts.
 10 Could you look at tick-box 1.8.1 first of all,
 11 please. It says:
 12 "Liaise with the Client and the Professional Team
 13 [both as defined] and prepare the employer's
 14 requirements."
 15 What does the quantity surveyor do normally in terms
 16 of preparing the employer's requirements?
 17 A. It collates documents from other members of the
 18 professional team and relevant documents that are
 19 required that then will form part of the employer's
 20 requirements, and also prepares a set of preliminary
 21 documents, which is one of the composite documents, and
 22 also a cost -- contract sum analysis.
 23 Q. I see.
 24 If you look at tick-box 1.8.3 and then 1.8.4, look
 25 at those together. 1.8.3 is about liaising with the

3

1 professional team and preparing cost studies to assess
 2 alternative contractor's proposals and prepare
 3 a recommendation for the client's approval.
 4 1.8.4:
 5 "Liaise with the Professional Team and assist with
 6 specialist enquiries to assess alternate contractor's
 7 proposals. Prepare recommendations for the Client's
 8 approval."
 9 Looking at both of those, when a quantity surveyor
 10 assesses a contractor's alternative proposal or
 11 proposals, what should they do?
 12 A. They'll be looking at the financial aspects of the
 13 alternative proposals compared to those that are in the
 14 employer's requirements.
 15 Q. Solely the financial aspects?
 16 A. Yes.
 17 Q. Looking at 1.8.5, it says:
 18 "Liaise with the Professional Team and conduct
 19 negotiations with the Contractor. Obtain documentation
 20 from the Professional Team to confirm the agreed design
 21 and/or performance specifications. Prepare
 22 recommendations for the Client's approval."
 23 When it says, "Obtain documentation from the
 24 Professional Team to confirm the agreed design and/or
 25 performance specifications", what would a quantity

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1 surveyor do in that respect? What would that include?
 2 A. It would be the gathering of the documents from the
 3 professional team.
 4 Q. What documents do you think that would include?
 5 A. Whatever documents the professional team had prepared
 6 that relate to design or performance specifications.
 7 Q. Right, I see.
 8 Now, we talked earlier on about Artelia's contract
 9 with the TMO having been signed in July 2014. It's
 10 right, I think, isn't it, that Artelia and the TMO
 11 agreed a number of additions in the 2014 version of the
 12 contract?
 13 A. Yes, that's correct.
 14 Q. While we're still on this page, this is the 2014 signed
 15 version of the contract, while we're still on page 57
 16 here. If you look at 2.1.9, under "Supplementary
 17 services", which is the only box in that run, other than
 18 one at the top of the page, which has been ticked, the
 19 rest are blank. 2.1.9:
 20 "Facilitate, set up and manage value engineering
 21 exercises."
 22 Just for completeness, you can also see that 2.1.11
 23 has been ticked as well.
 24 But just on 2.1.9, value engineering exercises, when
 25 did it first become apparent to Artelia that Artelia

5

1 would need to assist with facilitating and managing
 2 a value engineering exercise on this project?
 3 A. I'm not sure when specifically, but it would have been
 4 at a time when it was identified that the cost of the
 5 works that had been estimated exceeded the TMO's budget
 6 that was available for the works.
 7 Q. Right.
 8 I think it's right that, certainly by March 2014 at
 9 the latest, on evidence we've already seen in
 10 the Inquiry, value engineering was a key or at least
 11 an important feature of this project. Would that accord
 12 with your recollection?
 13 A. Yes.
 14 Q. Now, can we just go briefly to Chwee Chen Lim's witness
 15 statement number 2. This is {ART00009428}. This is her
 16 second witness statement to the Inquiry, and I just want
 17 to ask you something about what she says about the role
 18 of a QS, quantity surveyor, in this exercise.
 19 Can we look at page 19 {ART00009428/19}, please, and
 20 go to paragraph 56. She says there:
 21 "As QS, it is part of my role to facilitate, set up
 22 and manage value engineering exercises, so I will be
 23 involved in discussions about reducing costs."
 24 Do you agree with that?
 25 A. Yes, but it -- that was the particular aim of the value

6

1 engineering, was to try and see if there were
 2 alternative options that might reduce costs.
 3 Q. Right. What would a QS's involvement be in a value
 4 engineering exercise?
 5 A. It would be to actually evaluate the financial effect of
 6 any suggestions that were being made by the professional
 7 team.
 8 Q. Right. So evaluation of the financial effect of
 9 suggestions made by the professional team; what would
 10 a QS do to facilitate a value engineering exercise?
 11 A. Set up a workshop that would involve the client and the
 12 professional team and any other relevant members to then
 13 identify and bring -- to log suggestions as to where
 14 potential value engineering might be achieved.
 15 Q. I see. You said to log suggestions. While we're on
 16 that answer, where would those suggestions be logged?
 17 A. They would be kept in a schedule.
 18 Q. A schedule to what?
 19 A. Just a -- it could be a spreadsheet, it could be
 20 a written format, but it would be a schedule of ideas,
 21 and it would then -- the ideas would then be reviewed in
 22 terms of their technical evaluation by other members of
 23 the professional team, and also looked at in terms of
 24 the financial effect as to whether there might be
 25 a reduction in cost, or even whether there might be

7

1 a benefit which doesn't necessarily result in
 2 a reduction in cost.
 3 Q. Right. There's quite a lot of detail that you have
 4 given us in that answer, so that would be a detailed
 5 document, would it?
 6 A. Not necessarily, no.
 7 Q. Right. Who would be the custodian of that document?
 8 Who would keep it?
 9 A. The quantity surveyor would be the custodian, yes.
 10 Q. And who on a particular project would have access to
 11 that?
 12 A. It would be circulated to all members of the team.
 13 Q. And was one kept on the Grenfell Tower project?
 14 A. There was -- it was kept in a log, yes, I believe, and
 15 there were ideas that were circulated.
 16 Q. Now, while on the subject of value engineering -- and
 17 it's a subject we will revisit later in your evidence,
 18 Mr Cash -- I just want to ask you about obligations at
 19 this stage.
 20 Can we go back in the contract, the 2014 contract,
 21 to page 47 {ART00005742/47}. On page 47, as you can
 22 see, this is "Core services", and you can see at page 49
 23 {ART00005742/49} tick-box 2.1.4, under "Supplementary
 24 services".
 25 I should just say, this is part of the contract

8

1 dealing with the EA schedule of services, the employer's
2 agent schedule of services, but it also talks about
3 value engineering.

4 Here you see on page 49 paragraph 2.1.4, which has
5 a cross in the box next to it:

6 "Facilitate, set up and manage value engineering
7 exercises."

8 What would the employer's agent do -- so not the QS
9 but the EA, the employer's agent -- to fulfil those
10 obligations?

11 A. In a similar way, they would arrange for a workshop or
12 a meeting that would bring together the professional
13 team, and then act as facilitator to record ideas that
14 would potentially contribute to value engineering.

15 Q. Right.

16 A. They're very similar.

17 Q. Within Artelia, were those obligations discharged by the
18 one person who occupied two roles?

19 A. Yes, in terms of distinction between the roles, because
20 it was one company providing the service, that was
21 an interchangeable service between people as and when --
22 you know, who was actually responsible. So it wasn't
23 split between one person doing one thing and one person
24 doing another, because otherwise it would have been
25 a waste of resource.

9

1 Q. I follow.

2 Who was the individual within Artelia who discharged
3 or was responsible for discharging Artelia's contractual
4 obligations both under the QS services and under the EA
5 services in respect of value engineering exercises?

6 A. The lead in terms of the value engineering was taken
7 by -- in the initial stances by Alun Dawson as the
8 employer's agent, and supported by Chweecheen in terms of
9 the quantity surveying aspects of that.

10 Q. I follow, thank you.

11 Can I turn more specifically to the employer's
12 agent's role.

13 You mentioned Alun Dawson just now. I think it's
14 right that he was the individual within Artelia who had
15 the role of employer's agent up to March 2013; is that
16 correct?

17 A. Yes.

18 Q. And then there are a number of other people who occupy
19 that role thereafter. I'm going to run through them,
20 just tell me if any of these is wrong.

21 March 2013 to July 2013, it was Robert Powell.

22 A. Yes.

23 Q. July 2013 to March 2015, Philip Booth.

24 A. Yes.

25 Q. And then March 2015 to practical completion in

10

1 July 2016, I think it was Neil Reed.

2 A. Yes.

3 Q. Right.

4 Now, looking at your first witness statement, if we
5 can, please, that's {ART00006544/3}, paragraph 8 on that
6 page, under the heading "EA Services", in the second
7 sentence there you say that an EA, employer's agent, is
8 essentially an administrative role, and you go on to
9 say:

10 "An EA has the responsibility of monitoring the
11 progress of a construction project and administering the
12 contract."

13 What administrative work does an EA do?

14 A. It's effectively identifying the progress of the works.

15 It sets out to ensure that the design team, the
16 professional team, are fulfilling their responsibilities
17 in terms of making sure that they are delivering in
18 accordance with the programme, that they are on track,
19 and that actions are being carried out.

20 In terms of the contract, there are references
21 within the contract to the role of the employer's agent
22 in terms of what their obligations are, in terms of the
23 documents that they should issue, and generally
24 administer on behalf of the employer the management of
25 the contract.

11

1 Q. Right.

2 Does an employer's agent make substantive decisions
3 relevant to a project?

4 A. Only on behalf of the employer -- under the instruction
5 of the employer.

6 Q. I see. But examining the substance of those decisions,
7 you have referred to making sure the professional team
8 fulfil their responsibilities in terms of making sure
9 they're delivering in accordance with the programme and
10 also issuing documents. I can understand those two
11 substantive ideas.

12 Is there anything else that an employer's agent does
13 on instructions normally from the client by way of
14 administration of the contract?

15 A. If the client is requesting changes, then we will issue
16 instructions on behalf of the client to the team or to
17 the contractor.

18 Q. I see. So change management?

19 A. Yes.

20 Q. Right.

21 Does an employer's agent provide advice to the
22 client of any kind?

23 A. In terms -- yes, there's certain advice which is
24 provided within the scope of service, so for example in
25 terms of procurement or tenderers and things like that,

12

1 but in terms of -- if you're referring to advice in
 2 respect of design, absolutely not.
 3 Q. I follow. So procurement, tenderers -- what about
 4 budget?
 5 A. That would be the realm of the quantity surveyor.
 6 Q. Yes, I see.
 7 Now, we saw earlier in your evidence, yesterday
 8 afternoon in fact, that in this contract with the TMO,
 9 Artelia had deleted the role of project manager and
 10 project monitor. You remember that?
 11 A. Yes, I do.
 12 Q. Can we look at Robert Powell's witness statement. That
 13 is {ART00008984/6}, please. He was, as we've just
 14 established, the EA for the Grenfell Tower project from
 15 March 2013 to July 2013.
 16 Look at paragraph 27 at the top of the page there.
 17 He says:
 18 "The role of an EA is, generally speaking, to
 19 provide professional administrative assistance and
 20 representation to the client in the context of a Design
 21 and Build Contract. This is different to a PM role, as
 22 a PM tends actively to manage a team to develop and
 23 deliver a project for a client sometimes almost stepping
 24 into the client's shoes (with the client's agreement) in
 25 some respects. A PM will frequently be actively making

13

1 decisions on behalf of the client. I understand that
 2 AUK did not have this role on the Project. Instead, the
 3 client (the TMO) retained the PM role for itself and was
 4 the decision maker. This is not unusual."
 5 Do you agree with what Mr Powell has written there?
 6 A. Yes, I do.
 7 Q. Are there any other differences between an employer's
 8 agent and a project manager over and above what
 9 Mr Powell has identified there?
 10 A. Not in general terms, no.
 11 Q. So would an employer's agent have similar skills to
 12 a project manager?
 13 A. They could have, yes.
 14 Q. Could somebody who is appointed an employer's agent also
 15 be a project manager? It's possible to tick both boxes?
 16 A. Yes.
 17 Q. Is it less expensive in general, in your experience, for
 18 a client to appoint an EA, an employer's agent, and not
 19 a project manager?
 20 A. I would say yes.
 21 Q. Yes.
 22 Can I then turn to the next subtopic, which is who
 23 the project manager actually was on this project.
 24 Can we go back now again, I'm afraid, to the 2014
 25 contract, {ART00005742/23}. This is schedule 1 to the

14

1 2014 contract, and we looked at this yesterday
 2 afternoon, Mr Cash. You can see that "Project manager
 3 services" and "Project monitor services" were deleted.
 4 What is the difference between project manager and
 5 project monitor?
 6 A. They're different scopes of services that are identified
 7 by the RICS.
 8 Q. Can you give us an idea, in very brief terms, what the
 9 different scopes are?
 10 A. I can't think of anything off the top of my head. I'm
 11 not particularly familiar with the project monitor scope
 12 of services.
 13 Q. Fair enough.
 14 Would it ever be the case that a client would
 15 appoint a project manager and an employer's agent on
 16 a project?
 17 A. Yes.
 18 Q. As opposed to having one or the other but not both?
 19 A. Yes, I'm currently involved in a project where that is
 20 the case.
 21 Q. I see.
 22 For a project like the Grenfell Tower refurbishment,
 23 given its different complexities and different elements,
 24 what would you expect a project manager to do? Maybe
 25 put it better: what would you expect project management

15

1 services to include?
 2 A. The project manager would be, as Mr Powell had said in
 3 his statement, a decision-maker on behalf of the client
 4 and would have certain authorities to act on behalf of
 5 the client.
 6 Q. What would those authorities tend generally to
 7 incorporate or include? What sort of things?
 8 A. They might relate to decisions regarding types of design
 9 or progress in terms -- or development of programmes, in
 10 terms of making decisions on behalf of the client in
 11 terms of budgets, in terms of acceptance of derogations
 12 to employer's requirements or to value engineering
 13 decisions, rather than deferring to the client
 14 themselves to make those decisions.
 15 Q. I see.
 16 Now, you have referred just now in your answer to
 17 value engineering decisions. Do I take it from that
 18 that, in fact, that could encompass decisions about
 19 particular products to be used in a value engineering
 20 exercise or particular designs to be used in a value
 21 engineering exercise?
 22 A. Possibly, depending on the project manager's specific
 23 scope of services.
 24 Q. I see. Okay. We may come back to that later.
 25 If I can show you your first statement, please, at

16

1 paragraph 22, this is on page 8 {ART00006544/8}. You
2 say there, and this is the second sentence, and you're
3 referring to the second design team meeting there,
4 towards the middle of that paragraph:

5 "... I believe that the Project Manager description
6 [and this is a reference to a document] was just
7 a misuse of terminology, which also occurred on other
8 occasions during the Project. Mark Anderson, whose
9 title was Director of Assets & Regeneration and later
10 Claire Williams of the TMO were the Project Managers on
11 the Project."

12 Now, you referred to a document which you say was
13 a misuse of terminology, where that terminology was
14 used.

15 What was it that led you to think that Mark Anderson
16 and Claire Williams were the project managers for the
17 Grenfell Tower project?

18 A. That they were the ones that were making the decisions,
19 and that they were driving the project forward and
20 dictating a number of aspects in terms of setting the
21 budgets and the programmes.

22 Q. So you were of that view based on what you observed them
23 doing -- is this right? -- as opposed to anything that
24 they told you?

25 A. Claire Williams was actually introduced to the project

17

1 as the project manager.

2 Q. By whom?

3 A. I can't remember specifically, but I remember that it is
4 recorded in a meeting.

5 Q. Did you understand that Claire Williams -- well, let me
6 ask you about Mark Anderson.

7 What was it that led you to think that Mark Anderson
8 was a project manager?

9 A. He was effectively the client's representative within
10 the TMO who was managing the project.

11 Q. Did he or anybody else at the TMO tell you that he was
12 a project or the project manager?

13 A. Not specifically, no.

14 Q. Did you understand that Claire Williams and/or
15 Mark Anderson had taken on the project manager role in
16 the same sense as the role as contemplated by the
17 project manager obligations under the RICS terms?

18 A. I can't say that for sure, no.

19 Q. So what did you understand her or their role to be as
20 project manager?

21 A. In terms of the general terms as a project manager was
22 my expectation. Obviously I can't say specifically that
23 they were taking on every role within the project
24 management role of the services -- RICS scope of
25 services.

18

1 Q. We will come to a document in a moment, but can I just
2 look at the RIBA services standard form which did apply
3 as between the TMO and Studio E. This is {SEA00009824},
4 please. Here it is, and you're familiar, I think, with
5 the RIBA 2010 services?

6 A. I'm aware of it; I'm not entirely familiar with it.

7 Q. Okay. We've looked at it earlier on in this Inquiry.

8 We can see that at least in this project, if you go
9 to page 2, please -- well, let's stick with page 1 for
10 the moment. We can see on that page, here are the
11 services, the project is the Grenfell Tower upgrade, the
12 client is the TMO, and the architect is Studio E.

13 Then let's flip to page 2 {SEA00009824/2}, where
14 I do want to go, and you can see there that under
15 "Specified Roles", the role of project manager is
16 deleted, and then it says:

17 "If no Project Manager is appointed then the Client
18 or Client's Representative performs the role."

19 And then "Lead Consultant":

20 "Lead Consultant services are always required ..."

21 But you can see that project manager is deleted.

22 Were you aware of that?

23 A. No, I wasn't.

24 Q. So do we take it from that that you didn't know that
25 Studio E had excluded the role of project manager?

19

1 A. Not specifically in that document, no.

2 Q. You say, "Not specifically in that document"; did you
3 know otherwise or from another source that Studio E had
4 refused to take on or had excluded the role of project
5 manager?

6 A. Not specifically excluded it, no, but only in assumed
7 terms.

8 Q. You say, "only in assumed" -- you mean -- I don't
9 understand that last answer.

10 A. Inasmuch as that they were the architects and the client
11 was the project manager.

12 Q. Right, I see.

13 But as far as this contract goes, would you accept
14 that, given that Studio E had excluded the role of
15 project manager, as we can see, that would mean that, at
16 least as far as this contract goes, either the TMO or
17 Artelia as the client representative would be the
18 project manager?

19 A. It would -- it's suggesting that Studio E are not the
20 project manager, but, as you say, one or other, yes.

21 Q. Yes.

22 Now, let's go to the document I want to show you,
23 which is {ART00002255}. These are the minutes of the
24 contractor introduction meeting on 1 April 2014. It's
25 a document we've seen a great number of times in the

20

1 evidence so far, and in contextual terms, this is just
2 after Rydon had won the job as the main contractor, but,
3 I should just tell you, some months before Rydon's
4 formal written design and build contract was signed with
5 the TMO. That was at the end of October 2014.

6 Again for context, this is about two years into
7 Artelia's work on the Grenfell Tower project, and before
8 Artelia's July 2014 contract with the TMO.

9 So that sets it in its chronological context.

10 Let's look at it. We can see at the top half of the
11 page, at the very top in fact, it's on Artelia-branded
12 paper. You can see that. These are the minutes of the
13 meeting. They're dated or issued on 4 April 2014. Do
14 you see that? And you can see who was present, but you
15 can also see above that, under "Quality", "Author:
16 Peter Blythe". He is Artelia; yes?

17 A. Yes.

18 Q. And checked by Philip Booth. He is also Artelia, as we
19 know, and we can see that lower down. Then you can see
20 who was present.

21 Now, just pausing there, do you accept that this is
22 a document that was produced by Artelia?

23 A. Yes, I do.

24 Q. And Mr Booth and Mr Blythe were Artelia employees
25 appointed to the project at that time, weren't they?

21

1 A. Correct.

2 Q. Now, let's go down the cast of those present. We can
3 see that there are three TMO people present:
4 Peter Maddison, David Gibson and Claire Williams. Then
5 immediately below that we can see Philip Booth,
6 company: Artelia, function: project manager. Do you see
7 that?

8 A. Yes.

9 Q. And Peter Blythe calls himself the assistant project
10 manager.

11 Now, my question is this: if Artelia was not
12 performing or not intending to perform project
13 management services, can you explain why they have
14 called themselves "project manager" or "assistant
15 project manager" in this document that they produced?

16 A. I can't explain why they've done that, although those
17 would refer to their business titles, and therefore that
18 may well be a reason why, that those have been used in
19 error.

20 Q. I see.

21 If you look at the top of the page, you can see
22 that, under "Objective", the second item down under
23 "Project":

24 "Introduce the successful Contractor to the Client."
25 Then if you look and see who the client was under

22

1 those present, it's Peter Maddison, David Gibson and
2 Claire Williams, "Function: Client" in each case.

3 If this document was then circulated to all main
4 contractors, and certainly to Rydon, all the people from
5 Rydon, would you accept that this document would be at
6 least telling Rydon that Artelia had the role of project
7 manager?

8 A. Potentially.

9 Q. Let's go to {ART00001496}, please.

10 Before we do, can I just ask you: you said earlier
11 on in your evidence that Claire Williams was introduced
12 as the project manager to you --

13 A. Yes.

14 Q. -- in fact, looking at this document -- not this one,
15 the 1 April document we've just looked at -- she was
16 introduced as the client and it was Artelia who was
17 introduced as the project manager.

18 A. I don't necessarily believe that they were introduced at
19 the meeting as project managers, but they were
20 identified there as project managers.

21 Q. I don't think you were at that meeting, were you?

22 A. No.

23 Q. So how do you know, what is the basis of your belief
24 that they weren't introduced at the meeting as project
25 managers, given what they've written in the minutes?

23

1 A. I don't believe it says so within the minutes.

2 Q. Well, let's look at the --

3 A. Sorry, 1.2.

4 Q. Okay, well, let's go to that while we have it on the
5 screen, looking at 1.2 {ART00002255/1}. That says:

6 "ART, represented by PB [Philip Booth], will perform
7 the role of Employer's Agent on the project."

8 Yes. I mean, I don't think there is anything in
9 there that specifically says that Artelia will not be
10 the project manager. Do you think there is?

11 A. No, but it quite clearly states what the role is.

12 Q. Yes. It says what it says. One can argue about its
13 true construction, I suppose. But would you accept that
14 there is nothing in this minute which would tend to
15 contradict the idea, communicated by Phil Booth and
16 Peter Blythe's role, described as project manager and
17 assistant project manager, that Artelia were the project
18 managers on the project?

19 A. There is nothing that says that they're not, no.

20 Q. Let's go back to the document I want to take you to:
21 {ART00001496}. These are the minutes of a design team
22 meeting of 24 September 2013. Again, we can see that
23 Artelia took the minutes, that's Artelia notepaper, and
24 again the author is Peter Blythe, checked by
25 Phillip Booth, both of Artelia.

24

1 Again, in the middle of the page we can see that
2 Claire Williams and the others from the TMO are
3 introduced as the client. Again, towards the bottom,
4 Phil Booth and Peter Blythe, project manager and
5 assistant project manager. You see that?

6 A. Yes.

7 Q. So again, in 2013 -- this is earlier in time -- both of
8 those individuals are introduced as project manager and
9 assistant project manager.

10 Before I ask my question, I'll show you one even
11 earlier document. This is {ART00000037}. This is the
12 minutes of design team meeting number 2, Thursday,
13 24 May 2012.

14 Now, you weren't there, but you can see the bottom
15 half of the page, at paragraph 1.0, that Alun Dawson is
16 there and, under "Introductions/general", it says.

17 "Alun Dawson is introduced as the Project Manager,
18 assisted by David Hale."

19 So looking at the two documents I've shown you,
20 23 September 2013, May 2012, from the very earliest days
21 of Artelia's involvement in this project, Artelia did
22 introduce itself as the project manager, didn't it?

23 A. That -- these minutes were produced by Studio E,
24 I believe.

25 Q. Right, but they were distributed, I'm assuming, to those

25

1 who were present. Is that wrong?

2 A. They were -- they would have been, yes.

3 Q. And that would mean that Alun Dawson and Keith Bushell
4 and David Hale and Chweecheen Lim would have seen these
5 notes; yes?

6 A. Yes.

7 Q. And if it were wrong and Alun Dawson hadn't introduced
8 himself as the project manager, then would I be right in
9 thinking that one of them would have raised that and
10 said that the note was inaccurate?

11 A. I don't know if he did.

12 Q. No, but I'm asking you to agree with the proposition
13 that each of them or any of them, having seen this,
14 would have corrected it if in fact Alun Dawson hadn't
15 introduced himself as the project manager; do you accept
16 that as a proposition?

17 A. Potentially, yes.

18 Q. I don't think you have seen any document, and certainly
19 we haven't seen any document, which says that any such
20 correction was suggested.

21 A. I haven't seen one, no.

22 Q. So can we proceed on the basis that this is an accurate
23 record of what was said at the meeting by way of
24 introduction of Alun Dawson?

25 A. It's a record of what Studio E have recorded.

26

1 Q. And I'm putting to you that, given the absence of any
2 correction, can we proceed on the basis that Studio E
3 recorded it accurately?

4 A. If it's not been challenged in writing, yes.

5 Q. Yes.

6 Having shown you a number of documents and the
7 absence of correction of those documents, do you still
8 say that Mark Anderson and Claire Williams were in fact
9 the designated project manager for this project --

10 A. Yes, I do.

11 Q. -- given the way they were introduced?

12 A. Yes.

13 Q. And why do you say that?

14 A. Because that's the way that they've just been recorded
15 as attendees at a meeting, it's not necessarily the way
16 that they fulfilled their functions.

17 Q. Right.

18 Can we go to your first witness statement at page 8
19 {ART00006544/8}, please, paragraph 22.

20 Now, you say there, and we've seen this a few
21 minutes ago, that using the title doesn't mean that they
22 are project managers for the project, and it was their
23 job title at Artelia that was project manager, not their
24 role on the project.

25 Having seen the documents I've shown you, did you

27

1 ever take any steps yourself personally to clarify with
2 anybody that the use of the title "project manager" was
3 only a reference to an internal job title within Artelia
4 and not a reference to the status of that person on the
5 Grenfell Tower project itself?

6 A. I can't remember specific -- any specific instances.

7 I would have made it quite clear to the internal team
8 that we were employer's agents and we weren't project
9 managers there.

10 Q. Right. You can see, can't you, how the possibility of
11 confusion might have arisen at the very least?

12 A. In those particular instances, possibly, yes.

13 Q. Yes.

14 Can we then go to {ART00009032}. This is a draft
15 revised project brief as at May 2013, and we know it was
16 written by Robert Powell of Artelia and it's dated
17 1 May 2013. I don't need to show you the precise date
18 at this stage.

19 Now, at this point, May 2013, TMO were considering
20 whether to continue with Leadbitter as the contractor
21 for the Grenfell Tower project, weren't they?

22 A. Yes.

23 Q. If we look at page 2 {ART00009032/2} of this project
24 brief, if you look at the first half of the page, in the
25 first paragraph, last sentence there, I pick it out, it

28

1 says:
2 "Appleyards [as Artelia were at that stage], who had
3 previously acted as EA/QS will take on a full PM
4 [project manager]/EA [employer's agent] role in addition
5 to their QS responsibilities and will fulfil the Lead
6 Consultant role."

7 Now, I'll come to a question in a moment, but before
8 I do, I just want to show you something else in this
9 document, page 4 {ART00009032/4}, and it says in the top
10 half of page 4, under the heading "Project Team" --
11 that's the bottom half of the text but the top half of
12 the page -- Robert Powell is proposed as the project
13 manager and you are proposed as the project director,
14 under the word "Client", and that's Peter Maddison at
15 the TMO.

16 Just looking at that document and taking those two
17 pages together, would it be right that, at this point,
18 Artelia was actually proposing to project-manage the
19 refurbishment?

20 A. There was a proposal to do so, but this was a draft
21 document and the offer of doing the project management
22 services and lead consultant role was never taken
23 forward.

24 Q. Can we then go to {ART00001219}, please. This is
25 a further draft of the same document as at June 2013,

29

1 a revised project brief, again produced by Artelia. Do
2 you remember who produced this document?

3 A. I can't remember, no.

4 Q. If we look at page 5 {ART00001219/5}, you can see there
5 is a space for a signature "Signed (Project Director)",
6 and project director is identified as you, Mr Cash. Do
7 you see that?

8 A. Yes.

9 Q. And again, "Project Manager: Robert Powell &
10 Philip Booth".

11 Do you remember whether you signed this document?

12 A. I don't believe I did, no.

13 Q. Did you see it at the time?

14 A. I can't remember.

15 Q. Well, while we're on this page, as I've shown you
16 Robert Powell and Phillip Booth being designated as
17 project managers, can we go to page 2 {ART00001219/2} of
18 this document, because they're designated as project
19 manager. Do you remember whether they signed it as
20 project managers or not?

21 A. I don't believe they did. This was a draft document
22 still.

23 Q. Okay.

24 Well, let's go to page 2. Under "Contract and
25 procurement", if you look at the third paragraph down,

30

1 it says, three lines down from that:

2 "Appleyards, who had previously acted as EA/QS will
3 take on a full PM/EA role in addition to their QS
4 responsibilities and will fulfil the Lead Consultant
5 role."

6 So, again, that language remains in this June draft,
7 as we had seen it in the May version of this draft.

8 Do you accept at least this much: that at this
9 stage, June 2013, Artelia was proposing to act as
10 project manager in the strict sense, properly so-called,
11 on this project?

12 A. Yes, there was a suggestion.

13 Q. Let's move a little bit forward in time, perhaps at the
14 same time, {ART00009106}, please. This is a TMO
15 meeting, 6 June 2013 -- I say it's a TMO meeting because
16 that was the meeting title, as you can see from the top
17 of page 1 -- on the Grenfell Tower project, and the date
18 and the time of the meeting was 6 June. Again,
19 an Appleyards document; again, author: Phillip Booth,
20 checked by Robert Powell this time, and you can see who
21 was present: three from the TMO -- Maddison, Gibson,
22 Dunkerton -- and then you're present as project
23 director, and then underneath that we have Robert Powell
24 and Phillip Booth from Appleyards, as they then were,
25 identified as present as project managers. Do you see

31

1 that?

2 A. Yes.

3 Q. Then below it, in item 1, it says, "Approval of revised
4 project brief". Do you see that? That's the document
5 we looked at.

6 A. Yes.

7 Q. "PB presented the draft, revised project brief. It was
8 agreed to insert overall project costs, including fees
9 and surveys, not just construction costs. Subject to
10 the proposed changes the brief was approved."

11 Do you see that?

12 A. Yes.

13 Q. So it looks from this as if Artelia was approved as
14 project manager, not only because of the way in which
15 Mr Powell and Mr Booth were designated in this document,
16 but also because the revised project brief which I've
17 just shown you, in the page I've shown you, identified
18 Artelia as such. Do you accept that?

19 A. Sorry, say that again.

20 Q. Well, I'll try it a different way, it may have been
21 a long question.

22 It looks as if the draft project brief I was showing
23 you before, which said that Artelia was going to take on
24 the project manager role, was approved at this meeting.

25 A. Subject to comments made on the attached.

32

1 Q. Subject to the proposed changes, yes. I don't think
 2 that the comments had anything to do with the status of
 3 Artelia acting as project manager.
 4 A. In terms of what was approved at the meeting?
 5 Q. Yes.
 6 A. But it wasn't actually formally taken forward still.
 7 Q. So you are saying that it was formally approved at the
 8 meeting but not formally taken forward; is that your
 9 recollection?
 10 A. Yes.
 11 Q. I see.
 12 Were there any discussions with the TMO at this time
 13 on whether Artelia was to act as project manager as
 14 proposed in the revised project brief?
 15 A. I can't remember.
 16 Q. Right.
 17 Was that draft proposal ever acted on? You say it
 18 wasn't taken forward. Was none of it taken forward or
 19 was some of it taken forward?
 20 A. I don't know.
 21 Q. Right. I'm just wondering whether or not something
 22 changed in July 2014 when the formal contract was
 23 entered into.
 24 A. I don't think anything changed, it was -- as far as
 25 I was aware and concerned, it had always been that we

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1 would carry out the roles of the three particular
 2 services that were offered -- CDM co-ordinator, quantity
 3 surveyor and employer's agent -- and that whilst there
 4 had been a suggestion that Artelia might take on the
 5 project management role in relation to the moving
 6 forward on the project, it was never taken up.
 7 Q. Right.
 8 Let me try it a slightly different way. You say it
 9 was never taken up. We can certainly see what was the
 10 subject of specifically the contract in July 2014, we've
 11 seen the deletions there.
 12 A. Yes.
 13 Q. What I'm really getting at is whether or not there was
 14 a period between June 2013 and July 2014 where, at least
 15 according to this document, Artelia did act as project
 16 manager?
 17 A. I don't believe that we did. There was a suggestion
 18 that we would in the draft briefs. In that period of
 19 time, which I believe was the standstill time when
 20 the status reports were prepared, there was a specific
 21 brief that we identified certain activities that we
 22 would carry out, and that was done in a letter.
 23 SIR MARTIN MOORE-BICK: Can I just ask: it looks to me from
 24 the documents we have been reading that it was agreed in
 25 principle that Artelia would become project manager, and

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1 then subsequently, when the contract was formally drawn
 2 up and signed, the project manager role was deleted.
 3 Now, it may be Mr Millett wants to ask you about
 4 what occurred, but do you recall something, some sort of
 5 discussion taking place, which explained why there was
 6 that change in approach?
 7 A. No, I don't. The project management role was always
 8 excluded.
 9 SIR MARTIN MOORE-BICK: Well, it wasn't excluded at this
 10 stage, was it? Because we've just seen that there was
 11 a meeting at which the proposal that you should take on
 12 the project manager role seems to have been approved or
 13 agreed in principle.
 14 A. As an addition to our role, because our 2012 offer was
 15 always exclusive of project management.
 16 SIR MARTIN MOORE-BICK: All right.
 17 Yes, Mr Millett.
 18 MR MILLETT: Yes.
 19 Just coming back on that, you say the 2012 offer was
 20 always exclusive of project management, but in fact,
 21 just on the documents we've seen, the way in which
 22 people from Artelia were introduced, particularly at
 23 this meeting, and the adoption, according to this
 24 document, of the revised project brief in June 2013, the
 25 documents suggest that it was at least possible that

35

1 Artelia had taken on the role of project manager between
 2 June 2013 and July 2014.
 3 A. I don't believe that we did.
 4 Q. Right.
 5 Was there any discussion, so far as your
 6 recollection goes, between Artelia and the TMO about the
 7 fact that, even though the revised project brief we've
 8 just seen was adopted and approved at this meeting,
 9 which included the proposal that Artelia would act as
 10 project manager, nonetheless, in fact, Artelia was not
 11 taking up the project manager role?
 12 A. There was never any discussion of what any additional
 13 services might be required to make Artelia a project
 14 manager.
 15 Q. That may be, but my point is a narrower one.
 16 You have seen the revised project brief and the
 17 proposal to take up the role of project manager/EA; my
 18 question is: was there any discussion with the TMO about
 19 taking up that role and, if so, what it would include?
 20 A. No, not that I was involved with.
 21 Q. Can we go to {ART00006206}. This is an email from you
 22 dated 1 October 2015.
 23 I should just say while we're on this, a lot of the
 24 dates from the Artelia side have American dating.
 25 That's a feature, is it?

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1 A. It's --
 2 Q. It seems to us to be a feature of your email dating.
 3 A. It is. It's not something that I can influence.
 4 Q. No, it isn't, I'm not asking you about that, just in
 5 terms of how we read the documents, I am right, am I, in
 6 reading this as a 1 October 2015 document?
 7 A. Yes, I think so.
 8 Q. Yes, just so that people outside this room need to
 9 understand that sometimes they are in American format.
 10 Now, in the first paragraph, you say:
 11 "For your info, I had a good meeting with
 12 Peter Maddison this afternoon and we went through the
 13 various concerns regarding quality, programme, costs
 14 etc. He is conscious that his relationship with Steve
 15 [Blake of Rydon] goes back a long way and Steve talks to
 16 him direct. However, Peter, does not want that
 17 relationship to circumvent Artelia and by pass the role
 18 that we are playing in trying to get the project
 19 finished to the required quality and within budget.
 20 Peter fully appreciates what we are doing and is very
 21 supportive of our approach."
 22 Now, you then go on to say something different, but
 23 we don't need to look at that at this stage.
 24 What I want to ask you is: when you say "getting the
 25 project finished to the required quality and within

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1 budget", that was really the description of a project
 2 management role, wasn't it, there?
 3 A. That's in terms -- the reference there was to the
 4 overall project, not to our specific role.
 5 Q. Yes, but in getting the project finished to the required
 6 quality and within budget, were you not describing
 7 a project management role?
 8 A. No.
 9 Q. Do you agree that this statement here from Mr Reed would
 10 suggest that Artelia's role wasn't purely
 11 an administrative one?
 12 A. It was to successfully conclude the project.
 13 Q. Yes, and that's not just an administrative role.
 14 Getting the project finished to quality and on budget
 15 isn't administrative, or isn't solely administrative, is
 16 it? It's project management, no?
 17 A. No, we were doing it in an administrative role in
 18 accordance with our scope of services. The scope of
 19 services asked us to liaise with the professional team
 20 in terms of ensuring and managing handover.
 21 Q. Looking at the documents we have looked at, do you
 22 accept that it was reasonable for other parties on the
 23 project to have the impression that Artelia was acting
 24 as a project manager, given that that is how Artelia
 25 described itself in the documents we've seen?

38

1 A. Only in those documents that we've seen, but on many
 2 other occasions we made it quite clear that our role was
 3 as employer's agent.
 4 Q. Is it possible that no one actually considered
 5 themselves to have project management responsibility for
 6 this project?
 7 A. I don't believe so. There are many references to
 8 Claire Williams being project manager.
 9 Q. At any rate, your view, as I think we've got clear, is
 10 that you always thought she was the project manager from
 11 the start; is that what you're telling us?
 12 A. From her introduction to the project, yes.
 13 Q. You say, "From her introduction to the project".
 14 I wonder if we can be a little more specific. Can you
 15 time and date that?
 16 A. I can't remember, no.
 17 Q. Was it at a meeting you were told that?
 18 A. I can't remember when her -- she was introduced at
 19 a meeting. I believe it was when I first came across
 20 her, her involvement in the project.
 21 Q. Right, I see.
 22 Can we then turn to Artelia's role in providing
 23 clarity on roles and responsibilities, which I think is
 24 where this topic takes us next.
 25 SIR MARTIN MOORE-BICK: Can I just ask -- I'm sorry to keep

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1 interrupting, Mr Millett.
 2 MR MILLETT: Not at all.
 3 SIR MARTIN MOORE-BICK: In the period up to the formal
 4 signing of Artelia's contract, when we have seen what
 5 was undertaken and what wasn't, can you recall any
 6 occasion on which something had to be done by a person
 7 in the position of a project manager, and if so, who did
 8 it?
 9 A. Not specifically, no.
 10 SIR MARTIN MOORE-BICK: Right.
 11 A. I mean, during the course of a project, people accept
 12 their roles and do their roles, and if they find
 13 themselves stepping over or being asked to step over
 14 those roles, then they will invariably say so, if
 15 they're stepping outside of their boundaries. At no
 16 time did we feel that we were being asked or drawn into
 17 providing a project management service. We felt that
 18 the TMO were always in control of that.
 19 SIR MARTIN MOORE-BICK: So you can't think of an occasion on
 20 which you were asked, either by the TMO or someone else,
 21 for that matter, to take steps which would normally be
 22 carried out by a project manager, and you or someone
 23 else at Artelia said, "That's not our job"?
 24 A. Correct.
 25 SIR MARTIN MOORE-BICK: Thank you.

40

1 MR MILLETT: Thank you, Mr Chairman.

2 Can I just go back on a point earlier on that you
3 said, I just want to be clear.

4 The original proposal, the fee proposal, if we can
5 just look at that at {ART00006358}, please. This is
6 2 May 2012. We can see there is your original fee quote
7 for carrying out the services required at the bottom of
8 the page, and we can see quantity surveying, employer's
9 agent and CDM co-ordinator. There is nothing there for
10 project manager, it is correct, but there is equally no
11 express exclusion of project manager at that stage.
12 That's right, isn't it?

13 A. Not in that letter.

14 Q. No.

15 A. I believe that there were obviously attachments to that
16 letter.

17 Q. No, and then we see what happens later in May 2012 and
18 then into 2013, just to set that in its context.

19 Can we then go to the question of Artelia's role in
20 providing services as employer's agent on this project.
21 {ART00005742/47}, please. This is the schedule of
22 services for the EA role, employer's agent role, which
23 starts two pages earlier on page 45 for those who want
24 to see it. Perhaps we should just flash that up, so
25 we're clear. There it is. Two pages on at 47, we can

41

1 see the core services.

2 If we can look under that heading, there are
3 a number of boxes which have been ticked: 1.1.1 to 1.1.5
4 have been ticked, as has 1.2.1 and 1.2.6 and 1.2.7,
5 et cetera. We can see those.

6 If you look at 1.1.1, that's:

7 "Attend Client, Design, Project, Site and other
8 meetings as provided under this Appointment."

9 1.1.2:

10 "Issue instructions on behalf of the Client ..."

11 1.1.4:

12 "Monitor the performance of the Professional Team
13 and the Contractor."

14 You see that?

15 A. Yes.

16 Q. Then in the middle of the page in the right-hand column,
17 we can see 1.2.5:

18 "Advise the Client on specialist services, including
19 consultants, contractors, sub-contractors and suppliers
20 required in connection with the Project."

21 Now, that isn't marked, it isn't ticked, but below
22 that again we see an unticked box, 1.2.8:

23 "Advise the Client on the selection, the terms of
24 appointment and fee structures for the Professional
25 Team. Advise the Client on design services required

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1 under the Building Contract."

2 So just taking 1.2.5 and 1.2.8, which were not
3 ticked, what did you understand those services to
4 entail? It's a broad question, I appreciate, but can
5 you give us a sense of what those services, had they
6 been ticked, would have entailed?

7 A. In 1.2.5, if it had become apparent that there were
8 a requirement for specialist services that hadn't been
9 already appointed, whether it be in terms of consultants
10 or relative to design or contractors in terms of
11 carrying out the works, that we would be required to
12 advise the client.

13 In terms of 1.2.8, advising the client on selection
14 and terms of appointment for the professional team is
15 actually where we would be involved in procuring the
16 team and setting up their appointments.

17 Q. Do you know why Artelia excluded those services
18 specifically from the core services for an EA?

19 A. Because we didn't believe they were relevant to our
20 appointment.

21 Q. It's a slightly circular answer. Can you just unpack
22 that for us, please? Why did you not think they were
23 relevant to your appointment?

24 A. Because the design team had already been brought on
25 board before our appointment.

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1 Q. Right.

2 A. And that it's not uncommon to have those boxes unticked.
3 They are quite specific in terms of roles, and they were
4 not covered within our fee proposal.

5 Q. Were those services included for the KALC project, do
6 you recall?

7 A. I can't remember.

8 Q. Was there any discussion internally within Artelia about
9 why you would exclude those services for the
10 Grenfell Tower project?

11 A. No.

12 Q. Were those exclusions ever specifically discussed with
13 the TMO?

14 A. It was part of the original offer that we put to the
15 TMO. I prepared the documents, and I ticked the boxes
16 as I felt fit in terms of the services that we were
17 offering for the fees that we had offered as well.

18 Q. Yes, and to ask my question again: having ticked those
19 boxes, as you say you did, was there any discussion ever
20 between you and the TMO about whether they should be
21 included or not included or why you had excluded them?

22 A. I believe that at some time there would have been
23 a conversation with Jenny Jackson, much further down the
24 line after our initial proposal in 2012, which concluded
25 the discussions on what was finally signed.

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1 Q. Did you make it clear, do you remember, to Jenny Jackson
2 or anybody else at the TMO what the consequences would
3 be of Artelia's excluding these particular services,
4 1.2.5 and 1.2.8, from its scope of EA services?
5 A. I didn't feel it was necessary to -- the TMO are
6 an educated client in terms of construction contracts
7 and employ consultants on a number of occasions, and
8 they were conversant with the scopes of services.
9 Q. So do we take it from that that you assumed that they
10 would understand that what falls within the scope of
11 those services as set out there would not be part of the
12 contract between Artelia and the TMO?
13 A. Correct.
14 Q. Can we then go to {ART00005742/48}, the next page on.
15 This is still within the schedule of services for the
16 EA, employer's agent, and at the top of the page in the
17 left-hand column, you can see clause 1.3.3, which you
18 have ticked or crossed, and that provides:
19 "Establish the roles and responsibilities of the
20 Client, the Professional Team, the Contractor and
21 specialist /design sub-contractors."
22 What did you understand that service to entail?
23 A. It was to identify who was -- specifically who was doing
24 what in terms of the people that had been appointed by
25 the TMO.

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1 Q. How would you expect an employer's agent to go about
2 doing what you have just described?
3 A. It --
4 Q. Identifying who was doing what in terms of the people
5 who had been appointed by the TMO, as you put it?
6 A. It was identified within the project execution plan, and
7 it would have been covered within the meeting minutes
8 and within discussions within meetings.
9 Q. Okay. So the project execution plan. And who was
10 responsible for compiling or keeping the project
11 execution plan?
12 A. Artelia prepared the project execution plan.
13 Q. Was that something you had an input into?
14 A. Not particularly, no.
15 Q. Who did?
16 A. I believe Alun Dawson did.
17 Q. So that was the EA's role, was it?
18 A. Correct.
19 Q. I see, I follow. And after Alun Dawson, the others who
20 took on the role within Artelia?
21 A. Yes.
22 Q. You mentioned Jenny Jackson a moment ago. I think we
23 know who she is, but could you just explain generally
24 who Jenny Jackson is and what you understood her role
25 was.

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1 A. Jenny Jackson was introduced as the TMO's procurement
2 expert, and she was very much involved in the
3 procurement process that subsequently arose for the
4 contractor, and she was also involved -- heavily
5 involved in the discussions and final agreement of our
6 terms of appointment.
7 Q. Now, just going back to what's on the page in front of
8 us, can you just explain how the role at 1.3.3, to
9 establish the roles and responsibilities of the client,
10 et cetera, related to the roles at 1.2.5 and 1.2.8,
11 which were excluded, relating to advising the client on
12 specialist services and design services?
13 A. Sorry, when you -- 1.3.3 is in relation to those people
14 who were actually appointed.
15 Q. I follow. I see. So when it comes to establishing the
16 roles and responsibilities of the client, where you had
17 not ticked 1.2.5 and 1.2.8, does that mean that the
18 advice that you gave about that would not include those
19 roles?
20 A. Correct.
21 Q. So would it follow from that that where an employer's
22 agent establishes the roles and responsibilities under
23 box 1.3.3, an employer's agent might, in the process of
24 establishing those roles and responsibilities, identify
25 a role or responsibility that was not going to be

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1 fulfilled?
2 A. There is a possibility, yes.
3 Q. Yes, and in doing so would have to identify to those who
4 were part of its team, in other words the client, that
5 there was a gap?
6 A. If there was one found to be there, yes.
7 Q. Yes.
8 Now, if we scroll up to the previous page, page 47
9 {ART00005742/47}, you can see that tick-box 1.1.3 lies
10 underneath the heading "1.3 Design (RIBA Outline Plan of
11 Work 2007)", do you see that?
12 A. Sorry --
13 Q. You should be on page 47.
14 SIR MARTIN MOORE-BICK: It's the wrong page on the screen at
15 the moment.
16 A. No.
17 MR MILLETT: Page 47.
18 A. Sorry, which number are you looking at?
19 Q. I'm on page 47 and I'm looking at 1.3, the heading in
20 the bottom right-hand corner.
21 A. Yes.
22 Q. "Design (RIBA Outline Plan of Work 2007)."
23 A. Yes.
24 Q. My point was that 1.1.3 sits within that section.
25 A. Yes.

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1 Q. The RIBA outline plan of work 2007 is a reference to the
2 RIBA stages of work.

3 A. Correct.

4 Q. It was later revised, as we know, but that was at that
5 stage.

6 If you look at 1.2.5 and 1.2.8 again, which as we
7 now see are unticked, those items of work or services
8 are in the stage of 1.2, "Preparation (RIBA Outline Plan
9 of Work 2007)". Do you see that?

10 A. Yes.

11 Q. In other words, 1.2.5 and 1.2.8 sit in an earlier stage
12 in the process of the services, don't they?

13 A. Yes.

14 Q. So that being so, doesn't that tell us that Artelia
15 wouldn't be advising the client on specialist services
16 or appointment fee structures and design services at the
17 preparation stage, but not necessarily at the design
18 stage?

19 A. No, because these services, although they are identified
20 within particular stages, they are not necessarily
21 exclusive to those stages, and I think that's stated at
22 the top, just above "Core services".

23 Q. Where would you be identifying that?

24 A. There's a -- if you scroll to the top of the page,
25 please.

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1 Q. Yes, are you referring to item 3?

2 A. There's ... so item 5.

3 Q. Item 5. I see what you're saying. Yes, that's:

4 "In practice many of the Services will be carried
5 out in more than one section."

6 That's where you do tick. But where you don't tick,
7 as we've seen in respect of 1.2.5 and 1.2.8, the absence
8 of those services from the EA scope at the preparation
9 stage, according to the RIBA 2007 outline plan, wouldn't
10 necessarily mean that they fell out of the scope of the
11 works altogether if they came back in through another
12 provision at a later stage, such as design.

13 A. No, I don't agree with that. Once they're not -- if
14 they're not ticked, they're not ticked and it means that
15 they're excluded completely. That's my understanding.

16 Q. Let me put a proposition to you, then. If by the design
17 stage, the next stage on, Artelia has to establish the
18 roles and responsibilities of the client and the
19 professional team, does that not bring with it
20 an obligation to advise the client on specialist
21 services or design services if in fact they're missing
22 at that stage?

23 A. No, because I believe that responsibility would sit with
24 others.

25 Q. Who would it sit with?

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1 A. It would sit with members of the professional team or it
2 may even sit with the TMO.

3 Q. Members of the professional team for this purpose being
4 who?

5 A. Studio E, Curtins and Max Fordham.

6 Q. As you defined yesterday.

7 You say, "it may even sit with the TMO". Isn't that
8 precisely the point, that under 1.3.3, by that stage, in
9 the design stage, it was Artelia's role to identify
10 precisely who had what obligation, so that if it was the
11 TMO's obligation to take advice about specialist
12 services or design, it was Artelia's job to tell them
13 that?

14 A. In terms of their -- in terms of the roles and
15 responsibilities of who had been appointed, not in terms
16 of who had not been appointed. If there was a gap
17 between that, then we would look to close the gap
18 between -- the idea was to make sure there were no gaps
19 between those that had been appointed.

20 Q. Exactly.

21 A. Or the fact there may even be an overlap, which
22 sometimes is the case.

23 Q. Indeed. I think you're accepting my point, which is
24 that if you had spotted a gap in the course of
25 performing your services at the design stage under

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1 section 1.3.3, you would tell the client?

2 A. Yes, because we're expected to make it quite clear that
3 everybody understands what they're supposed to do as
4 part of their roles.

5 Q. Indeed.

6 Can I then move to a different topic, which is
7 client design adviser, CDA.

8 It's right, I think, that Artelia acted as CDA for
9 the KALC project.

10 A. Correct.

11 Q. Can we go, then, to {ART00008591}, please. This is
12 an email from Phil Booth to you, Mr Cash, on
13 10 January 2014. Again, American dating. It says:

14 "Simon,

15 "Claire wishes for us to put forward a proposal for
16 the CDA role. As the custodian of fee proposals and
17 scopes please can I ask you to do this? I know they are
18 considering others, e.g. one man bands but they have PI
19 concerns."

20 PI, just for the benefit of others perhaps, is
21 professional indemnity; is that right?

22 A. Correct.

23 Q. Yes.

24 By way of context, it's right, I think, that this
25 email was sent during the OJEU process, the OJEU

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1 tendering process, before Rydon was appointed as a main
 2 contractor.
 3 A. Yes.
 4 Q. So is it right that Artelia was considering itself at
 5 this stage as a possible candidate for the CDA role at
 6 this time?
 7 A. Yes.
 8 Q. Turning then to what the role of the CDA involves, and
 9 I want to look first at the services, can we go, please,
 10 to {ART00006279}. This is a proposal for CDA dated
 11 February 2014, as you can see.
 12 Do you recognise this document, Mr Cash?
 13 A. Yes, I do.
 14 Q. Did you personally approve it or have any input into it?
 15 A. No, I didn't.
 16 Q. Do you know who did personally approve it?
 17 A. I can't remember.
 18 Q. Because it's a proposal. Would it have been someone
 19 within the Grenfell Tower project at that stage?
 20 A. No, the CDA role is performed by another team within
 21 Artelia --
 22 Q. Right.
 23 A. -- and it would have been prepared by Richmal Hardinge,
 24 who would have been the person nominated as the CDA, and
 25 she would have had the proposal signed off by her line

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1 manager, and then it would have been passed to me for
 2 final issue.
 3 Q. I think you have answered a series of questions in that
 4 answer that I had.
 5 You say, "It would have been passed to me for final
 6 issue", so you were the person who would have issued it
 7 to the client?
 8 A. Correct.
 9 Q. And, in doing that, would I be right in thinking that
 10 you would have taken steps to read it, at least?
 11 A. I would have looked through it; I wouldn't have read
 12 every detail of it.
 13 Q. All right.
 14 Now, just pursuing that a little bit, can we go to
 15 your first witness statement at page 48
 16 {ART00006544/48}, and I want to look at paragraph 148,
 17 if we can. You refer to this proposal. You say:
 18 "On 4 February 2014, 2014, Richmal Hardinge at AUK
 19 prepared a draft proposal to act as a Client Design
 20 Advisor for the TMO on the Project ... I sent this
 21 proposal to the TMO on 27 February 2014 (by post) and
 22 28 February 2014 (by email) ... as part of a revised fee
 23 proposal. As I explain later, the TMO declined to
 24 accept the proposal for AUK to act as a Client Design
 25 Advisor. Had the TMO taken up this offer, the Client

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1 Design Advisor role would have been provided by
 2 Richmal Hardinge, an architect who worked in a different
 3 part of AUK's business."
 4 Now, you have put some dates in there about when it
 5 was prepared and when it was sent.
 6 If we look at the proposal itself, going back to it,
 7 {ART00006279/18}, please. You referred to
 8 Richmal Hardinge as the person who prepared it. There
 9 is her CV. We can see in the bold text at the top that
 10 she is a qualified architect; yes?
 11 A. Yes.
 12 Q. And we can see elsewhere, I think, she had passed the
 13 RIBA part 3 in 1993. We get that on the left-hand side
 14 of this document under "Qualifications", do you see,
 15 second entry down?
 16 A. Yes.
 17 Q. Then, under "Relevant skills and experience", which is
 18 a large box halfway down the page, it says, five lines
 19 down, do you see that:
 20 "Her move into the PFI/PPP sector three years ago
 21 has seen her focus on major, high profile public capital
 22 expenditure programmes where she is responsible for
 23 contract due diligence and scrutinising project delivery
 24 to ensure compliance with all necessary British and
 25 European standards, output specifications, funder

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1 requirements and statutory duties. She is rigorous in
 2 her approach and highly valued by our funder and
 3 authority clients for protecting their interests on
 4 these complex schemes."
 5 So just on that, would you say that Ms Hardinge had
 6 very specialised training, skills and experience,
 7 particularly in design?
 8 A. Yes.
 9 Q. I think at this time she was an architect of some
 10 15 years' experience.
 11 A. Yes.
 12 Q. If you look at the box, "Relevant experience", halfway
 13 down, which I referred to a minute ago but didn't go to,
 14 there is a table called "Relevant experience", and at
 15 the top entry you can see that she was client design
 16 adviser, CDA, for the Kensington Academy and Leisure
 17 Centre, KALC, for RBKC, wasn't she?
 18 A. Correct.
 19 Q. As you said before.
 20 If we go to page 3 {ART00006279/3} of this document,
 21 you could see the services that Ms Hardinge would
 22 perform if she were appointed CDA.
 23 A. Yes.
 24 Q. And they're set out in the big box at the bottom. I'm
 25 not going to read them all out, but if you look at the

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1 third bullet point, she would, if appointed:
 2 "Review through a Design Compliance Report agreed
 3 key design packages following the production of detailed
 4 drawings (Stage F) reporting to KCTMO using our
 5 risk-based 'warning light methodology' backed up by our
 6 firm opinions and recommendations."

7 What would that entail, in a bit more detail, do you
 8 know?

9 A. Yes. This would be looking at the contractor's
 10 proposals and designs when they were preparing
 11 construction drawings or manufacturer drawings and
 12 reviewing them against the employer's requirements to
 13 see if there were any derogations, and then using what
 14 we call a traffic light system of red, amber and green
 15 as to whether those derogations were acceptable, need
 16 consideration or were unacceptable in terms of what the
 17 TMO had identified in terms of their employer's
 18 requirements.

19 Q. Right.

20 Just examining that answer a bit more, can you just
 21 help me, would that service or set of services that you
 22 have just explained there include comparing drawings
 23 with the NBS specification?

24 A. Could do, yes.

25 Q. Would it involve monitoring the development or evolution

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1 of the drawings to make sure that they did include what
 2 was in the NBS specification?

3 A. I don't believe it would be monitoring the evolution of
 4 the drawings; it would be looking at the drawings that
 5 were finally issued once they had been completed.

6 Q. And taking that into account, comparing those with the
 7 NBS specification?

8 A. And whatever information is in the employer's
 9 requirements, correct.

10 Q. Yes, and would that also include checking for regulatory
 11 or statutory compliance?

12 A. It would look to -- it would look at the question of
 13 regulatory compliance.

14 Q. Would it include looking at the as-built drawings?

15 A. Yes.

16 Q. And making sure that the as-built drawings conformed
 17 precisely with what was actually on the building as
 18 built?

19 A. Part of the role is site inspections and looking at
 20 compliance.

21 Q. Would that include also examining any changes in
 22 materials from the NBS specification to new materials?

23 A. If they were part of a variation or a contractor's
 24 proposal, yes.

25 Q. Yes.

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1 If you go to page 6 {ART00006279/6} of this
 2 document, you can see "Scheme Design", just below
 3 halfway down the page, and it is said that:

4 "We will provide a Design Compliance Report at
 5 Pre-Contract award stage following a review of the
 6 construction or contractor's proposals (CPs) and
 7 endeavour to ensure they meet the Employer's
 8 Requirements (ERs), NBS specifications, British &
 9 European Standards as well as all statutory and planning
 10 requirements.

11 "Once the contract is let, we will review detailed
 12 drawings as they are produced to ensure the Works
 13 proposed continue to meet the ERs.

14 "We will provide design advice as required by
 15 KCTMO."

16 Just pausing there, in fact I think the services
 17 that she was offering or were being offered as part of
 18 this would include reviewing detailed drawings as they
 19 were produced, not just at the end.

20 A. Yes, sorry, when you say -- it wouldn't be the evolution
 21 of the drawings until they were produced, so drawings
 22 are issued in various stages.

23 Q. I follow. I follow that. Okay. So as they are
 24 produced, you mean conforming to each stage under the
 25 RIBA scheme of work?

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1 A. Correct, but at this stage they will be stage F.

2 Q. Yes. So just explain, then, what was meant by Artelia
 3 by the expression "as they are produced"?

4 A. Yes.

5 Q. What does that mean?

6 A. That as drawings are completed, they are issued in
 7 batches, because they wouldn't necessarily issue every
 8 single drawing all at once, so they would be
 9 concentrating on elements of design to suit their
 10 construction programme and they would then issue them in
 11 batches.

12 Q. I see. So just help me, if a cladding subcontractor
 13 such as, for example, Harley issued a revised drawing to
 14 Studio E through Rydon, would that be something that
 15 would be a drawing as produced which would then be
 16 picked up by this scope of services?

17 A. No, not necessarily, because we wouldn't know that that
 18 drawing had been issued to Studio E. It would be
 19 drawings that are issued by Rydon's to the client team
 20 for comment. So as acting as client design adviser,
 21 effectively looking at the drawings that are issued by
 22 Rydon's, not by Rydon's supply chain.

23 Q. I see. So I think you're telling us that Artelia in
 24 this role would be dependent on Rydon issuing drawings
 25 to the TMO as the client; is that right?

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1 A. Correct, and in the event that this role had been taken
 2 up, the drawings would have been issued to us as well.
 3 Q. I follow.
 4 Still on this page for the moment, would the check
 5 to ensure that the works continued to meet the ERs
 6 involve a check whether the design proposals met the
 7 initial Studio E design as set out in the ERs?
 8 A. Yes.
 9 Q. I take it that that would also include checking for
 10 compliance with British and European standards and
 11 statutory requirements?
 12 A. In terms of the designs that are issued by Rydons, yes.
 13 Q. Yes.
 14 A. It's not for us to check that Studio E's initial design
 15 is compliant. That is part of Studio E's role.
 16 Q. I understand that, and part of the check for compliance,
 17 that would include the Building Regulations, I assume,
 18 would it?
 19 A. Yes.
 20 Q. Would that review also include whether the employer's
 21 requirements themselves were compliant with the British
 22 and European standards, including the
 23 Building Regulations?
 24 A. No, because that's the --
 25 Q. So that's part of Studio E?

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1 A. Correct.
 2 Q. I see.
 3 A. And Curtins and Max Fordham as well.
 4 Q. Right.
 5 What would be recorded or included in a design
 6 compliance report?
 7 A. I can't say specifically, but it would certainly look at
 8 things like any derogations between the contractor's
 9 proposals and the employer's requirements, and as
 10 I said, it would also include the traffic light risk
 11 review in terms of the impact of those derogations. It
 12 would look at any compliance, it would look at planning,
 13 whether there were any particular planning issues that
 14 may still need to be addressed where they're not fully
 15 addressed by the current designs that have been issued.
 16 Q. Yes.
 17 If we go to page 6 at the bottom, at the end of the
 18 "Scheme Design" section, it says, as I've shown you, "We
 19 will provide design advice".
 20 What would that design advice have included, had
 21 this role been taken up by Artelia?
 22 A. It would have been design advice as required by the TMO.
 23 If the TMO had asked us for our opinions, then we would
 24 have given it. It wasn't anything in terms of saying
 25 that we would provide a continual design advice service

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1 in anything -- in a general aspect.
 2 Q. But would it include Artelia identifying non-compliances
 3 if they were reasonably obvious from the drawings with
 4 which you had been provided?
 5 A. That would be part of the compliance role, yes.
 6 Q. I follow, right.
 7 The CDA appointment would continue, wouldn't it,
 8 after practical completion, I think?
 9 A. Yes.
 10 Q. So that if the design changed as a result of value
 11 engineering, the CDA would review the resulting design
 12 for compliance with relevant statutory requirements?
 13 A. Correct.
 14 Q. Equally, if the design changed for any reason during the
 15 build, I think you would also expect the CDA, under this
 16 proposal at least, to review all the decisions taken to
 17 make sure that there was compliance with all relevant
 18 statutory requirements.
 19 A. If it's identified as a change or if there are revised
 20 contractor's proposals that are issued.
 21 Q. Yes.
 22 So standing back, would I be right in thinking that
 23 effectively the CDA's role under this proposal would
 24 involve a check for design compliance throughout the
 25 lifetime of the building contract?

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1 A. Correct.
 2 Q. Yes.
 3 Would it be normal to have a CDA appointed at this
 4 point in the process, in other words after the
 5 employer's requirements had been established and the
 6 tender process was well under way?
 7 A. It's not uncommon. It's a role that is, in various
 8 terms, required when the design team is novated and the
 9 client actually doesn't have anybody left to advise them
 10 on technical matters.
 11 Q. I see.
 12 Was there any consideration of having a CDA
 13 appointed at any earlier stage in the project,
 14 for example at the very start of the tender process in
 15 or from June 2013?
 16 A. I can't remember if it had been discussed in particular
 17 detail.
 18 Q. You can't remember.
 19 Would it be good practice, or would it have been
 20 good practice at the time, to the best of your
 21 understanding and thought processes at the time, to have
 22 had a CDA on a project like Grenfell?
 23 A. At the time being the appointment of the contractor?
 24 Q. Yes, from the early part of 2014, say, if not earlier.
 25 A. It would have been appropriate once the contractor was

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1 on board.
2 Q. Yes.
3 We've got a refurbishment here of a high-rise
4 residential building with an overclad, where the budget
5 was around about, for the sake of argument at the
6 moment, £9 million. In a project of that scale and
7 complexity, was your thinking at the time that it would
8 have been a good idea to have a CDA?
9 A. Yes, on the basis that the design team -- members of the
10 design team were being novated.
11 Q. Right.
12 Can I ask you to look at page 11 {ART00006279/11},
13 just to see the fee proposal for the services that were
14 being offered. You can see there that the fees for the
15 CDA role were a total fee of £30,922. That's right.
16 That's an all-inclusive role, is it?
17 A. Correct.
18 Q. An all-inclusive price, I should say.
19 A. Yes.
20 Q. I see. With £600 for post-occupancy evaluation,
21 I follow.
22 A. That was an optional extra that was offered. So the CDA
23 role as offered in the proposal was the first line. The
24 second one was an option if they wished to take that up.
25 Q. Do you know how that fee was arrived at in general

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1 terms?
2 A. I believe it was looked at in terms of initial review
3 and then a monthly calculation.
4 Q. I follow.
5 Can you give us an idea of whether that's a high fee
6 or a low fee or, you know, whether you were giving the
7 client a good rate?
8 A. I believe it was -- it's a fair fee.
9 Q. I'm sure you would say that. I wonder whether there was
10 any way we could compare that with anything else.
11 A. We do a number of CDA role fee proposals. I don't get
12 involved in them very often, but I didn't see it as
13 an unreasonable fee.
14 MR MILLETT: Right, thank you.
15 Mr Chairman, we are in the middle of this topic, but
16 I'm going to move on to a different sub-subtopic.
17 SIR MARTIN MOORE-BICK: Would that be a good point?
18 MR MILLETT: Yes, that's good. Thank you.
19 SIR MARTIN MOORE-BICK: I think we should all have a short
20 break at this point, Mr Cash, so I'm going to ask you to
21 go off with the usher in a minute.
22 We will come back at 11.40, please.
23 THE WITNESS: Yes.
24 SIR MARTIN MOORE-BICK: As I said yesterday, please don't
25 talk to anyone about your evidence or anything to do

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1 with it while you're out of the room.
2 THE WITNESS: I won't. Thank you.
3 SIR MARTIN MOORE-BICK: Thank you very much. Would you go
4 with the usher, please.
5 THE WITNESS: Thank you.
6 (Pause)
7 SIR MARTIN MOORE-BICK: 11.40, then, please. Thank you.
8 (11.25 am)
9 (A short break)
10 (11.40 am)
11 SIR MARTIN MOORE-BICK: All right, Mr Cash, ready to carry
12 on?
13 THE WITNESS: Yes, thank you.
14 SIR MARTIN MOORE-BICK: Mr Millett.
15 MR MILLETT: Mr Chairman, thank you.
16 Can we now go to page 4 of this same document,
17 {ART00006279/4}, and I would like to look with you,
18 please, Mr Cash, at paragraph 2.1 on that page, under
19 the heading "Project Understanding and Key Data".
20 In the second paragraph there, we can see that it
21 says:
22 "With the novation of architects, Studio E, to the
23 contractor the relationship and direct access to
24 architects and other members of the design team that you
25 have enjoyed on this project to date will change. The

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1 services of a Client Design Advisor will ensure that the
2 initial design that you have agreed and promoted to
3 stakeholders does not get 'watered down' as part of the
4 procurement and delivery process."
5 Now, you have explained, I think, in your third
6 witness statement what the purpose is of engaging a CDA.
7 I just want to show you that. If we go to that, please,
8 third statement, page 16 {ART00009416/16}. At
9 paragraph 36, you explain there that:
10 "The core purpose of a CDA (and similar
11 appointments) is to ensure that the interests of the
12 employer (here, the TMO) are protected throughout scheme
13 design to ensure that the design is not watered down
14 during ongoing scheme design and construction."
15 Pausing there, what does "watered down" mean?
16 A. It's referring to whether or not the contractor, the
17 design and build contractor, will try and make some
18 substitution in terms of their proposals that is to
19 a lesser standard or to a lesser quality than the
20 employer is requiring or to a lesser -- it could be
21 capacity or performance generally. It's basically there
22 to protect the client to ensure that they are getting
23 what they've paid for.
24 Q. Right.
25 Continuing then with your paragraph:

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1 "A CDA seeks to protect the Employer on a Design and
2 Build contract who will, as a consequence of the
3 novation of the architect to the Design and Build
4 contractor, have lost the services of an architect (on
5 the Project, as Max Fordham, the M&E contractor, was not
6 to be novated to Rydon, M&E services on the Project were
7 not to be addressed by the CDA ...). The CDA provides
8 advice as required by the client and reviews drawings to
9 ensure that what is proposed continues to meet what is
10 set out in the Employer's Requirements."

11 In your recollection, how important was it to you at
12 the time that the TMO had that sort of advice on this
13 project?

14 A. It's important that somebody has the responsibility of
15 commenting on the designs that are being put forward.

16 Q. So who was that, in the end?

17 A. It was Claire Williams.

18 Q. She was the client, though.

19 A. Yes, but it doesn't mean to say -- if the client is
20 an educated client, then there is no reason why the
21 client can't take that role on themselves. I've seen it
22 done before.

23 Q. So when you say important that somebody has the
24 responsibility of commenting on the designs, who would
25 that person be commenting to?

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1 A. It could be an external consultant commenting to the
2 client or it could be the client doing the checking
3 themselves.

4 Q. So the client would comment to themselves; is that
5 right?

6 A. Yes.

7 Q. Okay.

8 Did you think that there was a particular risk in
9 this contract that would mean that the client, the TMO,
10 would benefit from a CDA?

11 A. We had proposed the service because we felt that there
12 was a need for somebody to have a responsibility for
13 commenting on the contractor's proposals. At the end of
14 the day, the client took that role on themselves.

15 Q. Yes.

16 Just to unpack that a little bit, you say you felt
17 there was a need for somebody to have a responsibility
18 for commenting on the contractor's proposals. Do you
19 mean by that answer, just to press you a bit, that you
20 thought that this project required somebody to advise
21 Claire Williams on the contractor's proposals?

22 A. No. I was purely saying that we could provide
23 a service. I didn't say that the client had to have
24 that service.

25 Q. No, I'm not suggesting that.

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1 Let me try it a slightly different way. You were
2 saying that you could provide a service; did you think
3 at the time that the client needed that service?
4 A. We didn't know whether they needed it; we said -- we
5 offered it as an option. The clients may have the
6 expertise and may still not wish to carry out that, they
7 may wish to devolve that responsibility, in the same way
8 as the employer's agent could equally have been within
9 the client team.

10 Q. Yes, but you said earlier on -- line 11 on the previous
11 page of the transcript -- that you had proposed the
12 service "because we felt there was a need for somebody
13 to have a responsibility for commenting on the
14 contractor's proposals", and that's why you proposed the
15 CDA.

16 A. Yes.

17 Q. What I'm really trying to tease out from you is whether,
18 when you said you felt there was a need for somebody to
19 have a responsibility for commenting on the contractor's
20 proposals, that was because you didn't think that the
21 TMO had their own expertise to carry that responsibility
22 for themselves.

23 A. It wasn't clear that they had.

24 Q. It wasn't clear that they had.

25 Did you ever spell out the risks to the TMO so that

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1 they, whether it was Claire Williams or Peter Maddison
2 or anybody else at the TMO, fully understood the
3 consequences of not having a CDA, and what it was that
4 they would have to take on in order to avoid things
5 like, as you put it, the watering down of the ongoing
6 scheme design and construction?

7 A. Yes, I believe that we had conversations regarding that
8 which led to the request for providing a CDA service.

9 Q. I see. So there were conversations, were there, that
10 led up to them asking you to provide that service, as we
11 saw in the email?

12 A. Yes.

13 Q. Hence the reference to one-man bands?

14 A. Yes.

15 Q. We will come on to this now.

16 Can we go to {ART00002701}, because we can see what
17 happens to this proposal. This is an email from the TMO
18 to Phillip Booth. Now, he was, I think, the employer's
19 agent at this point, wasn't he?

20 A. Yes.

21 Q. It's also sent to Peter Blythe, who was assisting him in
22 that role; yes?

23 A. Yes.

24 Q. It's dated 29 August 2014, and it says:

25 "Dear both

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1 "Last Tuesday we talked about the appointment of
2 a design advisor, and the likelihood that this did not
3 particularly apply to cladding and M&E elements which
4 were designed and under guarantee."

5 Then in the next paragraph, she says:

6 "I have spoken to David Gibson and we are going to
7 see if we can manage this within the TMO, as we are very
8 familiar with the specifications for social housing. We
9 will monitor how this is working, as presumably all
10 proposals for comment will have a 'respond by' date.
11 Can you please send any design proposals to myself, cc
12 David Gibson."

13 Now, just pausing there, "Last Tuesday", I think,
14 refers to a meeting on 19 August, which I don't think
15 you were at, were you?

16 A. I can't remember.

17 Q. Right.

18 Do you know why it took from 27 February 2014, which
19 is when you sent the CDA proposal dated 4 February 2014
20 to the TMO, for the TMO to decide whether to appoint
21 a CDA? Can you explain the gap?

22 A. No, I can't.

23 Q. Did you or anybody else at Artelia, to the best of your
24 recollection, prompt the TMO for a decision on the
25 appointment of a CDA between February and August of

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1 2014?

2 A. I can't remember specifically, no.

3 Q. Did you agree in your own mind with what Claire Williams
4 was saying, that a CDA was unlikely to be necessary in
5 circumstances where the cladding and the M&E elements
6 were designed and under guarantee?

7 A. I don't -- no, I don't agree with that.

8 Q. Did you or Phil Booth express your disagreement with her
9 about that?

10 A. I wasn't aware of this particular email until it's been
11 disclosed.

12 Q. To the best of your recollection, did Phil Booth go to
13 her and say, "Well, you're wrong about this"?

14 A. I don't know.

15 Q. Right.

16 Let's see what Ms Williams says about this. This is
17 a statement that she produced to the Inquiry in January
18 of this year, 2020. It's {TMO00863359/7}, please,
19 paragraph 30. She says there:

20 "Artelia explained to me that the CDA role would not
21 touch on those discrete areas of the Project where
22 specialist contractors would have specialist knowledge
23 about their design and the materials used that Artelia
24 would not have. This is what I meant in my email to
25 Peter Blythe and Phillip Booth where I said ..."

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1 And she quotes the part of the email I've read to
2 you about it not applying to cladding and the M&E
3 elements.

4 Can you help: did Artelia ever tell Claire Williams,
5 to the best of your knowledge, that the CDA role would
6 not touch on those discrete areas of the project?

7 A. No, I don't believe so. I don't recall.

8 Q. Is what she says there correct, so far as your
9 understanding of what a CDA would do if appointed under
10 the terms of the proposal?

11 A. No. The roles were quite clearly stated within the
12 proposal that was sent to her.

13 Q. Right.

14 A. That it covered the whole of the design.

15 Q. So she was wrong in her understanding.

16 Did you talk to Claire Williams or Peter Maddison at
17 all about the CDA proposal between February and
18 August 2014?

19 A. I can't remember.

20 Q. Did she ever tell you or did he ever tell you, "No, we
21 don't want it in respect of the cladding", or was this
22 email the first you've seen of it?

23 A. This is the first I've seen of it.

24 Q. I see.

25 Would a CDA, a client design adviser, normally only

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1 focus on the areas with greatest design concerns, such
2 as, for example, the new-build areas she has referred to
3 in her email?

4 A. No.

5 Q. So a CDA would look at every aspect of design, would
6 they?

7 A. Correct.

8 Q. Yes.

9 Can we go back to the email again, {ART00002701}.
10 She says in the second paragraph, "I have spoken to
11 David Gibson", et cetera, and I've shown you that. Just
12 look at it again.

13 If we go to {ART00006464/2}, please, we do see that
14 you were actually forwarded this email by Philip Booth.
15 Do you see that?

16 A. Yes.

17 Q. That's on 29 August 2014, where he says to you, among
18 others, Richmal Hardinge and Robert Marr:

19 "Sadly TMO decided to be their own CDA."

20 So it does look, Mr Cash, as if you did see this at
21 the time. Do you remember seeing that at the time?

22 A. Yes, I do.

23 Q. If you had seen it at the time, you would have seen that
24 she was wrong in her understanding.

25 Having seen that, can I ask you why you didn't go

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1 back yourself to the client or tell Mr Booth to go back
 2 to the client to tell her that she had misunderstood the
 3 role of a CDA, and the role of CDA was not to be
 4 excluded in relation to the cladding and the M&E
 5 elements?
 6 A. I don't know.
 7 Q. Did you have any thoughts at all about her reasoning
 8 behind her declining of your proposal?
 9 A. Only that obviously, as an educated client, they had the
 10 capacity to provide that role themselves.
 11 Q. Right.
 12 Let's move on a little bit, as I think we do see
 13 something. We can see on page 1 {ART00006464/1} of this
 14 email run, there is an email from you to Phil Booth on
 15 1 September 2014, so a couple of days later, after he
 16 sends you her email in which he says, "Sadly TMO decided
 17 to be their own CDA", and you say:
 18 "Philip,
 19 "I would like to think that with Rydon's approach so
 20 far, it should not be an onerous task. However, it is
 21 very important that we do not find ourselves being
 22 dragged into dealing with any issues relating to
 23 compliance or design advice without it being acknowledge
 24 as additional work."
 25 You refer to "Rydon's approach so far"; what did you

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1 mean by that?
 2 A. That they had been very co-operative and had been
 3 issuing a lot of information, and that there was no
 4 reason to think that, in terms of what they'd been doing
 5 so far, there would be any issues with them derogating
 6 from the employer's requirements in terms of what
 7 information they might provide.
 8 Q. I follow. Did you understand that Rydon at the time
 9 would be looking in their approach so far, as you put
 10 it, at design compliance, compliance of design with
 11 regulatory requirements?
 12 A. Yes, because that's part of their role as a design and
 13 build contractor.
 14 Q. And when you say "should not be an onerous task", did
 15 you mean onerous for the TMO or for Artelia?
 16 A. Onerous for the TMO.
 17 Q. Right.
 18 Does that mean that your understanding at the time
 19 was that the TMO could rely on Rydon's design skills as
 20 demonstrated by its "approach so far"?
 21 A. When you say rely, do you mean in terms of not checking
 22 it or do you mean in terms of it being correct?
 23 Q. I think both is what I probably mean. What do you
 24 think?
 25 A. I think it's -- I would think it would -- I don't think

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1 it would be right to rely on it, I think you still have
 2 to check it.
 3 Q. Right. So to check it, you would need -- well, what
 4 sort of skills or qualifications would you need to check
 5 Rydon's work, which would include Rydon's assessment of
 6 design compliance?
 7 A. You need to understand design.
 8 Q. You need to understand design. What does that mean?
 9 A. You need to have a knowledge of design and the
 10 regulations and what is a compliant design.
 11 Q. Had you taken any steps to satisfy yourself that your
 12 client had knowledge of design and the regulations and
 13 what is compliant design?
 14 A. No. I was satisfied that they said that they had the
 15 expertise in-house.
 16 Q. Right. So you took them at their word?
 17 A. Yes.
 18 Q. I'm not saying there is anything wrong with that, but
 19 you never explored further whether or not the client
 20 actually had the skills to carry out the role they were
 21 taking on?
 22 A. It wasn't for me to do that.
 23 Q. Turning to Rydon, had you taken any steps to satisfy
 24 yourself that Rydon would analyse the designs and check
 25 compliance?

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1 A. They had been through a procurement process that had
 2 reviewed their technical competence as well as their
 3 experience of carrying out refurbishment projects, and
 4 everybody was satisfied that they would be able to
 5 provide a design and do that with the novated design
 6 team of Studio E.
 7 Q. I see.
 8 Did that procurement process, when you say "reviewed
 9 their technical competence" -- we will come to the
 10 procurement later in your evidence, but just for present
 11 purposes, can you identify with any precision what it
 12 was in the procurement process that led you to think
 13 that Rydon, as opposed to outsourcing it to others, had
 14 expertise and technical competence in matters of design?
 15 A. You wouldn't necessarily have internal -- they wouldn't
 16 necessarily have to have internally expertise in design
 17 because they were engaging other people to carry out
 18 design as part of their team.
 19 Q. Well, they would propose to have other people to carry
 20 out design, but at the stage of the tender process,
 21 those people hadn't yet been appointed. So repeating my
 22 question: what steps did you take to satisfy yourself
 23 that Rydon had the technical expertise to carry out the
 24 design and provide suitable design advice itself to the
 25 TMO?

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1 A. We knew that Studio E were going to be novated to them,
 2 and we knew that -- and part of the tender process was
 3 identifying whether or not they would be carrying out
 4 those design services in-house or be using their supply
 5 chain.
 6 Q. I see. But you didn't know who was going to be in the
 7 supply chain?
 8 A. Not necessarily. I wasn't part of the tender process.
 9 Q. Indeed, so you wouldn't actually know who in fact it was
 10 at the bottom of the chain who was actually going to be
 11 providing the designs.
 12 A. Correct.
 13 Q. Did that mean that you couldn't actually do any proper
 14 analysis about whether Rydon had the skills itself to
 15 know whether those designs were compliant?
 16 A. Only in terms of looking at the CVs of the people that
 17 were proposed within the tender that was submitted and
 18 their ability to manage design.
 19 Q. Indeed.
 20 Was it not Artelia's role as employer's agent to
 21 make sure that Rydon had itself the relevant skills to
 22 be able to supervise the design and compliance
 23 activities of its subcontractors?
 24 A. As part of the tender process, that was one of the
 25 evaluation criteria.

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1 Q. Indeed, so I think the answer to my question is yes.
 2 A. In conjunction with the TMO, who were also one of the
 3 evaluators as well.
 4 Q. Right, in conjunction with the TMO, who were also one of
 5 the evaluators as well, and again, the reliability or
 6 effectiveness of their evaluation would depend on their
 7 own qualifications, skills and experience.
 8 A. Correct.
 9 Q. Did you take -- I think I have asked you this before,
 10 but in that connection, let me just ask it one more
 11 time, and I'm sorry if this is a repetition of
 12 a question. Did you yourself or, to your knowledge,
 13 anybody at Artelia take any steps actually rigorously to
 14 make sure that your client did have the relevant
 15 experience, expertise and qualifications to understand
 16 what it was that Rydon were doing?
 17 A. No, I didn't think that was part of our role.
 18 Q. Right, didn't think it was part of your role.
 19 Can we go to your first witness statement, page 55
 20 {ART00006544/55}, please. I want to look at
 21 paragraph 173. On 29 August, you say, Claire Williams
 22 of the TMO responded, and you have set out the contents
 23 of the email there. In the last sentence you say:
 24 "While I was disappointed that AUK was not
 25 appointed, I thought that the TMO, as an organisation

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1 that managed a lot of properties in the RBKC, had the
 2 necessary experience to carry out this role."
 3 Why was managing a lot of properties in RBKC
 4 relevant to whether a CDA was required?
 5 A. In terms of their understanding of specifications and
 6 compliance, they -- I would have assumed that they would
 7 have had a good knowledge of what those were, and that
 8 if they have the expertise, they have their own internal
 9 project managers, they have their own internal health
 10 and safety, that they felt competent to be able to carry
 11 out that role.
 12 Q. Well, a bit more specific. You have identified managing
 13 a lot of properties. Managing properties doesn't
 14 include understanding design and compliance of design or
 15 materials with regulations and statutory obligation,
 16 does it?
 17 A. No, but in looking after properties and also
 18 constructing new properties, they were involved in
 19 capital works, which would have to have been compliant
 20 in terms of regulatory standards.
 21 Q. Right.
 22 I mean, put it a different way: did you think that
 23 the skills which the TMO's team on this project had were
 24 comparable with the design analysis skills of someone
 25 like Richmal Hardinge?

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1 A. I can't really comment on that.
 2 Q. Well, I'm asking.
 3 A. I don't know what their qualifications were.
 4 Q. No, indeed. So when you are comparing like with like,
 5 I think I'm getting the sense from you that you didn't
 6 actually put Richmal Hardinge as the potential CDA on
 7 one side, with her skills and experience, and ask
 8 yourself: well, does the TMO have the same skillset and
 9 experience set as Richmal?
 10 A. It wasn't in my remit to do that.
 11 Q. Did you ever give any thought generally to the TMO's
 12 ability to perform the CDA role during the Grenfell
 13 project?
 14 A. No, I felt that occasionally they were asking us
 15 questions which they should have been dealing with
 16 themselves and we put them back to them.
 17 Q. Right.
 18 I mean, to your knowledge, I think you're telling us
 19 that Claire Williams and David Gibson were never told
 20 that they didn't have the skills of somebody like
 21 Richmal Hardinge, who would be able to carry out a CDA
 22 role as per the proposal?
 23 A. Correct.
 24 Q. Right.
 25 Do we take it that, by their decision, you just

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1 assumed that they would have those skills without
 2 investigating it any further?
 3 A. Yes. It was -- we made a commercial offer which they
 4 turned down.
 5 Q. Now, are you aware of any response back to the TMO to
 6 Claire Williams' email of 29 August that we've just
 7 looked at, where she says, "We don't want to appoint
 8 a CDA"?
 9 A. No, I'm not aware of any.
 10 Q. We haven't been able to find one. Do you know why there
 11 was no response?
 12 A. We took it as read that they'd made their decision.
 13 Q. During the project, did Artelia ever consider telling
 14 the TMO, even informally, that they ought to reconsider
 15 that decision?
 16 A. No, not that I remember.
 17 Q. Going back to the question a moment ago of the TMO's
 18 ability, I think you have told us that you never did any
 19 specific investigations as to Ms Williams' technical
 20 qualifications. Just to confirm that, that's correct,
 21 isn't it?
 22 A. Yes.
 23 Q. Nor indeed Mr Gibson; is that right?
 24 A. Correct.
 25 Q. Nor Mr Maddison, or in fact anybody at the TMO that you

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1 dealt with?
 2 A. Correct.
 3 Q. Was it your impression that Claire Williams was taking
 4 decisions, design decisions I should say specifically,
 5 herself?
 6 A. I believe that she was, yes.
 7 Q. Did you think that at any time she might have been
 8 referring design decisions to others at the TMO?
 9 A. I don't know.
 10 Q. Can we look at {ART00006480}, please. This is an email
 11 chain of October 2014, 29 October 2014 at the top, and
 12 it relates to an incident where the boilers were turned
 13 off, allegedly because of Rydon's works. That's the
 14 background to it. I don't want to go into the detail of
 15 that.
 16 Can we go to page 2 {ART00006480/2} of this document
 17 and look at the bottom half of that second page there.
 18 This is an email of 29 October 2014 to you, Mr Cash,
 19 from David Gibson of the TMO. He says:
 20 "Simon, since sending this below this morning, Peter
 21 Maddison has been in touch (he is actually on leave,
 22 returning Friday).
 23 "He is requesting that you lead on a review of
 24 arrangements. We need clarity between Rydon, Artelia
 25 (including your CdmC responsibilities) and Max Fordham

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1 on how designs and method statements are agreed and
 2 signed off before works commence."
 3 Scrolling up to the top of the page, Mr Gibson says,
 4 back to you -- in fact, we can't see that on this page.
 5 Perhaps we should have the bottom of page 1, because we
 6 can see this comes to you as the primary recipient of
 7 this email. Then if we can flip back to page 2 -- I'm
 8 sorry, these have been split over the page -- you can
 9 see he says to you, Mr Gibson does:
 10 "I still need an overall view on design sign off etc
 11 I have yet to establish who will lead on this."
 12 Then if we go to the first page of this email chain
 13 {ART00006480/1}, we can see what you say in response to
 14 this email internally, I think, to Nick Valente, the
 15 same day, 29 October, and you say:
 16 "This really needs to be discussed with Philip
 17 [Booth, I think] when he is back from leave. We offered
 18 the TMO Client Designer Adviser services and they
 19 declined, saying that they would do this role
 20 themselves. So, I do not see that we have a role in any
 21 sign-offs. We will obviously need to write to the TMO
 22 with chapter and verse, but if Keith can respond in the
 23 meantime, that will hopefully allow us time to look at
 24 the wider detail early next week."
 25 Now, by sign-offs that you refer to there, do you

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1 mean sign-offs on a design change?
 2 A. Correct, and commenting on designs.
 3 Q. And commenting on designs.
 4 Would a CDA have a role in sign-offs that you refer
 5 to there?
 6 A. Not in sign-offs. The CDA would advise on compliance.
 7 It is still with somebody -- it would be with the TMO to
 8 provide the ultimate comments.
 9 Q. Right.
 10 A. But the CDA would provide the feedback to the TMO --
 11 Q. Yes.
 12 A. -- to allow them to make the comments.
 13 Q. I see.
 14 Was it your impression at this time -- late
 15 October 2014 -- that the TMO might have been confused
 16 about who was meant to be having input into the designs
 17 and method statements before the works began on site?
 18 A. It is not uncommon for people to misconstrue who is
 19 doing what, and sometimes you have to reiterate what the
 20 roles are.
 21 Q. Yes. You say, "We will obviously need to write to the
 22 TMO with chapter and verse", can you just explain what
 23 you meant by that?
 24 A. That was in relation to the incident that had happened
 25 and who was responsible for ensuring that that

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1 particular work -- because it was in relation to
2 actually work, not design, that was the incident, and
3 signing off and approving the work carrying out because
4 it interfaced with existing systems that were outside of
5 the contract.

6 Q. Was it your understanding at the time that perhaps
7 Claire Williams was confused about precisely what
8 Artelia's role was in respect of design, and
9 particularly sign-off?

10 A. I don't believe necessarily Claire Williams, but
11 obviously Peter Maddison had raised the issue, and
12 David Gibson was forwarding on Peter Maddison's views.

13 Q. Very well, then I ask the same question again in respect
14 of David Gibson and Peter Maddison: do you think they
15 might have been confused as to precisely what Artelia's
16 role was in respect of design and sign-off?

17 A. I think in -- I don't know whether it was in relation to
18 design, because this is in terms of, as I say,
19 a physical incident that happened on site, and it was
20 one that was quite significant in terms of stopping
21 heating, I believe, or hot water to the residents, and
22 therefore I believe that the email was very much
23 a knee-jerk reaction in terms of trying to get people to
24 do something.

25 Q. Yes.

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1 Can we go to {ART00006658}, please. This is an
2 email chain from August 2015, so ten months later or so.
3 This is also about the design of the boxing club and
4 savings made because of omissions.

5 If we go to page 3 {ART00006658/3} of this, this is
6 an email from Claire Williams to Neil Reed, copying you
7 and others in, you can see that at the bottom there,
8 17 August 2015:

9 "Neil

10 "Thanks for your resume.

11 "I thought I would give you some time before I rung,
12 but it sounds like you are pretty up to date.

13 "I will catch up with you ..."

14 Then if you go to page 4 {ART00006658/4}, you can
15 read her email. If you go to page 4, this starts with
16 an email from Neil Reed to Claire Williams, after a site
17 visit he had made that day, and there are various points
18 of detail in there.

19 Then her email back, if you go to the bottom of
20 page 3, we can see where it starts. This is to
21 Neil Reed and it's copied to you, Mr Cash, the same day:

22 "Thanks for your resume."

23 Then over the page at the top of page 4, she says in
24 the third paragraph that she has established that the
25 tiling in the boxing club is not as specified, so she

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1 asks for a hard copy of the spec, and she has asked
2 Chweechen about the finishes costed for the boxing club,
3 et cetera, and there is something about the shower rooms
4 being plastered and painted, et cetera. Then one minor
5 bit of good news about blinds. These are just details.

6 I want to show you page 1 {ART00006658/1} now.
7 That's the context. She seems to be asking Artelia to
8 check the specification to see if certain items are
9 included.

10 If you go to page 1, which is really what I wanted
11 to ask you about, this is Neil Reed's email to you of
12 18 August 2015, and it responds to your email to him of
13 the same day, and that is where you say to him:

14 "Claire may think it is our job to check what the
15 specification requirements are against the contractor's
16 proposals. However, compliance is not part of our role.

17 "In terms of what is and is not included in the
18 tender, as quantity surveyors we prepare a contract sum
19 analysis that breaks down a lump sum tender offer from
20 the contractor, to give us something that allows proper
21 evaluation of tenders and something against which to
22 manage costs during construction. It is not a
23 definitive document and the only way of telling what is
24 or is not included in the contract is to check the
25 employer's requirements and contractor's proposals.

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1 This is not a QS or PM role, but rather one that relates
2 to the CDA services that we offered and was declined."

3 Can you explain there what you meant by compliance,
4 when you say "compliance is not part of our role" in the
5 first paragraph?

6 A. It's in relation to the compliance of the contractor's
7 proposals against the employer's requirements.

8 Q. What about compliance of the work done with the
9 contractually agreed specification? Same?

10 A. Same.

11 Q. Right.

12 Would you agree with me that this email exchange
13 demonstrates that the TMO, even at this stage -- so
14 August 2015 -- wasn't clear about the role which Artelia
15 was performing?

16 A. I wouldn't say that it demonstrates that they're not
17 clear, I just think it demonstrates that Claire is
18 trying to get us to do something that's outside of our
19 scope.

20 Q. Knowingly?

21 A. Could well be.

22 Q. You say, "Could well be"; I mean, there are two
23 possibilities: either she was confused about your scope
24 or she knew very well what your scope was and was trying
25 to get you to do something that was outside it. What

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1 was your impression?
 2 A. That she was trying to get us to do something that was
 3 outside of our scope.
 4 Q. Right.
 5 Do you know whether you or anybody else at Artelia
 6 did anything in response to this?
 7 A. I can't remember.
 8 Q. It's clear from Mr Reed's message back to you, as I've
 9 shown you but not read to you -- he says, "This is very
 10 helpful", top of the page:
 11 "As and when you do speak to Peter [Maddison]
 12 I think it would be helpful if you could run through
 13 this with him, as we continue to come under pressure
 14 (even today) to provide clarifications about the spec
 15 and attend meetings. Thanks."
 16 Again, was your understanding that the pressure was
 17 to do something you weren't contracted to do or that
 18 there was confusion?
 19 A. It was that we were being asked to do something we
 20 weren't contracted to do.
 21 Q. Do you know whether Mr Reed ever did speak to
 22 Peter Maddison to say, "Look, stop trying to get us to
 23 do something that's out of scope"?
 24 A. I don't know whether he had a conversation with
 25 Peter Maddison or with anybody else within the TMO.

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1 Q. Right.
 2 Let's move forward in time. Can we go to
 3 {ART00006656}, please. This is an email chain in
 4 September 2015, and it concerns an issue between the TMO
 5 and Rydon about the performance of lifts in the event of
 6 a fire and the effects of the fire alarms.
 7 There is a long email which Simon Lawrence sends to
 8 Claire Williams, and that's on page 2. He sends it on
 9 11 September, as we can see there, and it goes over to
 10 page 3.
 11 If we just look at that email, the first part of it
 12 on page 2 is all about the fire panel and various
 13 details about that piece of equipment. Then if we go to
 14 the second page at the top {ART00006656/2}, we can see
 15 an email from Claire Williams to Neil Reed and
 16 Andrew Malcolm, re "Grenfell lift":
 17 "Chaps
 18 "Can you please give me a ring with your views on
 19 this, and where we go with it?
 20 "There seems to be a couple of anomalies."
 21 If we go back to the first page {ART00006656/1}, we
 22 can see that Mr Reed then forwards this email on to you
 23 on the same day, and he says to you:
 24 "I'll call you after lunch to discuss:
 25 "1. the challenges go on Re lack of design

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1 coordination and foresight.
 2 "2. Claire is emailing us and seeking to draw us in
 3 on conversations about 1!.
 4 "I remain concerned about time we are spending along
 5 with the very fact these things [are] coming up at this
 6 stage in the project."
 7 Did you agree with Mr Reed that there was at this
 8 stage a lack of design co-ordination and foresight?
 9 A. I believe that was in relation to design co-ordination
 10 with -- interface with existing systems.
 11 Q. Well, he says, "The challenges go on". It looks as if
 12 Mr Reed there is expressing the view that this is
 13 a general problem; in other words, that there is
 14 a general problem about lack of design co-ordination and
 15 foresight. Is that right?
 16 A. I don't know whether it was in general terms, but I know
 17 in terms of responding to -- in terms of what he was
 18 responding to, the issue raised by Simon Lawrence was in
 19 relation to interfaces with existing systems.
 20 Q. Right. I'm really just seeking to get to the bottom of
 21 what you really understood by this message.
 22 Did you understand him to mean that this was
 23 specifically related to the interface with the existing
 24 systems or a more general problem?
 25 A. Interface with existing systems.

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1 Q. Is it right that the TMO was trying to draw Artelia in
 2 to assisting on or resolving design and co-ordination
 3 problems?
 4 A. It appeared to be from the fact that Claire Williams was
 5 asking for our views, yes.
 6 Q. Is it fair to say that Claire Williams was trying to
 7 rely on Artelia for design decisions at times during
 8 this project which Artelia did not regard its role as
 9 including?
 10 A. Correct.
 11 Q. Right.
 12 I've covered this a moment ago, but I think you're
 13 telling us that you thought that Ms Williams knew jolly
 14 well that that was outside the scope but was trying to
 15 get you to include it.
 16 A. Yes.
 17 Q. Did you ever say to her in terms, "Look, Claire, this is
 18 outside scope, stop trying to expand the scope beyond
 19 what we're responsible for"?
 20 A. I believe that there were a number of occasions when not
 21 necessarily myself but other members of the team
 22 responded to Claire saying that these were design issues
 23 and that she should look to other people to respond to
 24 them.
 25 Q. Can we then go to {ART00006157}. This is an email you

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1 wrote to Peter Maddison on 7 September 2015 on the
2 subject of cost projections, in response to his email of
3 the same day to you, which you can see -- well, you
4 can't see at the moment, but that's on page 2. I don't
5 want to show you that.

6 I just want to show you this email, which you sent
7 to Peter Maddison, and it follows a conversation you had
8 with him that day, as you can see from the first
9 paragraph. In the last paragraph, if you go to that, he
10 says:

11 "As I said in my voicemail [which you say in the
12 first paragraph you had left him earlier], I would like
13 to have a conversation after the meeting on Wednesday
14 the resolution of design issues, which I do not believe
15 are within our scope of services. Hopefully, we agree
16 where the divide in responsibility lies and all work
17 together to give you the much needed information and
18 confidence you need to report back to your Board and
19 Residents."

20 Now, before I ask you a question about that, can
21 I show you what you say in your first witness statement,
22 Mr Cash, at page 63 {ART00006544/63}, paragraph 204.
23 You say, in response to or in relation to this part of
24 this email:

25 "Once again, I felt it was important to re-emphasise

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1 AUK's role to the TMO and make sure that it understood
2 that AUK was not responsible for design issues."

3 Were you surprised that, even by this point in the
4 project, September 2015, the TMO might not have
5 understood the limitation on your role about design?

6 A. Yes.

7 Q. You were surprised?

8 A. I was surprised that we were still having issues in that
9 respect, because there was a concern about an omission
10 in the scope, in the employer's requirements, that
11 should have been picked up as part of the design.

12 Q. Yes. So does that tell us that, even at this stage, or
13 up to this stage, there had been a degree of confusion
14 within the TMO about precisely what Artelia's role was?

15 A. I don't believe it can be called confusion. I do
16 believe that if -- it may be -- it appeared to me that
17 Peter Maddison was trying to apportion blame for
18 something that had been missed.

19 Q. Did you ever have a conversation with Mr Maddison about
20 the precise scope of Artelia's design role that you
21 indicated you would have?

22 A. Yes, I did.

23 Q. Do you know when that took place?

24 A. Subsequent to that email.

25 Q. Right. What did you tell him?

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1 A. That it wasn't our position to make sure that the
2 employer -- that the specifications contained that scope
3 of works; it was down to the design team -- so Studio E,
4 Max Fordham and Curtins -- to ensure that they captured
5 all of the works necessary. Our contract sum analysis
6 purely captured the scope of works in a round about way;
7 it wasn't definitive.

8 Q. I would now like to turn to a different topic, and I may
9 come back to this topic about roles later on, it may not
10 be the end of it, Mr Cash, but let me turn to
11 a different topic, which is initial procurement.

12 I would like to examine with you the initial stages,
13 first of all, of the Grenfell Tower refurbishment
14 project.

15 I will start, if I can, with Artelia's original
16 appointment, so going back a little bit to where we were
17 yesterday in 2012.

18 Now, according to the Artelia corporate statement
19 for the purposes of this Inquiry, Artelia were appointed
20 to KALC as a number of things, and I'll just tick them
21 off: project lead; yes?

22 A. Yes.

23 Q. EA, that's employer's agent.

24 A. Yes.

25 Q. QS; yes?

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1 A. Yes.

2 Q. CDMC, so CDM co-ordinator.

3 A. Yes.

4 Q. And CDA, client design adviser.

5 A. Correct.

6 Q. Studio E was the lead design consultant, I think we
7 established that yesterday.

8 A. Yes.

9 Q. Is it right that Artelia had gone through an OJEU tender
10 process and had a framework agreement with the TMO?

11 A. Not a framework agreement.

12 Q. Right.

13 A. It was an OJEU process for an appointment for the
14 particular project.

15 Q. I'm so sorry, quite right. So it had gone through
16 an OJEU process, but outside of framework.

17 A. Correct.

18 Q. I see.

19 Then I think it's right that in April 2012 Artelia
20 was appointed formally to the Grenfell Tower project.

21 A. We were invited to attend a meeting with a view to being
22 appointed, yes.

23 Q. Right.

24 Now, were you surprised that you weren't required to
25 follow a separate appointment process for the

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1 Grenfell Tower project as you had for the KALC project?
 2 A. No, because the original KALC project had made reference
 3 to a potential follow-on project in respect of
 4 Grenfell Tower.
 5 Q. So the OJEU tender was essentially for both projects; is
 6 that right?
 7 A. Yes.
 8 Q. I see.
 9 Can we then look at the fee cap issue. This is
 10 a question that's come up before.
 11 Can we go to {TMO10001757}. This is part of
 12 an agenda of the TMO board meeting, as you can see, on
 13 15 November 2012:
 14 "Confidential - Grenfell Tower regeneration
 15 project."
 16 You see that, and the purpose of the meeting was:
 17 "To recommend to the Board the progression of the
 18 detailed design and tender package phases of the
 19 Grenfell Tower Regeneration Project.
 20 "To recommend to the Board the appointment of
 21 Leadbitter (Principal Contractor) for the
 22 Pre-Construction Agreement phase of the project."
 23 That was the purpose of the meeting.
 24 A. Yes.
 25 Q. If you go to the second page, page 2 {TMO10001757/2},

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1 and look at the bottom of the page at paragraph 5.4
 2 under the heading "Procurement", you can see there it
 3 says, paragraph 5.4:
 4 "Appleyards has been commissioned separately as Cost
 5 Consultant (CC), Employers Agent (EA) and Construction
 6 Design Management Co-ordinator (CDMC) and this fee
 7 commission is capped at 174k for the entire project."
 8 You see that?
 9 A. Yes.
 10 Q. Was that cap to keep Artelia's fees below the OJEU
 11 threshold?
 12 A. I don't know why there was a cap there.
 13 Q. You can't help us? I know you weren't at this meeting,
 14 but you don't know why it was capped?
 15 A. No.
 16 Q. If you look at paragraph 5.2, the meeting note records
 17 that the:
 18 "... Project design team has been commissioned by
 19 KCTMO under its own contract regulations and fees are
 20 capped at the EU Procurement threshold of 174k as the
 21 design team procurement for KALC did not include
 22 provision to incorporate the Grenfell Tower Regeneration
 23 Project."
 24 Did you understand that Studio E, if that's what
 25 "design team" refers to, had also been capped at

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1 £174,000 for the reasons set out there?
 2 A. No.
 3 Q. You don't --
 4 A. Not at that time.
 5 Q. Did you come to learn that at a later time, do you
 6 think?
 7 A. When it became apparent in meetings that the TMO wished
 8 to appoint all of the consultants under Studio E rather
 9 than individually.
 10 Q. And when was that, roughly?
 11 A. It was not that -- I think it was not that long after,
 12 I can't remember.
 13 Q. This is November 2012, so ...
 14 A. I think it may well have already been talked about by
 15 that time, I can't remember.
 16 Q. Well, let's see how we go. Can we go to {TMO00850333},
 17 please. This is an email between Claire Williams and
 18 Jenny Jackson of 10 January 2014, this is English dating
 19 or UK dating. If we go to page 2 {TMO00850333/2}, we
 20 can see Claire Williams' email to Jenny Jackson setting
 21 out the fee proposals to which she is responding on
 22 page 1, just go to that, and Claire Williams says to
 23 her:
 24 "Jenny
 25 "I had a good session with Artelia yesterday, and

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1 understand a lot more re the appointments. My resume
 2 is ..."
 3 Then she sets out there what her understanding is.
 4 Then if you move to the first item, "1 Artelia - TMO
 5 appointment", there are some details there about the
 6 fees, and then she says:
 7 "This is based on a contract sum of £9.8m. I have
 8 no issue with this, but understand that we would need to
 9 sign off the RICS agreement covering services scope."
 10 Then if you go to page 3 {TMO00850333/3}, she talks
 11 about Studio E. Under 4:
 12 "Studio E - to be novated this is the only one
 13 I would query."
 14 Then she talks about what's been paid to date, and
 15 explains that Artelia had sent an email on 20 November
 16 and then she says:
 17 "I cannot find their fee information now, but it
 18 totalled £180,000 under novation - the first stages FIG
 19 I think were £39k, and H/J were £54k, then there was
 20 a massive £90k for stage K - which is the construction
 21 stage."
 22 She sets out what stage K covers after that.
 23 Can we then go back to Jenny Jackson's response at
 24 the top of the email chain {TMO00850333/1}. I'm hoping
 25 I've shown you enough of this email, and if we need to

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1 go back into this email, we will. But if you look at
2 the email at the top of the chain and look at her
3 response to Claire Williams, the fourth paragraph there
4 says:

5 "The fees for Artelia from September 13 look very
6 low given the complexity of the project. I need to get
7 their schedule of works sorted next week so we can
8 review. I would have expected the CDM and the QS fees
9 to be much higher."

10 My question is, having shown you this detail: was
11 Artelia keeping its fees artificially low so that they
12 were under the EU limit of £174,000?

13 A. No.

14 Q. Can you explain why they were so low given the
15 complexity of the project at this stage?

16 A. That was Jenny Jackson's opinion. I didn't believe that
17 they were low.

18 Q. Right.

19 Can we then turn to your role in the procurement of
20 other contractors and look at {ART00005742/55} again,
21 please. This is part of Artelia's QS services schedule
22 we looked at earlier from July 2014, page 55. As I say,
23 this is part of Artelia's QS services schedule.

24 If we look at tick-box 1.4.1 on that page, under the
25 heading "1.4 Pre-construction (RIBA Outline Plan of Work

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1 2007)", it says, and this box is ticked:

2 "Advise on tendering and contractual procurement
3 options. Prepare recommendations for Client's
4 approval."

5 Does that mean that Artelia had the obligation to
6 advise as to the procurement of other contractors?

7 A. Of the contractors to carry out construction works.

8 Q. Well, it says "tendering and contractual procurement
9 options". Does it not go a little bit wider than simply
10 construction works?

11 A. No, I don't believe it does. The general understanding
12 of this is in relation to the procurement of
13 a contractor to carry out the works, and that then
14 follows through in terms of the other scopes of services
15 that carry on beyond it.

16 Q. Does that tell us that there had already been a decision
17 or one is supposed to read into this that the contract
18 would be a design and build?

19 A. Not necessarily.

20 Q. So if not necessarily, why would you limit it, then, to
21 construction works?

22 A. Because that's the general understanding. This is
23 a general scope of services that's applied, and
24 therefore you would need to look at it in relation to
25 the specifics of the contract itself or the project

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1 itself. This is in relation to the quantity surveyor's
2 duties in overall procurement of the contractor, and
3 this is not looking back at consultants or anything like
4 that.

5 Q. Right.

6 Now, specifically, the obligation as described
7 there, however wide or narrow it is, sat with the QS
8 role; yes?

9 A. For this -- yes.

10 Q. So I think it was Chweecheen Lim, as supervised by you,
11 that would have the responsibility within Artelia for
12 advising on tendering and contractual procurement
13 options.

14 A. Yes.

15 Q. And for preparing recommendations for client's approval.

16 A. Yes.

17 Q. Would this obligation apply to all contractors? In
18 other words, all those who were contracting with the
19 client?

20 A. In terms of construction works, yes.

21 Q. So you say only construction, not any other service?

22 A. No.

23 Q. Well, let's move on, then, to Studio E. I want to ask
24 you some questions about the process which was gone
25 through to appoint Studio E to the Grenfell Tower

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1 project, if I may.

2 Now, again, it's right, I think, that Studio E
3 didn't go through any competitive process whereby it was
4 appointed on to the Grenfell Tower project, was it?

5 A. Correct.

6 Q. Did you ever raise any concerns about that?

7 A. No.

8 Q. Why is that?

9 A. The team was carried over from the KALC project, and
10 I assumed that, like ourselves, there was provision
11 within their appointment to be carried over.

12 Q. Right.

13 Were you aware that Studio E had never before worked
14 on a project involving the overcladding of a high-rise
15 residential block?

16 A. No, I wasn't.

17 Q. If there had been a competitive tender, would its
18 absence of experience in that respect have affected its
19 score?

20 A. Not necessarily. It would have depended on what the
21 selection criteria would have been.

22 Q. Did you ever have any discussion, either with the TMO or
23 within Artelia internally, about Studio E's experience
24 and expertise in high-rise refurbishments?

25 A. Not about their particular experience, no.

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1 Q. Why is that? How can you account for the absence of any
2 discussion about that?

3 A. They were a competent designer and they'd proved
4 themselves competent in terms of the KALC project as
5 architect -- in terms of designers and architects, and
6 we had no reason to doubt their competence in terms of
7 being able to do the work on the Grenfell Tower project.

8 Q. Well, why did you have no reason to doubt? After all,
9 they had been appointed on to the KALC project, which
10 was a low-rise building, a school; why did you have no
11 reason to question their competence in terms of being
12 able to do the design work on an overcladding of
13 a residential high-rise building, which was a very
14 different building altogether?

15 A. One, they'd already been brought on board before we were
16 brought into the project, so I was -- there was
17 an assumption in some respects that the client was
18 satisfied that they would be able to do the design work.
19 The meetings that we attended, the way that they
20 presented the options on the cladding showed that they
21 appeared to have quite a knowledge of what they were
22 doing, and I would refer back to our CDM role in terms
23 of ensuring that the client would have met his
24 obligations in satisfying themselves as to their
25 competence to provide the services for the project.

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1 Q. Do you accept that the way in which Studio E was
2 appointed, in other words simply being transferred
3 across from the KALC project to Grenfell, did not lend
4 itself to a rigorous check and an analysis of Studio E's
5 suitability for the Grenfell Tower project itself?

6 A. I don't know.

7 Q. Well, I'm asking you to accept the proposition.

8 A. I can't say, because I don't know what checks the TMO
9 may have made already.

10 Q. Right.

11 So do I take it from that that when you came into
12 the project from KALC, essentially, it didn't occur to
13 you personally or Artelia more generally to examine the
14 skillset, suitability, qualifications and experience of
15 Studio E for the Grenfell Tower --

16 A. It wasn't our role to do that, other than a CDM
17 co-ordinator to ensure that the client met their
18 obligations in satisfying themselves as to the overall
19 team's competence.

20 Q. Right.

21 Were you aware that Studio E LLP had financial
22 difficulties in 2014?

23 A. No, I wasn't.

24 Q. So you didn't know that the partnership, the LLP, was in
25 administration and then wound up in August 2014? Did

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1 you not know that?

2 A. No.

3 Q. If there had been a competitive tender at that time,
4 that might have ruled Studio E out; no?

5 A. If it had been apparent.

6 Q. Right.

7 Now, I just want to look with you at the Studio E
8 cap of £174,000. We saw a little bit of that in the
9 document we saw earlier, the 15 November 2012 TMO board
10 minute at paragraph 5.2.

11 A. Yes.

12 Q. Let's just look at another document. This is
13 Alun Dawson's witness statement to the Inquiry, he is
14 Artelia. This is {ART00008348/10}, please,
15 paragraph 45, and he says there:

16 "It is not unusual to engage consultants up to
17 a particular stage of a project. The design
18 consultant's fees for Stage C to D work were capped at
19 £174,000 because the TMO were looking to have a single
20 appointment with Studio E, with Studio E then
21 sub-consulting to the rest of the design team. My
22 understanding was that, under the OJEU regime, if there
23 was a single appointment above £174,000, then the work
24 would need to be tendered. The purpose of the cap was
25 to avoid having to tender the work as the TMO wanted the

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1 ultimate responsibility for the design to be all in one
2 place (ie with Studio E)."

3 I show you that. I just want to show you something
4 else before we get to some questions.

5 Can we look at {ART00000168}, please. This is the
6 minute of a meeting of 18 July 2012, so early on in the
7 project, and we can see who was present there. It was
8 held at Appleyards, this is a Studio E document, and
9 Paul Dunkerton from the TMO was there, and we have from
10 Appleyards Alun Dawson, David Hale and Chweecheen Lim, we
11 see that, and Bruce Soune from Studio E.

12 In the first main paragraph under "Appointments", it
13 says:

14 "A Dawson gave verbal confirmation that all
15 appointments are approved. However the TMO would like
16 to sub-contract all consultants via Studio E up until
17 Stage D, with the total fee up until Stage D not
18 exceeding £174k, which is the OJEU threshold for
19 requiring work to be tendered. This will probably mean
20 deferring some fees post Stage D."

21 Now, as a qualified QS yourself, with oversight of
22 this project and supervising Ms Lim, were you aware of
23 this cap of £174,000 at the time?

24 A. I can't remember if I was aware at the time, but I think
25 I became aware of it, yes.

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1 Q. When do you think you became aware of it?
 2 A. I can't remember.
 3 Q. Right. Did Alun Dawson not report back to you what had
 4 happened at this meeting?
 5 A. He probably would have done, yes.
 6 Q. You would therefore, I think, have understood that the
 7 purpose of the £174,000 cap for Studio E was so that the
 8 TMO would avoid having to tender for a new architect.
 9 A. In terms of being able to bring all of the consultants
 10 underneath Studio E in a single appointment.
 11 Q. Yes.
 12 A. Individually, they wouldn't have had to have done so.
 13 Q. Right.
 14 Did you ever discuss that purpose with the TMO
 15 yourself?
 16 A. I can't remember.
 17 Q. Did you know whether anybody else in Artelia had the
 18 discussion about that approach?
 19 A. I can't -- I don't remember anybody specifically, but
 20 I suspect Alun Dawson would have done, yes.
 21 Q. Did you think at the time, if you had discussed it, that
 22 this was an appropriate arrangement?
 23 A. I can't remember.
 24 Q. Right.
 25 Were you concerned at or from this point that

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1 Studio E might be keeping its design fees low
 2 deliberately to avoid the re-tender?
 3 A. No.
 4 Q. Did you think that they were doing so because they were
 5 underestimating the amount of design input which this
 6 project required?
 7 A. I don't think so, no.
 8 Q. Now, the course that was adopted or was proposed,
 9 I should say, I think was approved by Artelia in the
 10 end. Do you remember that?
 11 A. Yes. I think I do.
 12 Q. Did you take any action yourself?
 13 A. I can't remember.
 14 Q. Right.
 15 Would you have expected someone from Artelia to have
 16 pointed out to the TMO that the approach they were
 17 adopting was a potential breach of the procurement
 18 rules?
 19 A. Yes, and I can't remember if we did or not.
 20 Q. And it would have been, wouldn't it?
 21 A. It would have been, yes.
 22 Q. And you can't remember whether you did or not. But you
 23 would have expected someone within Artelia, surely, to
 24 have raised this with you for discussion so that you
 25 could actually discuss it with the TMO; no?

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1 A. I can't remember in -- I can't remember the details and
 2 whether or not somebody had already had the conversation
 3 with TMO, in which case it wouldn't necessarily have
 4 escalated to me.
 5 Q. Right. Are you telling us that you either weren't
 6 involved or don't recall being involved in any such
 7 discussion at all?
 8 A. I don't recall.
 9 Q. Who would it have been, do you think, who would have had
 10 that discussion with the TMO?
 11 A. It would have been a combination of Alun Dawson and
 12 Chweecheen Lim.
 13 Q. Right.
 14 Can we then turn to design quality control, and
 15 specifically SEA's ISO 9001.
 16 Are you familiar with ISO 9001 of 2008?
 17 A. I know of its existence; I'm not familiar with the
 18 contents of it, no.
 19 Q. It's an international standard for quality management,
 20 isn't it?
 21 A. Correct.
 22 Q. It's very broad.
 23 Did you know or do you now know that organisations
 24 which are registered as ISO 9001 compliant have been
 25 independently certified to have a quality management

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1 certification?
 2 A. Yes, I'm aware of that.
 3 Q. I think Artelia was itself 9001 registered, wasn't it?
 4 A. Yes.
 5 Q. At the time of it being engaged formally in 2014.
 6 A. Yes.
 7 Q. I think you would understand or agree that being
 8 accredited and certified under ISO 9001 involved
 9 a pretty rigorous accreditation process.
 10 A. I believe that it does, yes.
 11 Q. Did Artelia ever check whether Studio E Limited --
 12 Limited as opposed to LLP -- was ISO 9001 registered
 13 when it began to work on the project in and from
 14 mid-2014?
 15 A. No, it wasn't part of our remit.
 16 Q. Why is that? It wasn't part of your remit?
 17 A. Weren't responsible for checking their quality
 18 standards.
 19 Q. Right.
 20 Can we then go to the contract, page 47,
 21 {ART00005742/47}. This page is from the employer's
 22 agent's schedule of services, which I think I'm saying
 23 for the third time now begins on page 45. We don't need
 24 to go back to that.
 25 At the bottom of this page, we can see "1.3 Design

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1 (RIBA Outline Plan of Work 2007)", we looked at that
2 before, and we can go to the next page in a moment, but
3 it's clear just on this that this is dealing with
4 employer's agent services in relation to design; yes?

5 A. The design stage.

6 Q. The design stage, all right, I'll take that for the
7 moment.

8 If we go to page 48 [ART00005742/48], at the top of
9 the page, left-hand column, we can see that there is
10 a box 1.3.2, right at the very top, and that's ticked or
11 crossed, in other words marked as applicable:

12 "Liaise with the Professional Team and establish a
13 structure and procedure for quality management.
14 Establish review, approval, variation and reporting
15 procedures. Prepare recommendations for Client's
16 approval."

17 Would the professional team, as referred to there,
18 include Studio E?

19 A. Yes, it would.

20 Q. Given that this section is for the design stage
21 services, as you have pointed out, would that mean that
22 there would have to be established a structure and
23 procedure for the quality management of the design?

24 A. Of the -- of how the design was being prepared for the
25 particular -- for this project, and that would be

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1 captured within the project execution plan.

2 Q. I think that's a yes, isn't it?

3 Let me try it a different way: do you accept that,
4 given what we're looking at sits within the part of
5 these services related to the design stage, Artelia's
6 responsibility was to establish a structure and
7 procedure for quality management relating to design?

8 A. Yes.

9 Q. And based on this contractual obligation, do you accept
10 that Artelia had an obligation to the TMO to establish
11 quality management structures and procedures for the
12 design in liaison with the professional team?

13 A. Yes.

14 Q. Did Artelia in fact ever establish any such structures
15 or procedures at this stage?

16 A. I believe they were covered within the project execution
17 plan.

18 Q. And I think that's something which sat with
19 Chweechen Lim, isn't it?

20 A. No, with Alun Dawson.

21 Q. Alun Dawson, right, as the EA?

22 A. Correct.

23 Q. Right.

24 Do you know how Alun Dawson discharged that
25 responsibility in practice?

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1 A. He prepared a document that was issued.

2 Q. And did that cover Studio E's own work?

3 A. It covered the work of the team and the project
4 professional team generally.

5 Q. That would include Studio E, wouldn't it?

6 A. Yes.

7 Q. Because Studio E was part of the professional team?

8 A. Yes.

9 Q. Okay.

10 Did that project execution plan contain any guidance
11 or requirements as to the systems of, for example,
12 tracking of drawings and design that Studio E were to
13 maintain?

14 A. No, I don't believe it looked at Studio E's internal
15 processes, no. It was --

16 Q. Why is that?

17 A. Because that was for them. It wasn't part of our remit
18 to look at their internal processes; it was about
19 looking at the outputs and how those would be dealt with
20 overall in terms of the project.

21 Q. Well, my next question is: looking at the obligation,
22 "Liaise with the Professional Team and establish
23 a structure and procedure for quality management", did
24 that not include making sure that Studio E internally
25 had its own quality management procedures --

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1 A. No.

2 Q. -- which would enable the proper execution of the
3 project plan?

4 A. No.

5 Q. Why is that?

6 A. I don't believe -- because it's not for us to
7 interrogate each of the individual consultants as to how
8 they carry out their work.

9 Q. So what was the structure and procedure for quality
10 management that was established with the professional
11 team, do you know?

12 A. I can't remember.

13 Q. You can't remember? Can you not even remember in
14 outline what it was?

15 A. No, because, as I say, it was embodied in the project
16 execution plan, I believe, and I can't remember the
17 detail of that.

18 Q. Can we turn to CDMC duties in the context of Studio E.

19 We looked earlier at Artelia's obligations as the
20 CDMC under the CDM Regulations 2007, I think that was
21 yesterday, and we looked at the Approved Code of
22 Practice at paragraph 90. I think you recall that.

23 Do you agree with this proposition: that Artelia, as
24 the CDMC on the project, was required to consider and
25 provide advice to the TMO on the competency of Studio E?

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1 A. I can't remember the clause.
 2 Q. Right. Well, let's go back, then, to the Approved Code
 3 of Practice. It's probably the best place to find it.
 4 This is {INQ00013936/45}, I think, and look at
 5 paragraph 195 in this document. We looked at this
 6 yesterday, I think. I will read it again:
 7 "To be competent, an organisation or individual must
 8 have:
 9 "(a) sufficient knowledge of the specific tasks to
 10 be undertaken and the risks which the work will entail;
 11 "(b) sufficient experience and ability to carry out
 12 their duties in relation to the project; to recognise
 13 their limitations and take appropriate action in order
 14 to prevent harm to those carrying out construction work,
 15 or those affected by the work."
 16 Looking at 197 immediately below it:
 17 "Appropriate experience is also a vital ingredient
 18 of competence. People are more likely to adopt safe
 19 working practices if they understand the reasons why
 20 they are necessary, and past experience should be a good
 21 indicator of the person's/company's track record."
 22 If we go over the page to page 46 {INQ00013936/46},
 23 we can see paragraph 199. Just look at that. "What you
 24 must do", it says:
 25 "All those with duties under CDM2007 must satisfy

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1 themselves that businesses that they engage or appoint
 2 are competent. This means making reasonable enquiries
 3 to check that the organisation or individual is
 4 competent to do the relevant work and can allocate
 5 adequate resources to it. Those taken on to do the work
 6 must also be sure that they are competent to carry out
 7 the required tasks before agreeing to take on the work.
 8 "For notifiable projects, a key duty of the CDM
 9 co-ordinator is to advise clients about competence of
 10 designers and contractors, including the principal
 11 contractor that they engage."
 12 Now, I've shown you that.
 13 Did you understand at the time that the CDM
 14 co-ordinator's role, which was one specifically assumed
 15 by Artelia, should have considered and advised on the
 16 experience of Studio E in overcladding a building?
 17 A. If it was covered in our scope of service, then yes.
 18 Q. And do you agree that Artelia should have considered and
 19 advised on the use of other design professionals to
 20 assist Studio E in that task if they couldn't do it
 21 themselves?
 22 A. I'm not sure where that comes into it.
 23 Q. Well, it comes into competence, doesn't it? Making sure
 24 that the organisation or individual is competent to do
 25 the relevant work and can allocate adequate resources to

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1 it.
 2 A. Their competency is as architects and designers.
 3 Q. Indeed.
 4 Did you understand that, as a CDM co-ordinator,
 5 Artelia should have considered and advised on the
 6 financial standing and resources available to Studio E
 7 for this project?
 8 A. I'm not sure what checks were carried out by
 9 Keith Bushell.
 10 Q. No, but as a general matter. My question wasn't that.
 11 My question -- I'll ask it again -- is: did you
 12 understand that, as a CDM co-ordinator, Artelia should
 13 have considered and advised the TMO on the financial
 14 standing and resources available to Studio E in relation
 15 to this project?
 16 A. I don't think that's relevant to their competence.
 17 Q. Well, adequate resources, Mr Cash, paragraph 199, it
 18 says in the third line that you have got to make
 19 enquiries to check that the organisation or individual
 20 is competent to do the relevant work and can allocate
 21 adequate resources to it.
 22 A. Yeah. Sorry, yes, I was thinking more in terms of
 23 financial standing.
 24 Q. Right, well, that would be related to the ability to
 25 allocate adequate resources; no?

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1 A. I don't know.
 2 Q. Well, I'm asking --
 3 A. I don't think so. Adequate resources would have been in
 4 relation to the people that were allocated to the
 5 project, and they appeared to be -- I don't know what
 6 checks were carried out in terms of adequate resources.
 7 Q. Right.
 8 If Studio E were having financial difficulties,
 9 would that not be something you would want to know as
 10 the CDMC in order to be satisfied that they were able to
 11 allocate adequate resources to the project?
 12 A. I don't believe it comes into the CDMC, it's about their
 13 competency to design.
 14 Q. Right.
 15 Then quality management, again the same question:
 16 did you understand at the time that Artelia, as the CDM
 17 co-ordinator, should or was obliged to consider and
 18 advise the TMO on the quality management processes of
 19 Studio E as part of their competence?
 20 A. If it was within our scope of service.
 21 Q. Well, you say, "If it was within our scope of service".
 22 We have already looked at the CDMC duties under the
 23 contract and under the regulations. I would suggest to
 24 you that that was within the scope of your services.
 25 We're going back over old ground. It was within the

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1 scope of your services to ensure that Studio E was
 2 competent as defined in the ACOP.
 3 A. As I say, I'm not sure what checks Keith Bushell had
 4 done or what he had agreed with the TMO in terms of
 5 checks of Studio E's competency as the CDM co-ordinator.
 6 Q. Right. So does that tell me that you can't help answer
 7 this question: did Artelia provide any advice to the TMO
 8 about Studio E's competency for this project?
 9 A. Correct.
 10 Q. Can we then turn to a slightly different topic, which is
 11 Leadbitter's initial appointment to the Grenfell Tower
 12 refurbishment project.
 13 Now, you cover this in your first witness statement
 14 at page 8 {ART00006544/8}, if we can have that up,
 15 please, at paragraphs 23 to 24.
 16 In 23 you refer to the second design team meeting on
 17 24 May 2012, and we have looked at that earlier this
 18 morning. You say at paragraph 23, picking it up in the
 19 second sentence:
 20 "It was noted that the TMO board needed to be
 21 persuaded that keeping with the IESE contractor under
 22 KALC was in both the Project's and the TMO's best
 23 interests. This was a reference to the fact that
 24 Leadbitter was the existing contractor on the KALC
 25 project and one of the options for procurement of the

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1 building contract on the Project was for Leadbitter to
 2 be awarded the contract. My understanding was that this
 3 was preferred by those attending the meeting from the
 4 TMO, as it meant that the TMO would not have to go
 5 through a public procurement process to appoint
 6 a contractor on the Project."
 7 In paragraph 24 {ART00006544/9}, you go on to say:
 8 "I also understand that their view was that
 9 maintaining Leadbitter on the Project would also, in
 10 principle, provide value for money because they were
 11 already working on the adjacent KALC site and, in terms
 12 of practicalities and logistics that would provide some
 13 savings over having an entirely new contractor having to
 14 come to site and set up."
 15 Now, I think you weren't at that meeting, as you
 16 told us earlier. This is the second design team meeting
 17 of 24 May 2014.
 18 A. Yes.
 19 Q. Where you have set out what you say there in your
 20 statement that I have read to you at some length, did
 21 you take your conclusions there from the minutes that
 22 you read?
 23 A. Yes.
 24 Q. You say, as I've shown you, at the bottom of page 8, top
 25 of page 9, within paragraph 23, that the people at the

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1 meeting preferred to stay with Leadbitter at this time
 2 because it meant that they didn't have to go through
 3 a public procurement process.
 4 Why would some people at the TMO prefer not to go
 5 through a public procurement process to appoint
 6 a contractor on the Grenfell Tower project?
 7 A. At this particular point in time, the primary focus was
 8 on programme, and to go through a public procurement
 9 process would take several months. Therefore, if there
 10 was an option of being able to bring a contractor on
 11 board through an alternative means that would save them
 12 time, then that would obviously help them.
 13 Q. Right.
 14 Was there any, to your understanding, discussion
 15 about the preference for not having a public procurement
 16 process anything to do with cost?
 17 A. No.
 18 Q. Can I ask just in general terms -- and we will come to
 19 the re-tender later this afternoon, in fact we're going
 20 to come to it next, but before I get to it -- do you
 21 know in general terms why a design and build contract
 22 was chosen as the form of contract for the
 23 Grenfell Tower project?
 24 A. I believe that's because that's what we had on the KALC
 25 project, and I can't remember the specific conversations

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1 in relation to how the decision was arrived at though.
 2 I'm not sure whether there were discussions about
 3 alternative forms of contract.
 4 Q. Well, do you remember any discussions about
 5 an alternative form of contract?
 6 A. I wasn't involved in any particular discussions that
 7 I can remember, no.
 8 Q. Was there any consideration given to whether a design
 9 and build form of contract was suitable for a major
 10 refurbishment of an existing building such as
 11 Grenfell Tower?
 12 A. I can't remember.
 13 Q. Do you remember whether Artelia ever gave any advice on
 14 alternatives?
 15 A. I can't remember, no.
 16 Q. Or the form of contract which TMO should enter?
 17 A. No, I can't remember.
 18 MR MILLETT: Right.
 19 Mr Chairman, I note the time. It's 12.55. I'm
 20 about to turn to a different topic. I'm very happy to
 21 continue for five minutes.
 22 SIR MARTIN MOORE-BICK: Well, there are only a couple of
 23 minutes to go before the usual time for a break.
 24 MR MILLETT: Yes.
 25 SIR MARTIN MOORE-BICK: So if it's a new topic --

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1 MR MILLETT: It's a new topic, and I'm happy to start and
2 have five minutes on it and use the five minutes.
3 SIR MARTIN MOORE-BICK: You won't get five minutes; it's now
4 2 minutes.
5 MR MILLETT: Well, all right. In which case, I think I'm
6 getting the impression that this is an appropriate
7 moment.
8 SIR MARTIN MOORE-BICK: Well, if you're going to start a new
9 topic, it would seem to be more sensible to do that
10 after we have had the break.
11 MR MILLETT: I think it would, yes.
12 SIR MARTIN MOORE-BICK: All right.
13 Well, Mr Cash, as you can tell, we are about to have
14 a break now so we can all have some lunch.
15 THE WITNESS: Thank you.
16 SIR MARTIN MOORE-BICK: We will come back and resume your
17 evidence at 2 o'clock, please.
18 THE WITNESS: Thank you, will do.
19 SIR MARTIN MOORE-BICK: And please remember not to talk
20 about your evidence or anything related to it while
21 you're out of the room, all right?
22 THE WITNESS: I won't, thank you.
23 SIR MARTIN MOORE-BICK: If you would like to go with the
24 usher, please.
25 THE WITNESS: Thank you.

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1 (Pause)
2 SIR MARTIN MOORE-BICK: Thank you very much.
3 2 o'clock, please.
4 (1.00 pm)
5 (The short adjournment)
6 (2.00 pm)
7 SIR MARTIN MOORE-BICK: Right, Mr Cash, ready to carry on?
8 THE WITNESS: I am indeed, yes.
9 SIR MARTIN MOORE-BICK: Good, thank you.
10 Yes, Mr Millett.
11 MR MILLETT: Thank you, Mr Chairman.
12 Mr Cash, I would like to turn now to the topic of
13 the decision to re-tender in 2013.
14 A. Yes.
15 Q. By way of background, it's right, I think, that in late
16 2012 and early 2013, Chweecheen Lim produced a number of
17 budget cost estimates for the refurbishment, didn't she?
18 A. Correct.
19 Q. Just in brief, would you agree that a budget cost
20 estimate is a pre-tender report on costs so that the
21 client can compare them with the contractor's tenders?
22 A. Yes, they vary in detail as the design develops through
23 that stage, yes.
24 Q. And you monitored and supervised Ms Lim's cost analysis
25 process, I think, as you told us before.

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1 A. Correct.
2 Q. I just want to look at some documents showing the
3 Artelia cost analysis as against the TMO's budget.
4 We know from the documents that Ms Lim did, I think,
5 several cost estimates. Can you confirm what we know
6 from the documents already, that from stage D onwards,
7 every cost estimate that Ms Lim prepared was over the
8 TMO's eventual budget of £8.415 million for
9 construction?
10 A. Correct.
11 Q. Yes. That's £8.415 million.
12 Just an example of that, to see it in the documents,
13 we can see {ART00006140}, this is the stage D report
14 which Artelia prepared on costs of December 2012 for the
15 TMO. You can see that on page 1, and from page 3
16 {ART00006140/3}, if you look at the second-to-last
17 paragraph:
18 "Stage D costs have now been developed in parallel
19 with the latest design to give an estimated Total
20 Construction Cost of £8,415,000 excl VAT (incl
21 contingency @ 10% but excl fees) and an estimated
22 Overall Project Cost of £9,645,000 excl VAT."
23 Can you confirm that the Artelia estimates after
24 that did not reduce to a figure less than
25 £8.5 million-odd?

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1 A. I think that's correct, yes.
2 Q. Given that, did you ever think to yourself that the TMO
3 could not afford this project, given the discrepancy
4 with the TMO's budget that you had?
5 A. Yes, they -- well, in terms of the funding that they had
6 identified as being available at the time, yes.
7 Q. Did it ever occur to you that they couldn't afford this
8 project, in other words their budget was too low for
9 construction costs and fees?
10 A. Not that their budget was too low, that their
11 expectations were too high.
12 Q. Right. That may be the same thing depending on whether
13 the coin lands heads up or tails up.
14 A. It is, but in reality what you start with is what you
15 have in your pocket, and our -- you know, what we
16 normally find is that clients' expectations in terms of
17 what they try to achieve for the money that they have to
18 afford is normally in excess of their -- in terms of --
19 it's in excess of what they can afford. Therefore, it
20 has to be managed.
21 Q. I follow. I think we have your evidence on that.
22 Can I then turn to the Leadbitter costs.
23 Now, in early 2013, Ms Lim engaged with Mr Kotecha
24 of Leadbitter, didn't she?
25 A. Yes.

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1 Q. That was specifically on the subject of Leadbitter's
2 cost budget for the refurbishment. Do you remember
3 that?
4 A. Yes.
5 Q. Leadbitter's budgets were consistently higher than
6 Artelia's, weren't they?
7 A. Yes.
8 Q. If we look at your first witness statement at page 30
9 {ART00006544/30}, please, paragraphs 96 and 97. I would
10 like you to read those in full. I'll show them to you
11 in full. At 96 you say:
12 "The TMO was concerned about the gap between
13 Leadbitter's costs and its budget, as seen in Paul
14 Dunkerton's emails to Alun Dawson on 15 March 2013 ...
15 In Alun's response to Paul Dunkerton ... he noted
16 Leadbitter's continued failure to engage with the
17 questions asked of it, as follows:
18 "As discussed when we met, the level of detail
19 being provided by Leadbitter is very lean, even
20 acknowledging that it is based on Stage D information
21 (see attached by way of example - we have repeatedly
22 asked for more detailed breakdowns which Leadbitter have
23 not provided).
24 "This makes it very difficult for us to make proper
25 comparisons - we hope therefore that the proposed

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1 face-to-face meetings with Leadbitter and their supply
2 chain will allow us to interrogate their
3 figures/allowances in more detail and so help to unblock
4 this current impasse and thus put us in a position to
5 give you clearer advice on the matter ...".
6 "Alun continued to press Leadbitter for better
7 information, as seen in his emails between 15 and 20
8 March 2013 ... However, Leadbitter continued to be
9 unresponsive, despite Peter Maddison making his
10 frustration clear to Colin Chiles in his email on
11 20 March 2013 ... Alun also re-iterated his concerns to
12 Colin Chiles on 21 March 2013 ..."
13 Now, you say in paragraph 97 there that Leadbitter
14 continued to be unresponsive. Did you mean that they
15 just didn't communicate at all?
16 A. I think that was the implication, yes.
17 Q. Yes. I mean, they wouldn't break down their costs into
18 segments; is that fair?
19 A. Correct.
20 Q. And they didn't agree certainly with Artelia's costs.
21 A. Correct.
22 Q. Is there anything else they failed to do by way of
23 communication?
24 A. I can't remember if there were any other specifics.
25 Q. Ms Lim, who had done the detailed analysis of

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1 Leadbitter's costs, says in her evidence that she felt
2 that Leadbitter had not provided adequate detail or
3 support for its figures. Were you of that mind at the
4 time?
5 A. Yes.
6 Q. She also says that she wasn't convinced by what
7 Leadbitter were saying and found their lump sum approach
8 suspicious. That's her witness statement,
9 {ART00005817/15}, paragraph 53.
10 Again, were you of that mind at the time as well?
11 A. I wouldn't say that I was suspicious, I was just
12 concerned that they weren't giving sufficient detail to
13 allow us to interrogate their figures to find out what
14 was actually contained within their budget estimates.
15 Q. Very well.
16 We have seen at paragraphs 96 and 97 of your
17 statement that you have given a sort of recitation of
18 the record shown by those emails. Can we go to an email
19 from Ms Lim to Mr Dawson at {ART00006095}. This is at
20 21 January 2013, and she says:
21 "Hi Alun,
22 "Unfortunately there's no breakdown provided by
23 them, just a lump sum figure.
24 "It is difficult to take a view at this stage as
25 they didn't provide any rates ..."

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1 And she makes some comments.
2 Would it be enough in principle for Leadbitter to
3 provide a lump sum figure and no rates?
4 A. It wouldn't allow us to do a reasonable comparison to
5 understand where the differences were between our
6 figures and theirs.
7 Q. And that's why you would want a breakdown, presumably?
8 A. Correct.
9 Q. And rates, I see.
10 Were you personally looking for any of the detail of
11 Leadbitter's figures during this period? This is
12 January 2013 through to April 2013.
13 A. Yes.
14 Q. Did you think Leadbitter should have provided more
15 detailed breakdown and rates?
16 A. Yes, I do.
17 Q. Did your view of Leadbitter during this period, from
18 January 2013 onwards, become any more positive or did it
19 stay the same, that they remained unresponsive?
20 A. It remained the same, despite requests for them to
21 provide further information.
22 Q. Right.
23 Let's look at Mr Kotecha's side of the story. He
24 was lead project surveyor for Leadbitter, and I would
25 like just to show you what he says in his witness

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1 statement. This is {LBI00003938/2}. He says there at
 2 paragraph 7:
 3 "Due to the limited design information provided by
 4 the client's professional team and the high-level nature
 5 of the specifications issued by the TMO and/or their
 6 professional team throughout the tender process, my
 7 knowledge and involvement in the Grenfell Tower
 8 refurbishment project was limited to carrying out
 9 a basic feasibility study, rather than the provision of
 10 detailed proposals. In this regard I worked with the
 11 set of tender documents provided by the client's
 12 consultant team in order to develop the basic cost plan
 13 issued by Appleyards into an elemental market tested
 14 cost plan, which is a more detailed review of the costs
 15 in a package by package breakdown which highlight the
 16 allowances for each construction package."
 17 Now, he is criticising the design information
 18 provided by the Grenfell professional team as limited
 19 and high-level.
 20 Would you agree with Mr Kotecha's assessment that
 21 the designs and specifications that Leadbitter received
 22 were limited and high-level?
 23 A. No, I wouldn't agree with that, on the basis that they
 24 were reaching stage D, which is a technical level.
 25 Q. Right.

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1 Can we look at Colin Chiles' witness statement. He
 2 is another gentleman mentioned by you in the context of
 3 this exchange or period. This {LBI00003936/5},
 4 paragraphs 17 and 18. Under the heading "Cost proposals
 5 and submissions made by Leadbitter", he says:
 6 "As a general comment, given the underdeveloped
 7 nature of the client specification and design,
 8 Leadbitter was not in a position to put forward firm
 9 pricing proposals. Nevertheless, we continued to
 10 provide budget advice and began to review buildability
 11 Issues. The design was in an undeveloped state and
 12 whilst areas of the design developed in a good way (for
 13 example internals on the lower floors) the brief
 14 remained fluid with elements being added, removed or
 15 adjusted in various areas of the Tower. Certain areas
 16 of the design were subject to re-design for budgetary
 17 reasons and consequently, the Leadbitter team had to
 18 carry out repeat costing exercises."
 19 Then at 18 he says this:
 20 "The design was far from sufficient to provide
 21 detailed prices and our commercial team had to take
 22 robust views of budget costs to ensure a deliverable
 23 budget could be achieved, with the advice of supply
 24 chain members where necessary. The headline figure in
 25 our initial budget was substantially above the cost plan

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1 sum provided by Appleyards. Alternative materials to
 2 adjust budgets were proposed by the client's design
 3 team. However, as the design was underdeveloped this
 4 did not permit substantial movement of the budget
 5 costs."
 6 That's what he says.
 7 Picking out what he says there as the design in
 8 an undeveloped state and fluid, was it your view that
 9 the design was sufficiently detailed for a contractor to
 10 be able to provide a cost breakdown which the TMO and
 11 Artelia sought?
 12 A. Of the level of detail that we were looking for. We
 13 were looking for supporting information that sat behind
 14 the lump sum figures, we weren't looking for a firm
 15 pricing proposal.
 16 Q. I see.
 17 Do you accept that the design was underdeveloped and
 18 fluid, such that it was justifiably difficult for
 19 Leadbitter to provide detailed prices?
 20 A. No, I don't. I think that there was sufficient detail
 21 within the information that had been provided. There
 22 were elements that were still fluid in terms of final
 23 decisions, but the principles of design were still
 24 there.
 25 Q. Right.

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1 Can you account for why it is that both of these
 2 individuals from Leadbitter, Mr Kotecha and Mr Chiles,
 3 were of this view, that the design was undeveloped and
 4 fluid and insufficient information was available to them
 5 to be able to provide a detailed breakdown of the costs?
 6 A. I don't know why they say that.
 7 Q. You can't account for it? Right.
 8 Well, let me just try and give you some examples.
 9 I mean, do you remember -- and we can go to documents if
 10 you need it, but let me just suggest them -- Leadbitter
 11 had suggested value engineering on the cladding, stairs
 12 and reduced insulation. Do you remember that?
 13 A. Yes.
 14 Q. And they had suggested savings on cladding of £300,000
 15 in fact, hadn't they?
 16 A. Yes.
 17 Q. Do you remember that?
 18 A. Yes.
 19 Q. Also, I think there was a suggestion from Andrew McQuatt
 20 of Max Fordham in February of 2013 about alternative
 21 boilers, do you remember that?
 22 A. Vaguely, yes.
 23 Q. So even at this stage is it right that, in fact,
 24 Leadbitter, although they couldn't provide the
 25 breakdown, were nonetheless suggesting ways of reducing

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1 their budget by way of value engineering?
 2 A. Correct, but that was in respect of potential changes,
 3 not in respect of the design that had been carried out
 4 to that point in time.

5 Q. Yes, I follow.

6 Now, as part of the cost analysis work, I think we
 7 know that Artelia sought to check the prices of other
 8 contractors. Do you remember that?

9 A. Yes.

10 Q. Can we look at {ART00009136}, please. This is
 11 an internal Artelia email of March 2013, and you're
 12 copied in on all of the emails in this string, which
 13 runs over a number of pages.

14 If we can just look at the top one, it's from
 15 Alun Dawson to Robert Powell and you're copied in on it,
 16 22 March 2013, and he says to Robert Powell:

17 "Chweecheen has now advised that Wates and
 18 Willmott Dixon have come back with the two best
 19 performance ratings from our database so I'd suggest
 20 they're the two we need to talk to for the purpose of
 21 this high level cost-check exercise.

22 "In terms of timeframe, this will largely depend on
 23 when we are next meeting with the Client which has yet
 24 to be resolved (pending Leadbitter's availability), but
 25 I would have thought we should aim to have costs back

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1 for the end of next week latest."

2 Now, the reference there to a high-level costs check
 3 exercise, do you remember that topic being discussed?

4 A. Yes, I do.

5 Q. Do you know why a high-level costs check was done?

6 A. To try and provide a check against the cost estimate
 7 that we had prepared and against the figures that
 8 Leadbitter were submitting to see if -- see where
 9 a market test might put -- effectively another opinion
 10 of what the job might cost.

11 Q. Right. Is this something that happens on other
 12 projects, on such projects generally?

13 A. Yes, it is.

14 Q. It is, is it?

15 A. Yes.

16 Q. Let's go to {ART00009101}, because we can scroll forward
 17 in time to 23 April 2013 to this document, Mr Cash.
 18 This is a status report of April 2013 produced by
 19 Appleyards.

20 A. Correct.

21 Q. Now, do you remember that this was issued to
 22 Paul Dunkerton of the TMO and signed off by
 23 Robert Powell of Appleyards, as it then was?

24 A. I remember it being issued, but I can't remember it
 25 specifically being issued to Paul Dunkerton.

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1 Q. No, all right.

2 Well, when it was issued, do you think that you read
 3 it or approved it in any way before it was sent out?

4 A. I was aware of the contents of it, yes.

5 Q. Did you have any personal input into it?

6 A. It was prepared by Robert Powell and then I would have
 7 reviewed it.

8 Q. Right. I see.

9 So if we look at page 18 {ART00009101/18} in this
 10 document, under paragraph 5 "Procurement - Principle
 11 Contractor", and picking this up at the third paragraph
 12 down, it says:

13 "Given the present issues surrounding the project
 14 and acknowledging that the cause of at least some of the
 15 delays and inability to reconcile (sic) the cost
 16 plans between Appleyards as PQS and Leadbitter, have
 17 been suggested to due to a lack of responsiveness and
 18 pro-activeness on Leadbitter's part, it has been
 19 suggested that the TMO might be best suited to procure
 20 an alternative Principal Contractor for the project."

21 Do you see that?

22 A. Yes.

23 Q. Then in the next paragraph it says:

24 "It is currently being considered that an
 25 alternative framework might give the TMO access to other

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1 contractors, capable of better delivering the GTRP
 2 project."

3 Then five paragraphs down on the same page, it says:

4 "To date the LHC framework has been identified as
 5 a possible solution and a number of contractors
 6 available on this framework have been requested to
 7 provide a check price against Leadbitter based on
 8 a short scope of work and drawings provided to them."

9 Then there are four entities set out: Wates,
 10 Willmott Dixon, Higgins Contracts and Lakehouse.

11 Can you help us, the LHC framework, what is that?

12 A. It is a framework that is -- been through
 13 a pre-selection process to identify contractors for
 14 a particular -- for particular works.

15 Q. Now, RBKC were part of the LHC framework southern
 16 England region, weren't they?

17 A. I believe so, yes.

18 Q. Does that mean that they could procure works from each
 19 of those LHC contractors listed in the bullet points?

20 A. Yes.

21 Q. Just to explain for everyone's benefit, that meant,
 22 didn't it, that the TMO could appoint them without
 23 a competitive tender?

24 A. I'm not sure what the terms of the LHC framework are
 25 specifically, as to whether they would be required to go

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1 through a -- what is termed a mini-tender process or
 2 whether they could be appointed direct.
 3 Q. I see. But whether it's one or the other of those, it
 4 wouldn't be a full-blown OJEU style tender?
 5 A. Correct.
 6 Q. Right.
 7 Now, do you remember that none of those
 8 contractors -- Wates, Willmott Dixon, Higgins or
 9 Lakehouse -- returned check price estimates in the end,
 10 did they?
 11 A. No, they didn't.
 12 Q. And LHC, does that stand for London Housing Consortium?
 13 A. Yes.
 14 Q. Rydon I think was also asked to provide a market check,
 15 wasn't it?
 16 A. Yes, it was.
 17 Q. We can see that from the next document I want to show
 18 you, {ART00009105/4}, please. That's an email run in
 19 April 2013, and page 4 takes us to the email of 5 April
 20 from Robert Powell to Steve Blake. Do you see that?
 21 A. Yes.
 22 Q. We can keep on that one. There are a number of emails,
 23 but that's the one to look at. He says to Steve Blake
 24 in the second paragraph:
 25 "Perhaps you would have a look at the attached -

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1 supporting information for the proposed redevelopment of
 2 Grenfell Tower - RBK&C.
 3 "If you would be prepared to venture a check price
 4 against this it would help us - recognising that we need
 5 to agree a usable framework I means of procurement with
 6 RBK&C.
 7 "As mentioned, we are talking to more than one
 8 contractor in consideration of such an appointment and
 9 our client is looking to utilise their existing
 10 frameworks to procure same."
 11 Did Artelia have an existing relationship with
 12 Rydon?
 13 A. No.
 14 Q. Do you know who put Robert Powell in touch with
 15 Steve Blake at Rydon?
 16 A. No.
 17 Q. Was it Peter Maddison, possibly?
 18 A. I don't know.
 19 Q. Right.
 20 Can we then look at {ART00008434}. This is a little
 21 earlier in time, and it's an 8 March 2013 email run
 22 about the costs check.
 23 On 8 March you can see that Alun Dawson writes to
 24 you and Chweecheen Lim saying:
 25 "Simon/Chweecheen

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1 "As I thought, Rydon aren't on either framework -
 2 please see below - so (whilst I've already spoken to
 3 them this afternoon and await a call back on Monday) I'm
 4 not sure that they could be used moving forwards?"
 5 Do you see that?
 6 A. Yes.
 7 Q. Then you come back by way of response about an hour
 8 later and say:
 9 "Alan(sic),
 10 "My view is that you explain the situation to Rydon
 11 and see if they are still happy to assist. They may say
 12 yes as a means of developing a relationship with
 13 Appleyards."
 14 Now, we can see that you have been involved in
 15 a discussion about a month before about approaching
 16 Rydon to quote. So at this time, Rydon weren't part of
 17 any framework involving the TMO, were they?
 18 A. They weren't involved in either of the particular
 19 frameworks that were under consideration.
 20 Q. Would that mean or did that mean at the time that the
 21 TMO wouldn't be able to appoint Rydon directly to the
 22 project or off one of the frameworks; it meant that
 23 Rydon would have to compete in an open competition and
 24 win it?
 25 A. Unless there was another framework that the TMO could

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1 procure through that Rydons were actually part of.
 2 Q. Indeed, but did you know of one?
 3 A. I didn't.
 4 Q. And I don't think one was suggested, was it?
 5 A. I don't believe so.
 6 Q. No.
 7 Now, just going back to the email to which you're
 8 responding, this is from Alun Dawson to you on 8 March,
 9 in his last sentence there he says:
 10 "Any thoughts on this as I'm a little reluctant to
 11 draw them in under false pretences and/or do you have
 12 any preferences for A N Other?"
 13 Did you envisage at this time that Rydon might be
 14 appointed to the Grenfell project?
 15 A. I had no intent -- no vision that they may or may not
 16 be.
 17 Q. Right.
 18 I think you wanted to be above board with Rydon and
 19 make clear to them that they were only being asked to
 20 provide a price, but if they were going to come in, they
 21 would have to take part in an open tender?
 22 A. Potentially, yes.
 23 Q. At all events, I think it's right in the end that Rydon
 24 didn't actually provide a market price or market check
 25 price to Artelia at this time, did they?

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1 A. I don't think they did, no.
 2 Q. Can we then turn to a different subtopic, which is
 3 RBKC's role in this.
 4 Can we go first to {ART00000636}, please, this is
 5 an email from you to an email address called
 6 "11833.GrenfellTower", subject: "Grenfell Tower
 7 Regeneration Project - Leadbitter", and the text is
 8 addressed to Alun Dawson.
 9 Just help me, what's "11833.GrenfellTower"?
 10 A. That's an internal email address which would distribute
 11 to myself, Alun Dawson, Chweecheen Lim and Keith Bushell,
 12 and David Hale. So it was -- rather than using
 13 individual internal email addresses, it was a group
 14 email address.
 15 Q. Yes, I see, I follow.
 16 You say:
 17 "Alun,
 18 "You should also be aware of the e-mail that
 19 Laura Johnson has sent to Leadbitter, which is more
 20 specific than Mark's and clearly states that they are
 21 recommending the TMO do not proceed with Leadbitter."
 22 Your email, as we can see, forwards an email from
 23 Laura Johnson of RBKC. It's a little bit below that,
 24 but do you remember that?
 25 Perhaps we should look at it. If you go to

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1 {ART00000637}, this is the email from RBKC. Do you see
 2 that? It's dated 3 January 2013. That's what you
 3 forwarded to the Artelia team; yes?
 4 A. Yes.
 5 Q. It's addressed to Cliff Thomas at Leadbitter from
 6 Laura Johnson. If you look at the third paragraph, it
 7 says:
 8 "There was originally a total of around £60M
 9 available for the KALC project and Grenfell Tower. RBKC
 10 will now no longer be recommending the TMO proceed with
 11 you on the latter and will advise them to re-tender the
 12 works to a list of contractors not including
 13 Leadbitter."
 14 Now, just pausing there, is it right that in
 15 January 2013 you knew that RBKC did not want Leadbitter
 16 on the Grenfell project at all?
 17 A. That was the implications from Laura, yes.
 18 Q. Do you know why RBKC did not want Leadbitter on the
 19 Grenfell Tower project at this time?
 20 A. Because they'd had a lot of protracted negotiations in
 21 trying to get to financial close on the KALC project,
 22 and saw that -- in terms of Leadbitter not providing the
 23 information that had been requested in relation to the
 24 cost estimates, they could see something similar
 25 happening again on the Grenfell Tower project.

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1 Q. Right.
 2 When you saw that email, did you take any action?
 3 A. I can't remember if I did.
 4 Q. What struck you from that email? I mean, what was your
 5 reaction to it?
 6 A. That RBKC had lost patience with Leadbitter, and didn't
 7 want to go through the same hoops again with the
 8 Grenfell Tower project.
 9 Q. Right.
 10 Given what RBKC had said in clear and firm terms,
 11 that they no longer want Leadbitter on the
 12 Grenfell Tower project, why did you and the TMO want
 13 still to see if you could negotiate Leadbitter down to
 14 a better price?
 15 A. I can't remember why we did that, and I can't remember,
 16 in the terms of the context of this particular email
 17 between Laura and Cliff, what bearing that had in terms
 18 of instructions to the TMO --
 19 Q. Right.
 20 A. -- in taking Leadbitter forward.
 21 Q. How well known, to the best of your knowledge and
 22 understanding, looking back on it, was RBKC's view about
 23 Leadbitter within the TMO itself?
 24 A. I'm not sure.
 25 Q. Did you ever have any discussion at this time with

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1 anyone at the TMO about RBKC's desire not to use
 2 Leadbitter on the Grenfell Tower project?
 3 A. I can't remember. I don't believe so.
 4 Q. You see, Artelia doesn't seem to have done anything in
 5 response to that email, but does investigate
 6 re-procurement in the February and March of 2013 and
 7 into the April, as we've seen, I've already shown you
 8 that.
 9 My question really is: given the fact that RBKC had
 10 said they don't want Leadbitter on the Grenfell Tower
 11 project, why did you continue to see if you could get
 12 Leadbitter down by way of examining their costs?
 13 A. RBKC weren't our client in reference to the
 14 Grenfell Tower project.
 15 Q. So did you ignore what Laura Johnson was saying on the
 16 basis that, since she wasn't your client, it wasn't up
 17 to them?
 18 A. Our client, the TMO, wanted us to carry on discussions
 19 with Leadbitter.
 20 Q. I follow.
 21 What we get, I think, from the documents at that
 22 time, the first quarter of 2013, is that Artelia was
 23 trying to bridge the gap between its own cost analysis
 24 and that of Leadbitter's, but at the same time, and
 25 perhaps separately, TMO was investigating

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1 re-procurement.
 2 Is that a fair summary of what was happening in
 3 those months?
 4 A. Yes. When you say "bridge the gap", what we were trying
 5 to do is understand why the gap, not necessarily
 6 bridge it.
 7 Q. I understand that, my poor choice of words. Understand
 8 the gap.
 9 A. Yes.
 10 Q. But other than that correction, is that a fair
 11 summary --
 12 A. Yes.
 13 Q. -- of the events at that time?
 14 A. Correct.
 15 Q. Can we then turn to what happened in the spring of 2013,
 16 leading to the decision to put the project on hold later
 17 that year.
 18 We start, I think, with {ART00009101}. Now, this is
 19 the status report produced by Artelia in April 2013.
 20 Did you have any involvement in the production of this
 21 document?
 22 A. Not in the production, only in the overview of it, once
 23 it had been produced.
 24 Q. Did you approve it once it had been produced?
 25 A. I would say yes, in terms of the loosest sense.

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1 I didn't say that, "Yes, I approve it", but I reviewed
 2 it and I didn't have any comment on it.
 3 Q. Very well, okay. Before it went out, you were happy
 4 with it, were you?
 5 A. Correct.
 6 Q. Do you know who actually wrote it?
 7 A. Robert Powell.
 8 Q. Did he have any help or did he do it himself?
 9 A. I believe he did it himself.
 10 Q. Okay.
 11 Now, if we go to page 5 {ART00009101/5}, we find
 12 an executive summary, and we can see from the second
 13 paragraph in that that the report had been generated
 14 because the project had been extremely slow, and it says
 15 that the scheme was outside the parameters for time and
 16 cost. I'm summarising it, but that's a fair summary of
 17 the background, isn't it?
 18 A. Yes.
 19 Q. In the middle of page 5 we can see a seven bullet-point
 20 list summary of the contributory factors to the present
 21 situation:
 22 "In summary, the contributory factors to the present
 23 situation are:
 24 •" Client brief has been allowed to develop in a
 25 piecemeal fashion over time;

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1 •" Absence of a controlled and managed scope for the
 2 project;
 3 •" Late commitment to a defined construction budget;
 4 •" Historic relationships and contractual position
 5 regarding the associated KALC project may have
 6 frustrated good and proactive progress;
 7 •" Absence of earlier intervention;
 8 •" Absence of proper change control applied to the
 9 design brief; and
 10 •" Slow reaction of the proposed contractor to
 11 address and align cost plans."
 12 Do you agree that that list accurately summarised
 13 the state of the project as at April 2013?
 14 A. Yes, I do.
 15 Q. Can we look at the bottom of page 8 {ART00009101/8},
 16 then, and over to page 9. We can see some further
 17 factors there, some of which repeat previous points
 18 about what led the project to stall. It says at the
 19 bottom of page 8:
 20 "However at today's date the project has effectively
 21 stalled, primarily due to the inability to align the
 22 cost plans of the contractor and the PQS, the difference
 23 being in excess of £1.2 million.
 24 "Further, there is circumstantial evidence to
 25 suggest the following:

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1 •" That the scope of the project developed over time
 2 without clear guidance on budget from client;
 3 •" Early cost plans indicated affordability of the
 4 project; and
 5 •" Scope creep due to an absence of clarity over
 6 budget and design team inclusion of clients requests for
 7 scope enhancement and perceived requirements from local
 8 authority planners."
 9 "In addition to the foregoing, there have been
 10 several changes of personnel involved with the project
 11 in each of the client, professional and contractor teams
 12 which may have contributed to the 'issues' being faced
 13 by the project at today's date."
 14 Do you agree that those three bullet points were
 15 also contributing factors?
 16 A. Yes, I do.
 17 Q. Right.
 18 Let's look at page 9 {ART00009101/9} a little lower
 19 down, the second paragraph I have just read to you which
 20 says, "In addition to the foregoing ... several changes
 21 of personnel", there. Can you just enlighten us as to
 22 what that meant, what was being referred to there?
 23 A. That there were different -- there were changes along
 24 the route by -- we had had changes in terms of our own
 25 personnel because of people leaving the business and

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1 having to bring in new people; that the TMO --
 2 Mark Anderson, when he started, was only in an interim
 3 role and his role was then passed down to
 4 Paul Dunkerton, and that -- I'm not sure if by this time
 5 Claire Williams was already on board; and that there
 6 were changes in personnel as well in terms of the
 7 Leadbitter team, in terms of who was dealing with
 8 aspects of the project as well.

9 Q. Yes, I see.

10 Who were the people leaving the business from
 11 Artelia's end?

12 A. It would have been Alun Dawson.

13 Q. Ah, okay. When did he leave?

14 A. Sorry, when?

15 Q. Yes. It's in his statement, I think, but --

16 A. I can't remember the exact dates, but it's obviously
 17 covered within his statement.

18 Q. Right.

19 We know that Claire Williams wasn't in fact involved
 20 in this project until the September of 2013, but we also
 21 know Peter Maddison joined it in the January of that
 22 year.

23 A. Yes.

24 Q. Is that one of the features or factors that is referred
 25 to here?

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1 A. Yes. And, again, another person who was introduced to
 2 the project -- and, again, I can't remember the exact
 3 dates -- was David Gibson as well.

4 Q. I follow. So flux within the client team, in
 5 a nutshell.

6 A. Yes.

7 Q. Now, I just put to you that Peter Maddison became
 8 involved with this project in the January of 2013. Do
 9 you remember that?

10 A. I --

11 Q. It's a matter of record, but do you remember it?

12 A. I can't remember specifically, but yes, I know that he
 13 became involved, yes.

14 Q. Did you notice any particular change in attitude from
 15 the TMO once he became involved?

16 A. Not that I can remember.

17 Q. There is also a reference to changes in each of the
 18 professional and contractor teams. What was that
 19 a reference to, do you know?

20 A. I believe that it would have been a reference to,
 21 I suppose, like ourselves, a change in personnel, people
 22 who had left the business and had been replaced or
 23 people who had been moved between projects.

24 Q. Right. Who specifically? Can you give us any names,
 25 dates?

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1 A. I can't remember.

2 Q. No? Right.

3 Let's look at page 18 {ART00009101/18}. At the
 4 bottom of this page you will see a numbered list, and
 5 this is a list of -- well, it says:

6 "Whilst this exercise is underway, Appleyards would
 7 suggest this is not a viable option, for the following
 8 reasons."

9 The "this" is a re-tender, essentially. I'll show
 10 you the list:

11 "1. PQS project costs maintain that the overall
 12 cost of the scheme is in excess of the budget, which
 13 would indicate more fundamental action is required
 14 rather than to just change the contractor.

15 "2. Usurping Leadbitter at this stage throws up
 16 legal questions about the TMO's ability to do this.
 17 Appleyards are unable to comment on the legalities of
 18 this and recommend separate legal advice is sought if
 19 this were to remain an option.

20 "3. Replacing the Principal contractor at this
 21 stage will incur additional time and expense without the
 22 guarantee that the TMO would be any better served by the
 23 replacement.

24 "4. Leadbitter's knowledge of the overall scheme,
 25 the client and the project team is lost."

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1 Over the page to 9 {ART00009101/19}, it says:

2 "Accordingly, and given the recommendations
 3 elsewhere in this report, Appleyards recommend retaining
 4 Lead bitters as preferred contractor for the scheme in
 5 whatever form it is finalised."

6 Now, PQS there, is that a reference to project
 7 quantity surveyor?

8 A. Yes.

9 Q. That's Ms Lim, isn't it?

10 A. Correct.

11 Q. Under your supervision.

12 A. Yes.

13 Q. Before I ask you further about this, can I also show you
 14 page 25 {ART00009101/25} of the same document. Here we
 15 see Artelia's conclusions and recommendations, and in
 16 the second paragraph down, it says:

17 "2. Revise the scope of the project ..."

18 I'm so sorry, I'm looking at the wrong paragraph.
 19 I'm going to come back to that one shortly. Before
 20 I do, it's a little higher up the page, it's the second
 21 main paragraph under "Conclusion & Recommendation" --
 22 I will come to that list later, but it says:

23 "The project is currently over budget with little
 24 expectation that if left to iterative reviews with the
 25 contractor giving diminishing returns, that costs will

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1 be aligned or reduced sufficiently to make the scheme
 2 affordable ."
 3 Then in the next paragraph it says:
 4 "The TMO has advised it has desires to change the
 5 overall scheme to accommodate a change in brief and the
 6 proposed VE options to afford these proposed changes may
 7 be consumed simply to bring the existing scheme within
 8 the realms of affordability ."
 9 Then if we look at the third paragraph from the
 10 bottom on page 25, it goes on to say:
 11 "Accordingly, it is Appleyards opinion that unless
 12 the project, in its current guise, is stopped and
 13 a fundamental review embarked upon to re-define the
 14 scope, programme and cost, it will fail ."
 15 So, bearing in mind those sections of the report
 16 I have read to you, is it fair to summarise Artelia's
 17 recommendations as being: don't replace Leadbitter as
 18 the main contractor, one; yes?
 19 A. Yes.
 20 Q. And, secondly, do have a fundamental review of the scope
 21 of the project to redefine the scope, programme and
 22 cost?
 23 A. Correct.
 24 Q. If you look at the recommendations at the bottom of
 25 page 25 now, it says:

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1 "Accordingly it is our recommendation:
 2 "1. To stop the scheme in its existing guise
 3 immediately, pending a design team review.
 4 "2. Revise the scope of the project, including the
 5 Decent Homes requirements with the £8.5m budget in mind
 6 & issue formally;
 7 "3. Revise the project programme."
 8 And there are other things too.
 9 So those are Artelia's recommendations.
 10 In essence -- is this right, Mr Cash? -- the real
 11 problem here was that the TMO simply couldn't afford the
 12 project as designed within the existing budget?
 13 A. Correct.
 14 Q. We then move on in time. That's the status report in --
 15 well, let me suggest to you -- extremely clear terms in
 16 April 2013.
 17 A. Yes.
 18 Q. I mean, I suppose this is an Aunt Sally question, but
 19 were you in any doubt when you saw this document about
 20 what it was Artelia was telling your client?
 21 A. No doubt at all.
 22 Q. No.
 23 Let's go to {ART00006252}, please. This is an email
 24 of 21 May 2013, a month later, from Robert Powell to
 25 Philip Booth about a meeting with the TMO, and you're

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1 copied in. It says:
 2 "Philip,
 3 "Interesting meeting this am!
 4 "Basically - Peter Maddison has been over-ruled by
 5 Laura Johnson
 6 "She wants to keep the works for the boxing club and
 7 nursery and doesn't want to progress the kitchens &
 8 bathrooms at this stage necessarily"
 9 "Also PM not keen on progressing with
 10 Leadbitter
 11 "Our report kicking this all off was based upon the
 12 objective of preserving programme - This now not so
 13 important. Value for money is"
 14 "Accordingly we are likely to repro cure scheme via
 15 OJEU!"
 16 Now, just looking at that, Laura is Laura Johnson,
 17 is it?
 18 A. Correct.
 19 Q. Presumably.
 20 Then it goes on. It looks as if you attended this
 21 meeting; is that right?
 22 A. Yes, that's correct.
 23 Q. You were there, right.
 24 When Robert Powell used the words "over-ruled",
 25 "Peter Maddison has been over-ruled by Laura Johnson",

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1 what did you understand he meant?
 2 A. That Laura -- I believe that Peter Maddison reported to
 3 Laura, as head of social housing within RBKC, and that
 4 she had effectively told him that what she wanted would
 5 basically take precedence over what Peter Maddison was
 6 trying to achieve, and as, I suppose, the major funder
 7 for the project, contributor of funds to the project, he
 8 obviously had to take cognisance of what she was saying.
 9 Q. Right.
 10 So as you understood it, it sounds from what you
 11 have just told us that RBKC had some sort of decisive
 12 influence about whether or not this contract would be
 13 re-procured; is that right?
 14 A. It appears so, yes.
 15 Q. It appears so, but did it appear so to you at the time?
 16 A. Yes.
 17 Q. Really?
 18 Did you ask yourself or ask the TMO how that could
 19 be?
 20 A. No, because at the end of the day, that's a relationship
 21 above our client.
 22 Q. Were you aware that, as Rob Powell says here,
 23 Peter Maddison was not keen on progressing with
 24 Leadbitter?
 25 A. I was aware of that, yes, from the meeting.

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1 Q. What gave you that impression, do you remember?
 2 A. He had told us that at the meeting.
 3 Q. Do you know why he wasn't keen on progressing with
 4 Leadbitter?
 5 A. I don't know, other than he said that he wasn't keen to
 6 progress with Leadbitter, I think -- whether that was
 7 because he was being influenced by -- or being overruled
 8 or whether that was his own opinion, I don't know.
 9 Q. You didn't explore that with him?
 10 A. No.
 11 Q. Okay.
 12 Again, looking at the words of the email, we can see
 13 that the objective was value for money. Can you explain
 14 what you understood was meant by the preserving
 15 programme not being so important and value for money is
 16 or was?
 17 A. In a construction project there are three particular
 18 criteria which you identify in terms of priorities, so
 19 that's time, cost and quality, and when we set out on
 20 this particular project, time was of the essence in
 21 terms of trying to get the project done as quickly as
 22 possible and trying to complete it in line with the KALC
 23 project. This meeting effectively reappraised that in
 24 terms of priorities and put value for money as the key
 25 priority over programme, and ensuring that the project

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1 was delivered within the approved budget.
 2 Q. Right. You didn't mention quality in your description
 3 after having referred to it. Did you have any
 4 impression that, given that the programme was not so
 5 important, value for money is, where did quality sit in
 6 that hierarchy?
 7 A. I would say that quality and programme were probably of
 8 equal importance after the value for money.
 9 Q. After the value for money?
 10 A. In terms of quality relative to expensive -- expense of
 11 quality, not quality as in deleterious quality.
 12 Q. I follow. I think I follow. Are you saying that there
 13 is a difference when you look at quality between how
 14 much you spend on something of equivalent safety on the
 15 one hand, and saving money by using cheaper products
 16 which are less safe on the other?
 17 A. I'm not saying that, no.
 18 Q. Okay. Can you just explain your last answer?
 19 A. The quality is in reference to the cost of maybe
 20 different types of materials, but they all have to be
 21 compliant in terms of whatever regulatory compliance
 22 they must conform to.
 23 Q. Yes, I follow.
 24 Now, let's move forward in time. {ART00006232},
 25 please. This is an addendum to the status report dated

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1 May 2013, and we can see from elsewhere in the
 2 document -- I needn't, I think, show it to you -- that
 3 it was issued on 24 May -- it's on page 3, in fact, but
 4 we don't need to turn it up -- by Rob Powell and
 5 distributed to Peter Maddison.
 6 Did you see this addendum before it went out?
 7 A. I believe I did, yes.
 8 Q. Can we look at page 5 {ART00006232/5}, under the heading
 9 "Addendum". It's clear what it is.
 10 If we look at the first bullet point, it sits
 11 underneath a paragraph that says:
 12 "In the intervening period and following a meeting
 13 the TMO held with Laura Johnson of Royal Borough of
 14 Kensington & Chelsea in week commencing 13th May 2013,
 15 the TMO have clarified their position relating to
 16 a number of contributory factors to the scheme:
 17 • "Value for money is to be regarded as the key
 18 driver for the project."
 19 There are other things as well there.
 20 Then if you go to page 6 {ART00006232/6}, you can
 21 see the first and second paragraphs on page 6:
 22 "At a meeting between the TMO and Appleyards on
 23 21st May 2013, it was confirmed by the TMO that the
 24 question of programme should be considered subordinate
 25 to Value for Money on the project."

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1 Then it says:
 2 "In light of the foregoing, our original
 3 recommendation; to review options to replace the
 4 contractor as this will add further risk (cost and time)
 5 to the project must now be reconsidered. Indications
 6 are that value for money may be enhanced by re-procuring
 7 the construction element as opposed to proceeding with
 8 the existing contractor arrangement, perpetuated from
 9 the associated Kensington Academy and Leisure Centre
 10 Project."
 11 Now, we saw that the original recommendation in the
 12 status report was based on Artelia's opinion that
 13 replacing the contractor would not create the cost
 14 savings which had been sought. We saw that in the first
 15 edition of this report before this addendum.
 16 Can you explain why it was being said here in this
 17 addendum report that value for money may be enhanced by
 18 re-procuring the construction element?
 19 A. Because it would push it back into a competitive market.
 20 It wasn't actually saying that it would actually bring
 21 the project back into budget, which was a different
 22 matter entirely.
 23 Q. I think I follow that. The original recommendation was
 24 based on your view that replacing the contractor
 25 wouldn't create the cost savings that had been sought,

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1 but now it's being said that a re-procurement
 2 effectively would.
 3 A. No, what it was saying -- there were two different
 4 distinct parts here: one is that the brief and the scope
 5 of works were exceeding the budget available, so that
 6 was the unaffordability, and then in addition to that,
 7 the price that was being put forward by Leadbitters was
 8 even higher than our expectations were in terms of our
 9 budget estimate, and we felt that in terms of changing
 10 now to a programme driven -- sorry, from a programme
 11 driven to a value for money driven perspective, the
 12 price that was being offered by Leadbitters could
 13 actually be achieved -- we could achieve a better value
 14 for money against that in terms of being -- going
 15 through a competitive tender process, but it didn't
 16 necessarily mean that it would still be affordable
 17 within the TMO's budget.
 18 Q. What would a new contractor do by way of providing value
 19 for money that Leadbitter wouldn't or couldn't do?
 20 A. Because Leadbitters were in a negotiation position, they
 21 felt that they presumably had this project in the bag
 22 because they were already on the KALC project, and one
 23 of the things that we couldn't get to the bottom of in
 24 being able to interrogate the detail of their price was,
 25 for example, to what level they had allowed for risk or

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1 contingencies within the project, which a competitive
 2 tender may actually take a view on and take commercial
 3 views on, rather than trying to load a price with
 4 everything that they could think might actually occur on
 5 a project and, therefore, hedge their bets, so to speak.
 6 Q. But nothing had changed fundamentally about the
 7 circumstances of the project, had it?
 8 A. Correct.
 9 Q. And it was too big for the budget, and the design wasn't
 10 controlled. All those factors that you had spelt out in
 11 your April status report remained the position, didn't
 12 they?
 13 A. Correct, and we weren't changing our views on that
 14 particular element.
 15 Q. Well, we will see, because given that those things
 16 hadn't changed, why was re-procurement suddenly a good
 17 idea?
 18 A. Because it was a means of trying to procure a better
 19 value price, rather than going through a negotiated
 20 process. It's a known fact in the industry that
 21 negotiated prices are generally higher because people
 22 don't feel that they're in competition and are therefore
 23 able to put in the levels of profit that they require
 24 and therefore -- and also load prices with all the
 25 levels of costs of risks that they may encounter, rather

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1 than taking some of those risks on board themselves.
 2 Q. I thought you had accepted that replacing the
 3 contractor, not negotiating but replacing Leadbitter,
 4 wouldn't create the cost saving sought; that was the
 5 effect of the report in April.
 6 A. Correct, that was -- so replacing Leadbitter wouldn't
 7 get -- that was -- one of the root causes was that the
 8 expectations of the TMO were greater than the
 9 affordability of what they had available in their
 10 pocket.
 11 Q. Yes.
 12 A. But then also, we had an issue in terms of trying to
 13 negotiate with a contractor who was also trying to push
 14 the figures up even higher than our expectation was. So
 15 we had -- one issue was trying to curb the TMO's
 16 expectations in terms of their scope of what they wanted
 17 to achieve in the project, and the other one was trying
 18 to achieve and procure a contractor and secure
 19 a contract at a value that was also at a good level.
 20 And if the scope had been brought down to the -- a level
 21 that was affordable within the budget, then
 22 a competitive procurement was more likely to also
 23 procure a contractor at that level as well.
 24 Q. I see. So you are saying that the advice not to replace
 25 Leadbitter as the main contractor meant that the obverse

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1 was keeping Leadbitter as the main contractor, and that
 2 would mean you were stuck in a negotiation which would
 3 not produce the savings that were required?
 4 A. Correct, but it didn't mean to say that we wouldn't have
 5 to go through a process of value engineering to still
 6 achieve a scope of service and a brief, a client brief,
 7 that met the budget that they had available to them.
 8 Q. Right.
 9 Let's just move on with this document. Page 6,
 10 please, which we are on, if you go down to the fourth
 11 paragraph, you say:
 12 "There remains two options available for
 13 re-procuring a contractor for the scheme:
 14 •" Utilise an appropriate framework to select a
 15 contractor; and
 16 •" Submit a full OJEU compliant procurement
 17 exercise."
 18 Then you go on to spell out the different advantages
 19 of each.
 20 At this point, the cost difference, I think, between
 21 Artelia and Leadbitter had narrowed quite considerably,
 22 hadn't it?
 23 A. I believe it had, yes.
 24 Q. I think you were only about, by my calculation, £684,000
 25 apart.

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1 A. Yeah.
 2 Q. Does that sound about right?
 3 A. Something like that, yes.
 4 Q. Right. I think in fact we can probably see those in
 5 some documents. I'm not sure it's necessary to go to
 6 that. But do you remember that the difference between
 7 TMO and Leadbitter at this point was less than the
 8 amount of the contingency?
 9 A. I can't remember that specifically, no.
 10 Q. Well, let me give you some figures and we can look at
 11 documents if you need to, but in the status report of
 12 23 April we've looked at, the TMO's costs were
 13 £9.364 million, which included a contingency of
 14 £765,000. Do those figures sound right to you?
 15 A. As a project cost.
 16 Q. As a project cost, all right.
 17 A. I think. I can't remember if that was project --
 18 Q. Let's be clear, {ART00009101/14}, please. Let's just go
 19 to those. I wasn't going to take you to them, but we
 20 can. If you go to page 14, you can see what the current
 21 position is, and there is a revised estimated
 22 construction cost by you as £9.364 million, including
 23 £765,000 as a client's contingency. That's why I put it
 24 to you as it was a contingency.
 25 A. Yes.

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1 Q. So those are the figures there. I think Leadbitter's
 2 figures were £684,000 more than that because, as you can
 3 see at the bottom of that very page, 18 April 2013,
 4 Leadbitter's sixth submission is £10.048 million, so
 5 you're 684 apart, which is less than the 765
 6 contingency, isn't it?
 7 A. Yes.
 8 Q. So there were progressive attempts to align the costs,
 9 but there was still a gap, but the gap was only £684,000
 10 at that stage.
 11 A. Yes.
 12 Q. Now, given that programme was no longer a factor, why
 13 was the TMO unwilling to wait for Leadbitter and Artelia
 14 to reduce that discrepancy, that £684,000 gap, further,
 15 given how close they were?
 16 A. Because the contingency is a contingency held by the
 17 client, so the real difference was in the 9.364 less 765
 18 contingency.
 19 Q. Yes, so --
 20 A. So if you add 765 to the 600,000, you're over £1,000,000
 21 worth of difference.
 22 Q. Yes, but are you saying that the 10.048 million
 23 therefore didn't include the contingency?
 24 A. I don't know what was in Leadbitter's figures because we
 25 couldn't get the breakdown.

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1 Q. Either way -- one can argue about the figures. I've put
 2 to you 684 which includes the contingency, which is
 3 indeed a client retention.
 4 My question again: given that the programme wasn't
 5 a material factor anymore, was there not a prospect, at
 6 least, that the gap between the client and Leadbitter
 7 was so close as to be bridgeable at this stage?
 8 A. No, because the contingency is a contingency held by the
 9 client, and that could be for all eventualities from
 10 that point of the estimate through to the end of the
 11 project. It could -- it might have to cover things like
 12 discovery later on in the project, and therefore that
 13 contingency is held by the client and is only released
 14 as and when there is a need to. Therefore, you need to
 15 look at the net cost, not the gross cost.
 16 Q. I understand that.
 17 So cutting to the chase here, was it your view at
 18 the time that this gap, whether it was £684,000 or just
 19 about double that if you take the contingency into
 20 account, was an unbridgeable gap?
 21 A. At that point in time, yes.
 22 Q. Right.
 23 I don't need to show you, I think, that
 24 Richard Cloke of Leadbitter, who was Mohit Kotecha's
 25 manager, was of the view that unless the scope was

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1 altered or additional budget was made available,
 2 Leadbitter's own view was that the scheme as proposed
 3 couldn't be delivered in line with the client's advised
 4 budget. That sounds as if it was similar to your view
 5 at the time.
 6 A. Yes.
 7 Q. At least in accordance with the status report of April.
 8 A. Correct.
 9 Q. Right.
 10 Now, if we can go back to the status report of
 11 23 April 2013, {ART00009101/18}, at the bottom of that,
 12 you said there in the third bullet point, and I read
 13 this to you:
 14 "Replacing the Principal Contractor at this stage
 15 will incur additional time and expense without the
 16 guarantee that the TMO would be any better served by the
 17 replacement."
 18 It looks from the addendum that Artelia's advice had
 19 now changed, is that right, by the time we get to May
 20 and the addendum?
 21 A. Yes.
 22 Q. Was it Artelia's view that the scheme was still
 23 unaffordable, given the TMO's budget?
 24 A. Correct.
 25 Q. Was Artelia of the view that the scope of the project

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1 still needed to be redefined?

2 A. Yes.

3 Q. Can you explain why Artelia changed its advice?

4 A. Because of the change in emphasis from programme to
5 value for money, in terms of the drivers, the key
6 drivers from the TMO.

7 Q. Can we then look at {ART00006418}, please. This is
8 an email to you from Robert Powell of 22 May 2013 to
9 which he attaches his draft addendum to the April
10 report. We've seen the addendum. In his second
11 paragraph he says:

12 "Fundamentally this is a bit of political
13 lubrication to give the TMO justification to go against
14 the recommendation in our original report which
15 suggested they keep Leadbitter involved with the
16 project."

17 What did you understand by the term "political
18 lubrication", Mr Cash?

19 A. I'm not sure what he was trying to imply, other than
20 that, having changed the priorities within -- in the
21 drivers that the TMO were looking to apply to the
22 project, we needed to review what we'd said in the first
23 report and therefore -- and this status report was going
24 to be presented to the TMO board for approval.

25 Q. Do we take from this that although you didn't think or

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1 Artelia didn't think that this was the right advice, to
2 go out to a fresh re-tender, nonetheless you were
3 prepared to give it to help the TMO out politically?

4 A. No, the addendum had been prepared because there had
5 been a change in drivers and, therefore, we had reviewed
6 that in terms of what we'd said originally.

7 Q. What was the nature of the political problem, as you
8 understood it?

9 A. I don't know about any political problems.

10 Q. Might it have been -- and this is perhaps not a question
11 for you but for others -- that the TMO needed a piece of
12 paper to allow them to do what Laura Johnson had
13 demanded?

14 A. I don't know.

15 Q. Or did the TMO want different advice so that it could
16 pursue its own agenda of value engineering?

17 A. I don't know.

18 Q. Did you understand that the TMO had actually asked
19 Artelia to produce an addendum report in which the
20 advice was changed?

21 A. I can't remember if it did or not. I knew that
22 an addendum would be required because of the change in
23 circumstances.

24 Q. Right. You don't know who had prompted the production
25 of that addendum?

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1 A. I can't remember, but it may have been something that
2 was discussed at the original meeting that we had where
3 the changes had originally been discussed --

4 Q. Right.

5 A. -- in terms of the drivers.

6 Q. Were you giving advice just to suit the TMO's purposes
7 here?

8 A. No.

9 Q. Right.

10 If I can show you {ART00008984/29}. This is
11 Mr Powell's witness statement. I want to get your
12 comment on it, see if you agree with what he says.

13 At paragraph 89 he refers to the addendum, and he
14 says in the third line -- in fact, I'll read it all to
15 you:

16 "The Addendum was a reflection of the changed
17 parameters for the Project. The TMO clearly hoped that
18 the revised approach would provide better value for
19 money, with programme being less important. The TMO had
20 been prompted (by RBKC) to change its focus to
21 a different order of priorities, having previously
22 accepted the advice we had given it. If all the TMO had
23 was a Status Report from AUK advising on a different
24 course of action to the one adopted based upon
25 an earlier order of priorities (which had been

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1 superseded) that would leave the TMO without the full
2 story on paper. As the order of priorities had changed,
3 we needed to reflect that."

4 Do you agree with that?

5 A. That's a fair statement, yes.

6 Q. Right.

7 Can we then move on to {ART00009020/2}. This is
8 an email chain between Artelia and the TMO in May 2013.
9 We can see that you were copied in on this email chain,
10 and if we look at page 2, in the middle of the page, we
11 can see an email that Mr Powell sent to Peter Maddison
12 attaching the addendum report, and you're copied in on
13 that.

14 A. Yes.

15 Q. "Peter

16 "Please find attached the addendum to our report we
17 discussed. This should now give you the comfort you are
18 looking for to proceed with looking to re-procure the
19 construction against our earlier recommendation (which
20 was based on now obsolete information)."

21 If we scroll up to page 1 {ART00009020/1}, we can
22 see a further email to David Gibson 20 minutes later.
23 Do you see that? Where Robert Powell essentially sends
24 him the email he'd sent below to Peter Maddison, also
25 copying you in:

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1 "David
2 "Apologies - I left you off my earlier
3 correspondence to Peter.
4 "Attached is a copy of our addendum to our report."
5 Then at the top of the page, David Gibson writes to
6 Robert Powell four days later, 28 May, thanking him and
7 saying in the second paragraph:
8 "The recommendations within the addendum are in line
9 with our discussions of last week, and allows us to
10 progress towards re-procuring the construction."
11 Do you know what discussions Mr Gibson is referring
12 to there?
13 A. No.
14 Q. Were you involved in any of those discussions, do you
15 think?
16 A. I don't believe so.
17 Q. Right.
18 Do you accept that, in this email, it looks as if
19 the TMO had discussed with Artelia what recommendations
20 they wanted Artelia to make?
21 A. No, I don't think that's -- I wouldn't agree with that.
22 I would say that they'd had a conversation about what
23 the recommendations were. I don't know -- it doesn't
24 seem to imply that --
25 Q. Right.

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1 A. -- the TMO were actually telling us what to write.
2 Q. No, I'm not suggesting that quite, I'm just asking you
3 what your understanding of this email was.
4 A. There had been a conversation about the changes required
5 as a result of the changes in the drivers on the
6 project, and that an addendum would have to be written
7 because it would have to reflect the changes in the --
8 in tack in terms of recommendations.
9 Q. On the face of this email, it looks -- and I just want
10 you to comment on this -- as if there were discussions
11 first and then the addendum was drafted to be in line
12 with those.
13 A. Yes.
14 Q. So this wasn't discussions about the addendum; this was
15 an addendum to reflect the discussions. Is that fair?
16 A. Yes, but I don't know whether the discussions were about
17 what might be in the addendum, just to give the TMO
18 an advance indication of what was going to be included.
19 Q. Do you know what the information was that Mr Powell had
20 said had become obsolete, which he had referred to in
21 his earlier email?
22 A. In terms of the recommendations, to continue with
23 negotiations with Leadbitter on the basis that time was
24 of the key driver rather than value for money.
25 Q. Right. That wasn't really information becoming

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1 obsolete; that was an instruction changing. That's
2 really the right way of looking at it.
3 A. Yeah.
4 Q. Can we then go to {ART00009106}. We move now into the
5 early part of June 2013 and these are the minutes of a
6 TMO meeting on 6 June, and we can see that you attended
7 this meeting, as did Peter Maddison.
8 A. Yes.
9 Q. Can you see that? Again, the notes, Appleyards notes:
10 "Quality:
11 "Author: Philip Booth.
12 "Checked: Robert Powell."
13 If we go to the first item, "Attachments", number 1,
14 "Project Brief", and the first item is the "Approval of
15 revised project brief", we saw that earlier.
16 Then underneath that, item 2, "Contractor
17 procurement", 2.1:
18 "PM [Peter Maddison] requested Appleyards to review
19 the previous addendum report to include greater detail
20 on programme and costs to demonstrate that tendering the
21 contract will deliver greater value for money, the main
22 project driver."
23 By that -- and you were present, as we know -- did
24 you understand that the TMO had asked for a further
25 revision of the addendum report, in other words that

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1 addendum draft we saw a little bit earlier, the one from
2 May, that we've just been looking at?
3 A. Yes, that he wanted it in more detail.
4 Q. Right.
5 Do you remember what was discussed at this meeting
6 in relation to reviewing that draft of the addendum
7 report, the May addendum report?
8 A. I can't remember the detail, no.
9 Q. Right.
10 When it says that there was to be greater detail on
11 programme and costs "to demonstrate that tendering the
12 contract will deliver greater value for money, the main
13 project driver", do you remember that this was the TMO
14 telling you what your advice should be in a revised
15 addendum?
16 A. No.
17 Q. Or giving instructions about the subject matter and
18 purpose of the amendments to that addendum?
19 A. I don't believe so. I think he was effectively looking
20 for more detail and felt that what we'd said in the
21 report wasn't sufficiently detailed.
22 Q. What was wrong with your addendum as at May that you'd
23 approved and sent out?
24 A. I can't remember.
25 Q. Did you think there was something wrong with it,

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1 something incomplete about it, something insufficient
 2 about it?
 3 A. I didn't think so at the time. I can't remember
 4 specifically .
 5 Q. No. Did you disagree with Mr Maddison and say, "Look,
 6 you have got enough in that"?
 7 A. I don't remember saying anything to the contrary, no.
 8 Q. Did it come as a surprise to you that Peter Maddison had
 9 asked you to give greater detail on programme and costs
 10 for the purposes of demonstrating that the contract will
 11 deliver greater value for money?
 12 A. I can't remember.
 13 Q. Is it fair to say, looking back on it, that the May
 14 version of the addendum didn't quite give Peter Maddison
 15 enough of the political lubrication that he was after?
 16 A. I don't know.
 17 Q. You must have had an impression at the time; you were at
 18 the meeting.
 19 A. I wouldn't know in terms -- I didn't think of it in
 20 terms of political lubrication; I thought of it more as
 21 a report to give a status at a particular point in time.
 22 I wasn't thinking of it in terms of any other use other
 23 than giving a recommendation for taking the project
 24 forward.
 25 Q. No, I mean, just looking at it from a little distance,

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1 you have produced a detailed status report in April, you
 2 had had a change of instructions, you would put it,
 3 later on, and produced an addendum in May responding to
 4 the new situation.
 5 My question really is: did it not occur to you at
 6 the time that that was enough and ask yourself why it
 7 was that Peter Maddison wanted further detail?
 8 A. We quite often write reports and we think they're in
 9 sufficient detail and clients come back to us and say
 10 that they require further detail to allow them to
 11 explain or to pass on to others.
 12 Q. Yes. I see. All right. Let's see how this pans out.
 13 Can we go to {ART00006181}, please. This is
 14 a revision to the original status report of April 2013
 15 and, as you can see from the front page, updated
 16 18 June 2013. Oddly, it says, next to the words in
 17 brackets, 22 April 2013.
 18 Just while we're on it, can you explain why the
 19 original April status report bore the date of 23 April
 20 but this one says 22 April, updated 18 June?
 21 A. I can only assume that the 22nd and 23rd -- there was
 22 an error.
 23 Q. I see. There is not two different versions, are there?
 24 A. Well, as it says, it's an updated report.
 25 Q. Right.

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1 Let's look at page 27 {ART00006181/27} of this
 2 document. This is the June update of the April status
 3 report. There we can see that there is an addendum,
 4 which is now added to this document. So it had been
 5 implanted into the status report by way of a June
 6 update. Have I got that right?
 7 A. Yes.
 8 Q. Looking at this addendum, does this look familiar to
 9 you?
 10 A. Yes.
 11 Q. Did you write this, do you think?
 12 A. No, I didn't.
 13 Q. Did you approve it at the time?
 14 A. I would have reviewed it.
 15 Q. Right. As part of your review of the update?
 16 A. Yeah.
 17 Q. If we look at page 27 at the top, it says there that the
 18 TMO have clarified their position, and you can see it
 19 says there:
 20 "In the intervening period between issue of the
 21 original draft of this report and following a meeting
 22 the TMO held with Laura Johnson of Royal Borough of
 23 Kensington & Chelsea in week commencing 13th May 2013,
 24 the TMO have clarified their position relating to
 25 a number of contributory factors to the scheme."

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1 That's what we saw from the original addendum. Then
 2 again:
 3 "Value for Money is to be regarded as the key driver
 4 for the project."
 5 Then other bullet points, again, all identical to
 6 the 24 May first draft of the addendum; yes?
 7 A. Yes.
 8 Q. Then looking below that, we can see things that are
 9 familiar, and then if you go to page 28 {ART00006181/28}
 10 of this document, from the third paragraph from the
 11 bottom, this text is new, isn't it:
 12 "Given that the amended project brief gives primacy
 13 to value for money for the project we recommend that the
 14 TMO re-procures the Principal Contractor through an OJEU
 15 compliant, open Market tender."
 16 That's I think new, isn't it?
 17 A. I believe so, yes.
 18 Q. That wasn't even in the addendum in May, was it?
 19 A. No.
 20 Q. Were you comfortable that that recommendation reflected
 21 your own professional opinion?
 22 A. I believe it reflected the opinion of Robert Powell.
 23 I'm not sure -- I can't say for myself because I wasn't
 24 actually the author of the document.
 25 Q. You believe it reflected the opinion of Robert Powell.

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1 Did you have a discussion with Robert Powell about
 2 this paragraph?
 3 A. I can't remember.
 4 Q. Were you comfortable with this document going out with
 5 that in it?
 6 A. Yes.
 7 Q. That paragraph in it? You were.
 8 Can you explain why it took you or others at Artelia
 9 between 6 June and the meeting we saw and 18 June to
 10 make these changes and add these additions at the end
 11 here?
 12 A. This was -- I think the reason it went down this route
 13 was because we felt that Leadbitters shouldn't be
 14 excluded from a re-procurement exercise, and if you went
 15 down a framework route where they weren't on that
 16 particular framework, having already had it as part of
 17 their original tender under the KALC project, they may
 18 be able to raise objections, and therefore we felt that
 19 an OJEU compliant tender would still allow Leadbitters
 20 the opportunity to bid on an open market if they so
 21 wished, and therefore avoiding any risk of them coming
 22 back with a formal complaint in terms of the procurement
 23 process.
 24 Q. Can we go to {ART00001241}, please. This is an email
 25 from you to Peter Maddison on 19 June 2013, and you

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1 attach a "Status Report - June [Version] 5 Final". Do
 2 you see that?
 3 A. Yes.
 4 Q. "Peter,
 5 "Apologies for the delay in issuing this to you, but
 6 it has taken longer than I anticipated to update our
 7 status report, following our discussion last week. I am
 8 aware that you have a board meeting tomorrow and may not
 9 have sufficient time to review what I have written, but
 10 in essence, I have taken on board your comments and
 11 reworded sections to read in a better light."
 12 Now, you refer there to "discussions last week".
 13 That's the week before, obviously, the week of this
 14 email. Do you remember having discussions with
 15 Peter Maddison?
 16 A. Yes, I do.
 17 Q. What was the gist of those discussions, can you tell us?
 18 A. Yes, he wasn't happy that, within the report, we were
 19 raising criticisms of the TMO.
 20 Q. Right. So he wanted you to produce a report that was
 21 less critical of the TMO?
 22 A. Correct.
 23 Q. Right.
 24 Now, when we compare the documents, the April status
 25 report with the June update, we see not only the

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1 addition of the addendum as changed itself, as we've
 2 seen, but also other things as well. I wonder whether
 3 we can look at those. I'm going to do a compare and
 4 contrast.
 5 Can we go first of all to the original April status
 6 report, page 5 -- that's {ART00009101/5} -- and there is
 7 a bullet point list there which I showed you before, the
 8 seven bullets, starting with:
 9 "Client brief has been allowed to develop in
 10 a piecemeal fashion over time."
 11 At least the first four of those are critical of the
 12 TMO, aren't they?
 13 A. Yes.
 14 Q. Yes.
 15 A. Sorry, the three, the first three.
 16 Q. The first three. But also "Historic relationships and
 17 contractual position regarding the associated KALC
 18 project may have frustrated good and proactive
 19 progress", that's also reasonably critical of the TMO?
 20 A. It is, but I think that was in particular reference to
 21 Leadbitters as well.
 22 Q. All right, fair enough. I take the point. But the
 23 first three are certainly critical of the TMO, and the
 24 fourth one includes a criticism of the TMO.
 25 Then if we compare that with the updated version of

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1 the June report, the update, this is {ART00006181/5},
 2 you can see now that there has been a change, and
 3 instead of saying "Client brief has been allowed to
 4 develop in a piecemeal fashion over time", it now says:
 5 "The development of the client brief went through a
 6 number of iterations over time, expanding to reflect the
 7 desired objectives."
 8 So that's a change that has been made in order to
 9 cast the TMO in a better light, isn't it?
 10 A. Yes.
 11 Q. The next bullet point was {ART00009101/5}:
 12 "Absence of a controlled and managed scope for the
 13 project."
 14 Et cetera, and that's all gone, and now you have got
 15 {ART00006181/5}:
 16 "A perceived poor commitment from Leadbitter to
 17 demonstrate a full commitment to this project. The
 18 indications are that this project was not properly
 19 resourced due to the parallel demand of [KALC] ..."
 20 That's a new bullet point, isn't it?
 21 A. Yes, it is, and that I think was in replacement of the
 22 fourth bullet point of the previous report.
 23 Q. Yes, and the second and third bullet points have gone as
 24 well, haven't they?
 25 A. Yes.

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1 Q. Yes. So you have taken out the critical second and
 2 third bullet points and replaced it with a much less
 3 critical fourth bullet point that really just fires at
 4 Leadbitter and excludes the TMO.
 5 A. Yes.
 6 Q. Again, it's to put the TMO in a better light, to be
 7 blunt?
 8 A. Yes.
 9 Q. The indications that you refer to there, "The
 10 indications are that this project was not properly
 11 resourced", what was that a reference to?
 12 A. In terms of Leadbitter's commitment to the project, we
 13 felt that their priorities were on the KALC project and
 14 we didn't think that they had sufficiently resourced the
 15 project in terms of being able to respond to the
 16 questions that we were asking for, and also because
 17 there were a number of meetings that had been arranged
 18 with Leadbitters where they didn't actually turn up.
 19 Q. This is a new reason, though, isn't it? I mean, these
 20 aren't reasons that were reflected in the original
 21 report of April, were they?
 22 A. I think it was in -- referred to in a round-about way in
 23 the fourth bullet point in terms of the existing
 24 relationships with the KALC project.
 25 Q. So you beefed up blaming Leadbitter and let the TMO off

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1 the hook on this one.
 2 A. In that sense.
 3 Q. Yes. Because the truth is, as you have told us, that
 4 the issue prompting the removal of Leadbitter was
 5 actually a change in the priorities of the client to
 6 reflect value for money.
 7 A. That was the change in tack on the drivers, yes.
 8 Q. And I think you have accepted that the criticism of the
 9 TMO about a late commitment to budget has been removed.
 10 Now, am I right in thinking that you agreed with
 11 these statements when this status report went out?
 12 A. I didn't necessarily agree with them personally, no.
 13 Q. Why did you let them out, then, to Peter Maddison if you
 14 didn't agree with them?
 15 A. Peter Maddison and I had had a particularly strong
 16 conversation about the changes that had to be made. He
 17 was being very persistent and put a lot of pressure on
 18 us to make those changes. I was quite resistant because
 19 I felt that it was a true reflection of what had
 20 happened on the project, but at the same time, this was
 21 a report that Peter Maddison was looking to present to
 22 his board, and that if we weren't going -- if we didn't
 23 make the changes, then the report wouldn't be presented
 24 to the board and therefore no decision would be made or
 25 no recommendations would be drawn from that. Therefore,

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1 the whole basis of the report would have failed
 2 completely.
 3 Q. So you were basically strong-armed into making these
 4 changes?
 5 A. Yes.
 6 MR MILLETT: Mr Chairman, is that a convenient moment?
 7 SIR MARTIN MOORE-BICK: Yes, I would think it is, thank you
 8 very much.
 9 We will have another break now, Mr Cash. We will
 10 come back at 3.35, please, and usual rules: please don't
 11 talk to anyone about your evidence or anything to do
 12 with it while you're out.
 13 THE WITNESS: I won't. Thank you.
 14 SIR MARTIN MOORE-BICK: All right? Would you like to go
 15 with the usher, please.
 16 THE WITNESS: Thank you.
 17 (Pause)
 18 SIR MARTIN MOORE-BICK: 3.35, please. Thank you.
 19 (3.20 pm)
 20 (A short break)
 21 (3.35 pm)
 22 SIR MARTIN MOORE-BICK: Right, Mr Cash, all ready to carry
 23 on?
 24 THE WITNESS: Yes.
 25 SIR MARTIN MOORE-BICK: Very good.

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1 Yes, pour yourself some water, then we will start.
 2 THE WITNESS: Thank you.
 3 Right, ready.
 4 SIR MARTIN MOORE-BICK: Yes, Mr Millett.
 5 MR MILLETT: Mr Cash, just finishing off on the last topic
 6 before we move to another one, can I ask you to go to
 7 {TMO10048490}. This is an internal email of
 8 17 September 2013 from David Gibson to Claire Williams.
 9 Obviously you're not copied in on it, but it follows on
 10 from or forwards, I think, to Claire Williams the email
 11 that you had sent to Peter Maddison and copied to
 12 David Gibson on 19 June. So this is two months later.
 13 What David Gibson tells Claire Williams is this:
 14 "Claire, re VFM through procurement. This is all
 15 I have seen from Appleyards, and we had to twist their
 16 arms quite hard for them to write it.
 17 "Have a quick look at the executive summary and see
 18 if it fits the bill."
 19 As I say, you didn't see this exchange at the time,
 20 but do you agree with that characterisation of the
 21 circumstances in which you amended the status report?
 22 A. Yes, I do.
 23 Q. Yes.
 24 Can I then turn to value engineering as a topic, and
 25 I want to start by asking you some questions about value

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1 engineering as a matter of principle .

2 First , in 2013, what was your understanding of what
3 value engineering was or meant?

4 A. It's a process which is common to most projects that
5 challenges a design or a concept to ensure that what is
6 being proposed is giving the best value in terms of the
7 client's objectives .

8 Q. Was it usual to have value engineering on projects like
9 the Grenfell Tower project?

10 A. Yes, it's common on, I think, virtually all projects
11 that I have been involved in.

12 Q. Can we look at your first witness statement, please,
13 then, at paragraph 52 on page 15 {ART00006544/15}. You
14 say that VE is a well known term in the construction
15 industry, and you say:

16 "While, to some degree, views differ as to its
17 precise meaning, in my view, VE involves achieving the
18 same scope of work required by a client but at better
19 value. VE does not involve a change in the scope of
20 work or any reduction in performance or function or
21 a loss of an element of work altogether. In terms of
22 'better value', that value is not necessarily always
23 a reduction in cost, although usually it does achieve
24 a cost saving."

25 Then you go on to give examples.

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1 Your emphasis here -- and I'm summarising the
2 paragraph, tell me if this is unfair -- is cost savings
3 without a loss of performance and functionality .

4 A. Correct.

5 Q. Is that important as a qualification? In other words,
6 you can have cost savings as part of a value engineering
7 exercise, but you mustn't have loss of performance or
8 functionality?

9 A. That's the purpose, yes.

10 Q. When you are doing a VE exercise, which is more
11 important, the reduction in the cost or the preservation
12 of performance or functionality?

13 A. The reduction in cost is not the key objective. It's
14 about actually maybe trying to achieve the targets
15 better, and that may or may not be --

16 Q. Where a different material delivers better value, how
17 carefully, when doing a VE exercise, would you examine
18 any potential to compromise performance or
19 functionality?

20 A. I think that's part of an overall technical review that
21 would be carried out by the team as a whole.

22 Q. You say an overall technical review carried out by the
23 team as a whole; just looking at it broadly on this
24 project, who would carry out that exercise in the
25 context of the adoption of any particular material on

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1 the Grenfell Tower project?

2 A. In terms of the pre-construction phases, that would be
3 Studio E, Max Fordham and Curtins.

4 Q. And after the design and build contractor had been
5 appointed?

6 A. Then the expectation would be that Rydon, as the design
7 and build contractor, would identify what the benefits
8 are in terms of putting forward any alternative
9 proposals, and the TMO, in terms of having taken on
10 board the role of technical review, would also review
11 that themselves as well.

12 Q. Can I ask you to go to page 16 {ART00006544/16} of this
13 witness statement, paragraph 54. You say:

14 "Like AUK, Studio E was doing its job by raising VE.
15 I believe that on almost every construction project
16 I have ever worked on, VE has been considered at some
17 stage. It is just part and parcel of good practice in
18 the construction industry and trying to get the client
19 the best value for its money."

20 So is it your experience that value engineering is
21 something that an adviser such as Studio E would always
22 raise with a client at any stage?

23 A. I believe it should be.

24 Q. Right.

25 In the paragraph immediately above it, you say:

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1 "In contrast, a reduction in scope [this is
2 a contrast with value engineering] involves a change in
3 design that is actually reducing performance or
4 function, or removing an element of work altogether."

5 So, summarising it, is it your view that, after the
6 value engineering process, the design should achieve the
7 same level of safety as before?

8 A. I don't -- whatever, whether it be a reduction in scope
9 or a value engineering, there should be no reduction in
10 standards of safety.

11 Q. Right. So whether it's VE or a reduction in scope, the
12 design should still achieve the same level of safety?

13 A. Yes, in terms of regulatory compliance.

14 Q. In practical terms, would you expect that somebody
15 within the team, the design team, would check or analyse
16 whether each of the design changes which are proposed as
17 part of a value engineering exercise, or perhaps product
18 or specification changes, were compliant with all
19 applicable regulations and statutory requirements?

20 A. Yes, I would.

21 Q. And on the Grenfell Tower project -- I think you have
22 given me the answer before -- that was, is it right,
23 Studio E up to the point at which Rydon were appointed,
24 and after that it was Rydon?

25 A. So it would be Studio E, Curtins and Max Fordham in

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1 their capacity in respect of whatever that saving might
 2 be or whatever that value engineering aspect might be.
 3 Q. Until the tender?
 4 A. Correct.
 5 Q. I follow.
 6 A. And after that Max Fordham were retained by the TMO, and
 7 so Max Fordham and the TMO and Rydons.
 8 Q. Yes.
 9 What sort of check or analysis would you expect
 10 those entities to carry out in order to ensure that
 11 value engineering had not compromised performance or
 12 functionality?
 13 A. Depending on what the VE might be, that they would look
 14 at specifications for compliance with statutory
 15 requirements, British Standards, and such -- codes of
 16 practice and things like that.
 17 Q. Did you or anybody else at Artelia ever investigate
 18 whether a check or an analysis had been done as part of
 19 the value engineering exercise that we come to see to
 20 make sure that there had been no compromise to
 21 functionality or performance?
 22 A. If there were proposals being put forward, we would look
 23 to the design team to carry out those checks.
 24 Q. Yes, you would, but did anybody at Artelia ever check
 25 that those checks had been carried out by the design

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1 team, whoever they were at the time?
 2 A. I can't say for sure.
 3 Q. Is there any reason why Artelia wouldn't have done its
 4 best to make sure that, whoever was doing the checks,
 5 they had been done properly?
 6 A. We should have done and I hope we would have done.
 7 Q. You should have done it, you say, and hopefully would
 8 have done.
 9 Right, let's then turn to the value engineering
 10 exercise in 2013.
 11 In general, I think you would accept that,
 12 throughout the early stages of the project -- so from
 13 inception in 2012 through 2013 -- there were substantial
 14 changes in the design of the project. We've seen
 15 examples of that.
 16 A. Yes.
 17 Q. Let's just look at a couple more. If you go to
 18 {ART00009057}, this is an email chain between
 19 Bruce Sounes of Studio E and Alun Dawson in March 2013,
 20 and it starts in fact at the end of February of that
 21 year. If you go to page 5 {ART00009057/5}, please, this
 22 is an email of 26 February 2013 from Bruce Sounes to
 23 Alun Dawson, and he says:
 24 "It is not really possible to undertake a radical
 25 rethink without sight of the figures, a discussion with

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1 the client, and the involvement with the Services
 2 Engineer who is not copied into your email. Is the M&E
 3 not under review as well?"
 4 Now, of course, this is at the point at which there
 5 is discussion about cost, because the difficulties with
 6 Leadbitters had arisen in terms of bridging the gap, and
 7 he sets out some obvious targets, as he calls them, for
 8 savings:
 9 "Omit Garages/Baseline/Undercroft work.
 10 "Change Zinc cladding material to something
 11 cheaper."
 12 Do you see that?
 13 A. Yes.
 14 Q. Those changes are quite substantial, aren't they?
 15 A. Yes, some of them are.
 16 Q. Or would be.
 17 You can see, if you go up the email chain to the
 18 bottom of page 4 {ART00009057/4}, what Alun Dawson's
 19 reply is. In the last paragraph of that reply, he says:
 20 "Most of your list seems to be omissions or
 21 downgrading the spec as opposed to VE ..."
 22 Would you agree that at least some of those proposed
 23 changes that he was proposing were actually reducing the
 24 scope of the project and not value engineering at all?
 25 A. They appear to be, yes.

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1 Q. Did you think at that time that there might have to be
 2 a reduction in quality in order to meet the TMO's
 3 budget?
 4 A. In ... possibly, in terms of its expectations of the
 5 level of specification in terms of quality, but not in
 6 terms of its conformity.
 7 Q. No, I understand.
 8 Was there any area of the specification at that
 9 stage where you thought quality could be compromised in
 10 order to achieve more successful value engineering?
 11 A. I hadn't -- I didn't really think of it at the time, but
 12 I know that cladding had been a discussion point
 13 obviously for some time.
 14 Q. I follow. So from that answer, and indeed the email
 15 that we see as early as February 2013, do we take it
 16 that, so far as you were concerned, the cladding was
 17 always in the frame, if I can use an expression, for
 18 value engineering?
 19 A. The selection of the type of cladding was always in the
 20 frame, because it had not been finalised. There were
 21 a number of discussions, and although there was --
 22 Studio E were trying to pursue one particular type of
 23 cladding, I don't think any clear decision had been made
 24 as to whether it might be one particular cladding or
 25 another. But it was more a case of the fact that the

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1 cladding had to have a certain level of performance.
 2 Q. Just looking at what Mr Sounes says about the cladding,
 3 "Change Zinc cladding material to something cheaper",
 4 and Alun Dawson's response where he says most of the
 5 list seems to be omissions or downgrading the spec as
 6 opposed to VE, did you think that the change from zinc
 7 to something cheaper was a downgrading of the spec?
 8 A. No, not necessarily.
 9 Q. Right. Not necessarily? What would make it
 10 a downgrading of the spec?
 11 A. If the performance ratings were different to those that
 12 were expected.
 13 Q. I follow.
 14 Can we then move to a different topic, which is
 15 Rydon's appointment. I'm going to come back, I think,
 16 later to the question of value engineering once Rydon
 17 are on board.
 18 Can we go to Artelia's contractual obligations once
 19 again, and go back to the EA schedule at
 20 {ART00005742/48}.
 21 At the bottom of the page there in the left-hand
 22 column we can see tick-box 1.4.2, and this is under the
 23 heading "1.4 Pre-Construction (RIBA Outline Plan of Work
 24 2007)", and that tick-box is not ticked, 1.4.2, and
 25 it's:

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1 "Advise on suitable tenderers for the Building
 2 Contract. Prepare recommendations for the Client's
 3 approval."
 4 By that, Mr Cash, do I understand it correctly that
 5 Artelia's position is that it did not have an obligation
 6 to advise the TMO on who to appoint as the main
 7 contractor?
 8 A. No, this is a generic set of scopes of services and
 9 therefore are to be used not only in public procurement
 10 but also in private procurement, and sometimes when we
 11 go -- in terms of private procurement, where we don't
 12 have to go through a public process, then it is up to us
 13 to put forward suggested names of contractors who we
 14 think might be suitable for longlisting or shortlisting
 15 to a tender, and in this particular instance we were not
 16 being -- because it was a public procurement, we
 17 wouldn't be going through that process, which was why
 18 that box was not ticked.
 19 Q. So is the short answer to my question that because this
 20 was to be an OJEU compliant tender, your advice on
 21 suitable tenderers wasn't required and therefore the box
 22 wasn't ticked?
 23 A. Correct.
 24 Q. Right.
 25 However, it's right, I think, as a matter of fact --

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1 in other words, what happened on the ground -- that
 2 Artelia as the employer's agent for the TMO, so I think
 3 Phil Booth actually, and also as QS, Ms Lim in fact,
 4 were both involved in all of the stages of the OJEU
 5 procurement process, weren't they?
 6 A. Correct.
 7 Q. Now, moving forward in time, then, we know that several
 8 bidders returned bids during the OJEU process. Can we
 9 look at {ART00005886}, please. This is an email chain
 10 of 14 February 2014 to you, Mr Cash, from Chweecheen Lim.
 11 This is about prices.
 12 A. Yes.
 13 Q. If we scroll to the bottom of page 1 and over to page 2
 14 {ART00005886/2}, we can start by looking at her email to
 15 you of 14 February 2014, bottom of page 1, and then just
 16 look at the top of page 2. She says:
 17 "Hi Simon, just to let you know that the lowest
 18 tender is £9.25M!
 19 "Thanks."
 20 That was from Rydon, wasn't it?
 21 A. The tender? Yes.
 22 Q. Yes, the tender.
 23 Now, we can see from documents that, in early 2014,
 24 Ms Lim had actually re-analysed the budget and she
 25 herself had costed the budget at £10.045 million. Do

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1 you remember that?
 2 A. Yes.
 3 Q. We don't need to show you a document for that. Just for
 4 our internal purposes and everyone who wants to look at
 5 it, it's {ART00005805/12}, which is Artelia's updated
 6 final tender report of 17 March 2014, and you will find
 7 that figure on page 12. That's just to put that into
 8 the transcript.
 9 So looking at those two figures, the £9.25 million
 10 from Rydon and Artelia's own figure of over £10 million,
 11 they were coming in at around about a million, £900,000
 12 actually, less than Ms Lim's estimate.
 13 A. Yes.
 14 Q. But it was still, at £9.249 million, about £750,000
 15 higher than the TMO's own budget of £8.415 million.
 16 A. Correct.
 17 Q. Yes.
 18 If we can just look up to page 1 {ART00005886/1} in
 19 this email run, we can see that you come back and say,
 20 on the same day, in fact about eight minutes later:
 21 "Good result then - what did they miss? And who is
 22 it?"
 23 Can you just explain what you meant by, "Good
 24 result"? Why was it a good result?
 25 A. Because the tender was within the project -- within our

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1 pre-tender estimate, which -- that included a level of
 2 contingency as well, so we were satisfied that we
 3 weren't way out in terms of telling the TMO that the
 4 works were overbudget.
 5 Q. Right. So a good result because it was a very low
 6 figure?
 7 A. Not because it was a low figure but because it was
 8 within what we had predicted.
 9 Q. Right, okay. So you say the £10 million-odd that Ms Lim
 10 had produced was a prediction, was it?
 11 A. Yes.
 12 Q. I mean, you were using that as a benchmark figure, were
 13 you?
 14 A. It's an indication, yes. It's not meant to be
 15 a competitive tender.
 16 Q. No, indeed. No. You mean your figure wasn't?
 17 A. Correct.
 18 Q. No. So they had beaten it by about £900,000, and that
 19 was the good result?
 20 A. Yes, but bear in mind that Ms Lim's figure also included
 21 an element of contingencies as well.
 22 Q. Indeed.
 23 You go on to say, "what did they miss?" Was your
 24 initial impression that Rydon's price was unrealistic?
 25 A. No, it was a light-hearted quip.

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1 Q. It may have been a light-hearted quip, but it reveals
 2 a deeper truth, perhaps, and I just wonder what that
 3 deeper truth is. Did you think they might have made
 4 a mistake?
 5 A. No.
 6 Q. So why did you say, "what did they miss?"
 7 A. As I say, it was a quip to, I suppose, rile Ms Lim in
 8 terms of saying to her that maybe they had got something
 9 wrong, but it wasn't meant in any particular way other
 10 than that.
 11 Q. Was the quip perhaps provoked by the size of the
 12 underbid under the £10 million-odd that Ms Lim had
 13 calculated?
 14 A. No.
 15 Q. Did you have any concerns at this stage that Rydon's bid
 16 might mean that they were coming in unrealistically low?
 17 A. No.
 18 Q. Therefore it would follow that you didn't have any
 19 concerns that, at that price, quality and safety were
 20 somehow being sacrificed in favour of a low price?
 21 A. No.
 22 Q. Did you have any thoughts at the time that, if Rydon's
 23 tender offer had been accepted, Rydon might later be
 24 under financial pressure to produce the project or
 25 develop the project on budget?

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1 A. No.
 2 Q. Did the TMO ever ask you at any stage about the
 3 sustainability of Rydon's bid at that level?
 4 A. Not that I recall.
 5 Q. Did you or anyone else at Artelia consider whether it
 6 was an abnormally low tender which might itself be
 7 unsustainable?
 8 A. No.
 9 Q. Right, okay.
 10 If we go, then, to {ART00002197} and look at the
 11 first page, this is Artelia's final tender report dated
 12 12 March 2014. We looked at this, I think, yesterday.
 13 I just want to just show you page 13 {ART00002197/13} in
 14 that document.
 15 If you look at that page, you can see six paragraphs
 16 down there is a table, and just above that, two
 17 sentences up, it says:
 18 "Overall, the table on page 7 reveals broadly
 19 consistent pricing at a sustainable level."
 20 It may be that that's a wrong reference to a page
 21 number. It doesn't matter.
 22 Given the discrepancies between Artelia's own
 23 costings and total cost and Rydon's own price, and
 24 indeed between the other bidders' and Rydon's price, did
 25 Artelia really think that the pricings were

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1 consistent --
 2 A. Yes.
 3 Q. -- and sustainable?
 4 A. Yes, we did.
 5 Q. You see, Rydon had come in substantially below the other
 6 bidders, hadn't they?
 7 A. Yes.
 8 Q. And substantially below Artelia's own benchmarking.
 9 I just wonder why it is, given how low Rydon was, and
 10 given your initial quip that Rydon must have missed
 11 something, quip though it may have been, you really
 12 thought it was a sustainable and consistent price
 13 consistent with all the others.
 14 A. Ms Lim had done a review of the tender price that they'd
 15 sent, that they submitted, and the analysis that they
 16 submitted, and felt that the prices were not
 17 unreasonable.
 18 Q. Right.
 19 Do you accept that the statement that we see here,
 20 that there is broadly consistent pricing at
 21 a sustainable level, might have given the TMO comfort
 22 that the project scope as set by them could be delivered
 23 for the price set by Rydon or quoted by Rydon?
 24 A. Yes.
 25 Q. Right.

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1 Can I then turn to the question of Mr Blake's
2 relationship with Mr Maddison and what you knew of that.
3 We saw earlier an email of 1 October 2015 --

4 A. Sorry, I didn't know of it.

5 Q. No, it's the topic of --

6 A. Sorry.

7 Q. This is what I want to explore.

8 A. Yes.

9 Q. I'm not jumping to the conclusion, I just want to ask
10 you about it.

11 This is {ART00006206}, we looked at it earlier on in
12 your evidence, dated 1 October 2015, and it's about
13 a conversation that you had with Peter Maddison of the
14 TMO about Steve Blake. In the first paragraph in line 2
15 you say to him:

16 "He [that's Peter Maddison] is conscious that his
17 relationship with Steve goes back a long way and Steve
18 talks to him direct. However, Peter, does not want that
19 relationship to circumvent Artelia and by pass the role
20 that we are playing in trying to get the project
21 finished to the required quality and within budget."

22 Now, when you say, "He is conscious that his
23 relationship with Steve goes back a long way and Steve
24 talks to him direct", when did you first find out that
25 they knew each other at all, do you remember?

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1 A. I think this was -- it was not long before -- it was not
2 long before this when it became apparent that they were
3 having direct conversations that were leaving us out of
4 the loop, which was why I then had the conversation with
5 Peter Maddison.

6 Q. How did you find out that they were having conversations
7 direct and leaving you out of the loop?

8 A. I can't remember precisely, but I think it would have
9 been through a conversation with Neil Reed.

10 Q. When you say to Neil Reed, "He is conscious that his
11 relationship with Steve goes back a long way", is that
12 something that Peter Maddison told you?

13 A. Yes.

14 Q. Do you remember what he said to you?

15 A. I can't remember specifically. I was just trying to
16 recount what came up in the conversation.

17 Q. Did he give you any indication of how far his
18 relationship with Steve Blake went back?

19 A. I don't believe so.

20 Q. Did you ask him?

21 A. I don't think so.

22 Q. What did you glean at all, if anything, about their
23 relationship?

24 A. That they had worked together for some time in the past,
25 and that Steve Blake was talking to him and trying to

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1 have conversations in regard to the delivery on the
2 project, which should have actually been coming through
3 us.

4 Q. Did you have any concerns that the relationship as
5 described to you by Mr Maddison might somehow compromise
6 the TMO's and particularly Mr Maddison's impartiality
7 about Rydon and its performance and its pricings?

8 A. There was nothing in the conversation that implied that,
9 no.

10 Q. Did you yourself have any inkling or concerns about
11 that?

12 A. No.

13 Q. Can we then go back in time to 2014, and I want to show
14 you {RYD00086643}, please. Now, if we go to the bottom
15 of page 1, we can see that this is an internal email on
16 20 February 2014 from Katie Bachellier to Simon Lawrence
17 and others in Rydon, and she says:

18 "All,

19 "I have just called Peter Blythe from Artelia to see
20 if there was any early feedback on our tender. In
21 short, the answer was not yet but he did mention that
22 they will be holding interviews on 5th March. He
23 couldn't tell me at this stage whether we will be
24 invited or not but we should hear by the end of next
25 week.

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1 "Might be worth putting the date in diaries just in
2 case."

3 In your experience, was it common at the time to
4 give feedback to bidders on their tenders during the
5 OJEU process?

6 A. Not at all.

7 Q. You say, "Not at all" in quite firm terms. Was that
8 because that would be forbidden, effectively?

9 A. Yes.

10 Q. Yes.

11 Can we then go to {RYD00086648}. This is another
12 internal email within Rydon, now on 6 March 2014, so
13 a couple of weeks later and into the OJEU tender
14 process. We can see here that Steve Blake is telling
15 Tim Shutler at Rydon, copied to Jeff Henton, that:

16 "At the Housing conference we had meetings with
17 senior representatives from K+C and my opinion is that
18 in the event that we were the [successful] contractor
19 they would have no issue signing up to a form of
20 documentation as we suggest."

21 Then two lines down he says:

22 "We have been informally advised that we are in pole
23 position - ours to lose."

24 Were you aware that Rydon had been informed
25 informally of its performance in the tender, even before

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1 the interviews had taken place?
 2 A. No, I wasn't.
 3 Q. If you had discovered that fact, what would your
 4 reaction have been?
 5 A. It would have been that the tender process had been
 6 compromised.
 7 Q. And what would the consequence of that have been?
 8 A. Effectively it could have voided the tender process.
 9 Q. So the informal information that Rydon were in pole
 10 position, "ours to lose", was irregular and improper;
 11 yes?
 12 A. Yes.
 13 Q. Right.
 14 Would you have been unhappy if Artelia employees had
 15 told a bidder that they were likely to win before the
 16 close of the OJEU process?
 17 A. Yes.
 18 Q. Can we then just move on, on this topic. Back a few
 19 days in time but on in the topic, {ART00006433}, please.
 20 This is an email from Jenny Jackson of 3 March 2014, so
 21 just a few days before we were looking at it. You're
 22 copied in to this, and in the first line she says that
 23 she wants to discuss -- I'm just looking at the email.
 24 Yes, you are copied in to it, although it's an email
 25 from her to David Gibson. She says:

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1 "We need to think how this will be presented to the
 2 Board - we will be asking them to sign a contract for
 3 a contract sum in excess of the current budget. The
 4 contract specifically includes a term referring to value
 5 engineering and, if necessary, work can be omitted.
 6 I am in the office tomorrow and we can discuss how this
 7 will be presented."
 8 Then if you go to page 2 {ART00006433/2} of this
 9 document -- that's how it culminates, but I wanted to
 10 show you that first.
 11 A. Yes.
 12 Q. It is the end result of a discussion that starts
 13 essentially on page 2, and she sends to you an email of
 14 2 March which I want to show you. You can see that it
 15 says:
 16 "Please can we discuss how we intend to bridge the
 17 gap between the £9,249,294 tender submitted and the
 18 £8.5m client budget?"
 19 Then she says:
 20 "The advice obtained from Trowers and Hamblins is
 21 clear."
 22 Then we have a different typeface, and I had better
 23 read it to you:
 24 "KCTMO has advertised the contract as a Restricted
 25 Procedure, based on an estimated contract value of £8m

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1 to £10m. Tenderers are required to submit a price for
 2 undertaking the programme, and KCTMO is required to
 3 assess the tenders based on the price/quality criteria
 4 you have set out in the tender documents. The
 5 Restricted Procedure does not permit a contracting
 6 authority to undertake negotiations with the tenderers
 7 prior to contract award, and does not provide for the
 8 contracting authority to revise the tender document or
 9 for tenderers to submit revised 'best and final offers'.
 10 To do so would be a breach of the EU Regulations, even
 11 if you allowed all the tenderers to renegotiate their
 12 prices.

13 "Your only EU compliant options are to assess the
 14 tenders and award the contract to the tenderer who
 15 scored the highest based on your price/quality criteria,
 16 or not award the contract and run a new procurement
 17 exercise. If the contract allows it, you may run value
 18 engineering exercises with your selected tenderer, but
 19 only once the contract has been entered into."

20 So that was the advice. Then she goes on to say:

21 "In the event that there is a formal challenge we
 22 may be required to disclose some/elements of the formal
 23 reports so I suggest the references to 'value
 24 engineering' are removed for the moment.

25 "I think the way forward is to enter into the

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1 contract for £9,249,294 and then embark on the VE post
 2 award (so the award is on the basis if the published
 3 evaluation criteria). There will need to be some
 4 'informal' discussion with the preferred contractor
 5 prior to award so there is an understanding of the
 6 approach.

7 "Views?"

8 Now, we then see your response to this, Mr Cash, if
 9 we go to it, which is over the page to page 1
 10 {ART00006433/1}, and you say, this is 3 March, next day:

11 "Jenny,

12 "I agree with you in terms of placing the contract
 13 at the submitted tender value and an offline discussion
 14 with the preferred contractor. Particularly to set out
 15 the intent once a contract has been entered into. There
 16 is absolutely nothing to say that once in contract the
 17 KCTMO cannot look for ways of making savings and as part
 18 of the informal discussion, the intention can be made
 19 clear and although not binding, the contractor's
 20 agreement sought to work with KCTMO to achieve the
 21 required savings. Some savings have already been
 22 identified and the contractor may well put forward
 23 others for consideration during the discussions that can
 24 be investigated prior to entering into contract."

25 Do you remember this email chain?

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1 A. Yes, I do.
 2 Q. Now, at this point that you write your email, 3 March,
 3 there had been no formal notification to any of the
 4 bidders, had there?
 5 A. None.
 6 Q. And the OJEU process was continuing, wasn't it?
 7 A. Correct.
 8 Q. And there were interviews still outstanding; yes?
 9 A. Yes.
 10 Q. The question here was how to bridge the gap between the
 11 TMO's budget and Rydon's price, but you'd had no
 12 discussions about bridging that gap yet, had you?
 13 A. No --
 14 Q. And no -- sorry.
 15 A. I was going to say, actually, the discussion was more
 16 about the TMO signing off the appointment of
 17 a contractor at a value over their approved budget.
 18 Q. And you had had no discussions about bridging that gap
 19 between the TMO's price and any other tenderer's price
 20 either, had you?
 21 A. Correct.
 22 Q. So what was contemplated, I think, was an informal
 23 discussion with Rydon about value engineering and not
 24 the three other tenderers?
 25 A. There were only two others at that time that were being

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1 considered.
 2 Q. In the end, that's correct, but I'm right on my point,
 3 aren't I, that there wasn't any contemplation of even
 4 any informal discussion with those other tenderers, only
 5 with Rydon?
 6 A. That's correct.
 7 Q. Can we then go back just to Jenny Jackson's advice on
 8 page 2 {ART00006433/2}. I showed you this a minute ago
 9 but I just want to focus on it.
 10 She says there, as I've shown you, that -- well, she
 11 suggests that references to value engineering are
 12 removed for the moment in the formal reports.
 13 Did you support the advice to remove mentioning
 14 value engineering?
 15 A. I can't remember if I made any objections or not at the
 16 time, but ... so I can't say for sure.
 17 Q. Did you understand, looking at the last paragraph of her
 18 advice or view, that she meant that value engineering
 19 exercises could only be conducted post-award?
 20 A. Yes. That was the intention.
 21 Q. What did you understand post-award meant in that
 22 context?
 23 A. Post confirmation of appointment of Rydon's.
 24 Q. So not, therefore, before notification of the preferred
 25 bidder?

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1 A. Correct.
 2 Q. Or indeed in the standstill period after the
 3 notification?
 4 A. Correct.
 5 Q. Or indeed at the end of the standstill period, or do you
 6 think at that point you could discuss it?
 7 A. At the end of the standstill period then we would be in
 8 a position because they would have been effectively
 9 selected.
 10 Q. Right, I see. So I think you would say you could only
 11 properly start discussing value engineering at the end
 12 of the standstill period and not before?
 13 A. Correct.
 14 Q. But she is of course saying that the TMO can have an
 15 "informal" discussion prior to award, so that the
 16 contractor could understand "the approach".
 17 Now, to the naked eye, Mr Cash, she is saying that
 18 although you can't actually seek to negotiate a bidder's
 19 price, you can tell them informally, off the record, as
 20 it were, that the TMO would want to have a value
 21 engineering discussion as part of the contract they will
 22 enter. That's how it looks. Is that how you understood
 23 it?
 24 A. That was my understanding, that, yes, it was to set out
 25 the principles of what would happen post-award.

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1 Q. Indeed. Is this wrong: in other words, she is saying
 2 that the TMO can seek to get some tacit agreement from
 3 Rydon that they will enter into a contract that includes
 4 a VE exercise?
 5 A. Not so much a tacit agreement; it was an understanding
 6 which would not be -- it's not a binding agreement in
 7 any way, and it was there to try and give her the
 8 ability to provide comfort to the board to -- of the TMO
 9 to sign off a contract value in excess of their approved
 10 budget.
 11 Q. All right, let's try it a different way: she was
 12 suggesting an informal, as it were, nod and a wink
 13 agreement, not binding in law, from Rydon in advance of
 14 them being notified that they were the preferred bidder?
 15 A. I wouldn't -- no, I wouldn't call it a nod and a wink,
 16 I think that's an incorrect reference. I'd think it's
 17 more a case of -- might be the way I saw it, was it was
 18 having a conversation with the preferred bidder but not
 19 actually telling them they were the preferred bidder, in
 20 terms of saying: this is the approach that would happen
 21 in the event that they might be awarded the project.
 22 Q. Indeed.
 23 Let's go back to what you say about this at page 1
 24 {ART00006433/1}. You refer there to having an offline
 25 discussion with the preferred contractor.

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1 When did you envisage that that offline discussion,
 2 as you put it, would take place?
 3 A. That it would happen at a point in time before award of
 4 the contract.
 5 Q. In other words, before notification of the preferred
 6 bidder?
 7 A. Before -- yes.
 8 Q. And by offline discussion, do you mean secret?
 9 A. I suppose it's secret because it's not actually in
 10 conjunction with discussions with anybody else.
 11 Q. That was my next question. Was the purpose of that
 12 offline discussion so that the TMO could get some sort
 13 of, if not binding agreement, then comfort from the
 14 contractor in an informal way that they would work with
 15 the TMO to achieve savings?
 16 A. Yes, but not with any particular reference to them being
 17 a preferred contractor.
 18 Q. Does it come to this: it was all right with you that the
 19 TMO could come to some sort of informal understanding
 20 with Rydon that they would reduce their prices by way of
 21 value engineering once in the contract, and that that
 22 understanding would be entered into or arrived at,
 23 perhaps, prior even to the award of the contract?
 24 A. It was my understanding that the conversation would not
 25 make any reference to their position in terms of the

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1 tender, that it was purely trying to seek
 2 an understanding that they were accepting of the process
 3 that would be followed once an award had been made, if
 4 they were successful.
 5 Q. You go on to say in your email, this is the penultimate
 6 line:
 7 "Some savings have already been identified and the
 8 contractor may well put forward others for consideration
 9 during the discussions that can be investigated prior to
 10 entering into contract."
 11 Are you saying there that the TMO could ask Rydon to
 12 identify specific savings that they would make before
 13 they're awarded the contract?
 14 A. No, it was reference to other savings that might be
 15 identified by other members of the professional team,
 16 not by the contractor.
 17 Q. All right. But in terms of timing, the timing is that
 18 Rydon would identify other savings for consideration
 19 which could be discussed before the contract was
 20 awarded.
 21 A. No, that's not what's being said there.
 22 Q. What are you saying there?
 23 A. That the savings had already been identified -- that
 24 there were savings that -- some had been identified
 25 within Rydon's tender, some had been identified by other

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1 members of the professional team, and that there were
 2 still ongoing investigations in terms of looking at what
 3 other potential savings might be made by the
 4 professional team, and that once the contract had been
 5 awarded to whoever it might be awarded to, then further
 6 discussions might be entered into as to whether there
 7 are any actual further savings, other than those that
 8 had already been identified.
 9 Q. This is rather different, though, from what
 10 Jenny Jackson is saying, isn't it? Because she is
 11 saying that the TMO could let a bidder know that the TMO
 12 would like to do a valuation exercise when in contract,
 13 but not actually seeking savings before the contract.
 14 A. Correct.
 15 Q. Yes. What you are suggesting is rather different from
 16 the Trowers advice, isn't it?
 17 A. No, because Trowers is saying that you can enter -- if
 18 you enter into a contract at the value, then you can
 19 enter into a value engineering process once they are
 20 awarded.
 21 Q. Indeed, but what you are suggesting, I think, in your
 22 email is that there could be this offline discussion
 23 with the preferred contractor prior to the contractor
 24 even being notified that it was preferred.
 25 A. Purely to identify the process that would be followed.

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1 It wasn't to actually investigate any savings or any
 2 value engineering.
 3 Q. I see. So that's the distinction you would draw, is it?
 4 A. Yes.
 5 Q. In other words, identifying a process rather than
 6 identifying any specific savings?
 7 A. Correct.
 8 Q. I see.
 9 SIR MARTIN MOORE-BICK: Why not go through the same process
 10 with the other bidders?
 11 A. We probably should have done, but the feeling was that
 12 they were so far away that there was no way that they
 13 were going to close that gap, and that the TMO actually
 14 needed to be able to have comfort, otherwise they
 15 wouldn't be able to sign off the tender report, in which
 16 case then we wouldn't have had a project.
 17 SIR MARTIN MOORE-BICK: Because the nature of the comfort,
 18 if I have understood it correctly, is in effect to tell
 19 the preferred bidder that although the contract sum was
 20 £9.4 million-odd, in reality there would have to be
 21 a reduction in different aspects of the work to bring it
 22 down within budget. That was the essential nature of
 23 what was being communicated, wasn't it?
 24 A. Yes, but there would be a process gone through to -- so
 25 effectively it was managing the contractor's

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1 expectations that if they were awarded a contract at
2 £9.24 million, that actually, eventually, the price that
3 gets -- that would get signed off wouldn't be that
4 value.

5 SIR MARTIN MOORE-BICK: Yes, Mr Millett.

6 MR MILLETT: Why didn't you, just to revisit the point
7 the Chairman has just put to you, adopt the same
8 exercise across a level playing field with all the
9 tenderers to give them an equal opportunity to discuss
10 the proposed approach, even if not figures, for value
11 engineering?

12 A. Because we felt that the difference between the
13 tenderers in terms of what had already been evaluated
14 was such that there was only really one player in the
15 process now.

16 Q. Right. This is before even the interviews, as we can
17 see. It's four days before the interviews. What was
18 the point of having the interviews, then, if you had
19 already made the decision that, as you put it, there was
20 only really one player in the process?

21 A. Because the interviews had been identified as part of
22 the OJEU process, evaluation process, and therefore we
23 couldn't just discount those, and they were part of the
24 overall scoring mechanism to achieve an overall score.
25 But even if Rydon had scored zero and everyone else had

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1 scored five, they still wouldn't have actually been in
2 a better position. It wouldn't have changed the
3 markings.

4 Q. Indeed, and doesn't that rather tell us that, in fact,
5 this exchange, whether or not it complies with the legal
6 advice or corresponds with Trowers' legal advice, shows
7 us that, actually, the TMO had essentially selected
8 Rydon purely on the basis of price, on the basis of the
9 tenders as had come in, and it was for that reason that
10 the value engineering discussions or approach to value
11 engineering was not opened with any of the other
12 tenderers?

13 A. No, because the overall evaluation criteria were based
14 on price, quality and interview. So the price was 40%,
15 the overall quality was 55%, and the interview was 5%.
16 So actually the emphasis was on quality, not on price.

17 Q. Let me put it a different way: whatever had led to the
18 conclusion, you had already made your minds up by
19 3 March that Rydon was going to win, which is why you
20 didn't approach the other tenderers?

21 A. When you say made our minds up, that was the outcome of
22 the evaluation. It wasn't the fact that we had just
23 made our minds up; we had gone through a particularly
24 detailed process of evaluation and scoring which had
25 resulted in all three tenders being scored, and Rydon's

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1 was exceptional -- had performed exceptionally well on
2 both price and quality relative to the other tenderers.

3 Q. But as I said to you a moment ago, that process hadn't
4 been completed yet, the scoring, because the interviews
5 hadn't taken place.

6 A. Which represented 5%, and that gap wouldn't have been
7 bridged even, as I say, if Rydons had scored zero and
8 the other tenderers had scored five. So in actual fact,
9 although we had to go through that process, because
10 that's the OJEU process and somebody could have
11 challenged us if we hadn't gone through that process, it
12 was already a foregone conclusion.

13 Q. I think that answer my question.

14 Can we then go to the top of this email chain,
15 {ART00006433}, and we can see there that, as I showed
16 you before, Jenny Jackson says to David Gibson:

17 "We need to think how this will be presented to the
18 Board ..."

19 Is it right that the TMO wanted to seek reductions
20 from Rydon, as the lowest tenderer, even in advance of
21 entering into the contract?

22 A. It was expected that the value engineering would result
23 in reductions in the contract award price.

24 Q. And was that because the TMO wanted to reduce the price
25 to fit their budget?

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1 A. They wanted to reduce costs, yes.

2 Q. To fit their budget?

3 A. Yes.

4 Q. Or as close to as they could.

5 A. Yes, because they didn't have any way of increasing
6 their budget.

7 Q. By this advice, were you assuring the TMO in what you
8 were saying that they could seek reductions in advance
9 of the award of the contract, or at least seek clarity
10 about the approach to reductions, if I can put it more
11 delicately, in advance of the award of the contract?

12 A. We could say that the contractor had understood what the
13 process would be, but we couldn't give any further
14 clarity other than that, because there was no obligation
15 or commitment from the contractor to actually have to
16 comply with that.

17 Q. Yes.

18 So, in a nutshell, this email chain shows that, even
19 before the interviews forming part of the OJEU process,
20 there were proposals for unilateral discussions with
21 Rydon as one of the bidders about value engineering that
22 were not made available to the other bidders.

23 A. About the process of value engineering, not about the
24 detail of value engineering.

25 Q. If it was about the process and therefore completely

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1 above board, as you might have it, why did it have to be
 2 "informal" or "offline", as you put it?
 3 A. Because the whole process of value engineering had been
 4 taken out of the tender report, and therefore it was
 5 going to become a post-award process.
 6 Q. Right.
 7 Did you feel entirely comfortable about this way of
 8 proceeding, Mr Cash?
 9 A. No, but this was -- it was a process of being able to
 10 get the TMO board to sign off and get to a position
 11 where a contract could be awarded. As I say, otherwise
 12 there wouldn't have been a contract award and there
 13 wouldn't have been a project.
 14 Q. Does that tell us that Artelia was prepared to support
 15 the TMO and the course of action that the TMO wanted to
 16 take, even if Artelia wasn't entirely comfortable with
 17 it?
 18 A. It was, I suppose, again where we were being put under
 19 pressure by our client to try and follow a process.
 20 Q. Yes.
 21 Now, let's move forward a little bit in time. As
 22 I understand it chronologically, the events are on
 23 7 March the interviews take place, and on 10 March
 24 Claire Williams produces a report recommending Rydon as
 25 the winner. Do you remember that? Have I got those

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1 dates --
 2 A. I think those are correct, yes.
 3 Q. On 12 March, I think it's right that Artelia produced
 4 a final tender report also recommending Rydon as the
 5 winner, and I can give a reference for that:
 6 {ART00002197}. There is no need to turn it up.
 7 Then on 18 March, just following the chronology,
 8 putting it in context, notices were sent by Artelia to
 9 all bidders letting them know the outcome. Does that
 10 accord with your recollection?
 11 A. Yes.
 12 MR MILLETT: And the one that went to Rydon is at
 13 {ART00008632}.
 14 I just want to have a look, having given you the
 15 framework of the dates, 7 March to 18 March 2014, at
 16 what happened in detail in that period.
 17 Now, Mr Chairman, this is a reasonably lengthy
 18 topic, but we can make some progress in five minutes.
 19 I would quite like to start on it, if we can.
 20 SIR MARTIN MOORE-BICK: All right. Yes, we can do that.
 21 MR MILLETT: I can probably get down to the next subtopic in
 22 five minutes.
 23 Can I ask you to go to {RYD00003310}. This is
 24 an email chain between the TMO and Rydon on 13 and
 25 14 March 2014, and can we look, please, first at the

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1 email from David Gibson of the TMO to Steve Blake of
 2 Rydon at the bottom of page 1 and then over on to
 3 page 2.
 4 At the bottom of page 1 -- these things get cut off
 5 sometimes -- shows that this is an email from
 6 David Gibson to Steve Blake, 13 March 2014, and if we
 7 can go to the top of page 2 {RYD00003310/2} we can see
 8 the substance of it. Let's look at the first three
 9 paragraphs. He says:
 10 "Steve,
 11 "Peter Maddison of the TMO has given me your contact
 12 details. I understand you are currently in a meeting.
 13 "I have attached a simple spreadsheet indicating the
 14 areas we would like you to look at in relation to
 15 possible savings.
 16 "Our target is circa £800k, which included the
 17 cladding savings already priced and any grant income to
 18 the scheme."
 19 Were you aware of this email at the time, do you
 20 think?
 21 A. No.
 22 Q. Were you aware at the time that Rydon was asked by the
 23 TMO to find savings of £800,000?
 24 A. No.
 25 Q. And therefore it would follow that you weren't aware

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1 that the TMO had asked Rydon to find savings of £800,000
 2 even before Rydon had been notified that they were the
 3 successful bidder?
 4 A. Correct.
 5 Q. Does that surprise you?
 6 A. It does.
 7 Q. Why does it surprise you?
 8 A. Because I wasn't aware that this was happening.
 9 Q. That goes without saying, that's how most surprises
 10 happen, but does it shock you?
 11 A. Well, yes, because I wouldn't expect that of
 12 an organisation of the TMO.
 13 Q. No.
 14 If we can go up to page 1 {RYD00003310/1}, we can
 15 see that the parties agreed to meet the following
 16 Tuesday, which is, as it turns out, 18 March 2014.
 17 There is an error about Monday and Tuesday.
 18 Now, that meeting was in the period during which the
 19 OJEU process was still running, wasn't it?
 20 A. Yes.
 21 Q. Because in fact, although the letter went out on
 22 18 March 2014, it went out late in the day on that day.
 23 Were you or, to your knowledge, anybody else at
 24 Artelia aware that on 18 March 2014, before the
 25 notification of the result, TMO and Rydon had a meeting

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1 to discuss savings to be made, including savings on
 2 cladding?
 3 A. No.
 4 Q. Again, are you surprised in the sense of shocked to
 5 discover that that had happened?
 6 A. Yes.
 7 Q. I assume from what you have just told us that there was
 8 no one from Artelia at the meeting?
 9 A. Not that I'm aware of, no.
 10 Q. Can I also assume that you have never seen any notes of
 11 that meeting?
 12 A. No.
 13 Q. We have asked those who have attended whether they took
 14 any notes and we have not seen any.
 15 Can we go to {ART00008755}. This is the email from
 16 Philip Booth sending out Rydon's notification that it
 17 was the preferred bidder, and you can see that,
 18 18 March 2014, and it's sent at 5.55 in the evening. Do
 19 you see that?
 20 A. Yes.
 21 Q. "Dear Peter."
 22 It goes to Rydon, Peter Arnold at Rydon:
 23 "Please find attached the notice of tender result
 24 for the works at Grenfell Tower."
 25 It appears to be sent out, as far as we've been able

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1 to piece together the timing, after the meeting between
 2 the TMO and Rydon about value engineering on that day.
 3 Do you know how Artelia knew to send out the
 4 notices? Was there a final instruction from the TMO to
 5 press the button and send it out, do you know?
 6 A. I would expect there would have been, because once our
 7 tender report gets submitted, it gets reviewed, and
 8 I believe that it had to be presented to the TMO board
 9 for them to sign off and approve the appointment of the
 10 contractor.
 11 Q. Do you know when that happened?
 12 A. I can't remember for sure, no, but I believe it would
 13 have happened prior to us issuing those. We wouldn't
 14 have issued them without some reference from the TMO.
 15 Q. No, indeed. Do you know or do you have a feel for how
 16 soon before 5.55 on 18 March 2014 the instruction came
 17 from the TMO to send this letter out to the bidders?
 18 A. I don't know.
 19 MR MILLETT: You don't know, all right.
 20 Mr Chairman, is that a convenient moment?
 21 SIR MARTIN MOORE-BICK: Yes. That suits you, does it?
 22 MR MILLETT: It does.
 23 SIR MARTIN MOORE-BICK: Right, well, Mr Cash, we're going to
 24 finish there for the day. I'm sorry I have to ask you
 25 to come back and answer some more questions tomorrow,

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1 but I think you may have been warned that that was
 2 likely to happen.
 3 THE WITNESS: Yes, I have been.
 4 SIR MARTIN MOORE-BICK: So we will resume at 10 o'clock
 5 tomorrow morning. Please don't talk to anyone about
 6 your evidence or anything to do with it overnight.
 7 THE WITNESS: I won't.
 8 SIR MARTIN MOORE-BICK: And we will look forward to seeing
 9 you tomorrow.
 10 THE WITNESS: Thank you very much.
 11 SIR MARTIN MOORE-BICK: Thank you very much. Would you like
 12 to go with the usher, please.
 13 THE WITNESS: Thank you.
 14 (Pause)
 15 SIR MARTIN MOORE-BICK: Thank you. 10 o'clock tomorrow.
 16 MR MILLETT: Yes, Mr Chairman, thank you.
 17 (4.31 pm)
 18 (The hearing adjourned until 10 am
 19 on Wednesday, 7 October 2020)
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