

1 Wednesday, 5 December 2018

2 (10.03 am)

3 MR BOULDING: Good morning, Chairman. Good morning,

4 Professor.

5 As I foreshadowed yesterday, my next witness is

6 Mr Aidan Rooney and he's sitting in the witness box.

7 WITNESS: Good morning.

8 MR BOULDING: Good morning, Mr Rooney.

9 MR AIDAN GERALD ROONEY (sworn)

10 Examination-in-chief by MR BOULDING

11 MR BOULDING: Your full name, I understand, is Aidan Gerald

12 Rooney; correct?

13 A. That's correct.

14 Q. And it's right, is it not, that you have produced one

15 witness statement for the Commission of Inquiry's

16 assistance in this matter?

17 A. That's correct.

18 Q. I wonder whether we can have a look at that together.

19 If you could be shown on the monitor B181.

20 Do we there see, Mr Rooney, the first page of your

21 witness statement?

22 A. Correct.

23 Q. I wonder if we could go on to page B217. I'm right in

24 thinking, am I not, that it's your signature under the

25 date of 14 September 2018?

26

1 A. That's correct.

2 Q. But there are one or two corrections, I think, to be
3 made, and we see them, do we not, at page B217.1? You'd
4 like to correct your witness statement as set out there,
5 would you not, Mr Rooney?

6 A. That's correct.

7 Q. Subject to that correction, are the contents of your
8 witness statement true to the best of your knowledge and
9 belief?

10 A. They are.

11 Q. Now, Mr Rooney, to assist the tribunal, it's become
12 conventional to see where you were in the MTR
13 organisation. I wonder if we can go first, please, to
14 page B676.

15 We can see, down in the bottom left-hand corner,
16 that this is an organisational chart effective from
17 January 2015, and we can see, can we not, Mr Rooney,
18 that you are there in the middle as the general manager?

19 A. That's correct.

20 Q. That shows the reporting sequence, does it not, at that
21 particular time, as far as you're concerned?

22 A. In January 2015, that's correct.

23 Q. Of course. But things didn't always stay like that, and
24 I wonder if we can go to another document, please, and
25 that's B576. This is effective as of 31 March 2016,

26

1 correct, top left-hand corner?

2 A. That's correct.

3 Q. There do we see your face and name at the very top of
4 the tree?

5 A. That's correct.

6 Q. What's going to happen now, Mr Rooney, is that you'll be
7 questioned, I anticipate, by Mr Pennicott for the
8 Commission of Inquiry. Then there are various lawyers
9 around the room who will be given the opportunity, if
10 they want, to ask you some questions. The Chairman and
11 the professor can ask questions at any time, and then
12 I might have some further questions for you at the end.

13 A. Understood and thank you.

14 MR BOULDING: There we go.

15 Examination by MR PENNICOTT

16 MR PENNICOTT: Good morning, Mr Rooney.

17 A. Good morning.

18 Q. As Mr Boulding has just indicated, my name is Pennicott
19 and I'm one of the counsel to the Commission. I have
20 some questions for you, which I don't think are going to
21 take too long --

22 A. Thank you.

23 Q. -- certainly not for my part. Thank you very much for
24 coming along to give evidence to the Commission this
25 morning.

26

1 A. My pleasure.

2 Q. Mr Boulding helpfully has taken us to a couple of
3 organisation charts, but, in a sense, they don't tell
4 the full picture in terms of all the roles that you
5 played on this project. I appreciate, of course, that
6 in your witness statement you have helpfully set out the
7 various roles that you played and various duties and
8 responsibilities you had throughout your involvement
9 with the SCL project.

10 A. That's correct.

11 Q. However, whilst most people in this room may have had
12 the benefit of reading this witness statement, perhaps
13 there are others outside who haven't, so I'm just going
14 to very, very briefly try to summarise what I understand
15 the position to be, and you can tell me if I've got it
16 right or not.

17 A. No problem. Thank you.

18 Q. We start off, I think, in May 2013 through to December
19 2013, where I think you were the project manager for the
20 SCL Hong Kong Island section?

21 A. That's correct.

22 Q. Then, from January 2014 to September 2014, you were the
23 project manager for the SCL civil-NSL, that's the North
24 South Line?

25 A. That's correct.

26

1 Q. Then, in October 2014, you became the acting general
2 manager-SCL civil-EWL and NSL?

3 A. That's also correct.

4 Q. Then in April 2015, you became the general manager-SCL
5 civil-EWL?

6 A. Correct.

7 Q. Then, a short period for that particular role, in July
8 2015, as I understand, right up until August this year,
9 you were the general manager-SCL civil-NSL?

10 A. Correct.

11 Q. During that period, that is July 2015 to August 2018, in
12 January 2016, I understand you became the project
13 manager of contract 1112, that we are concerned with?

14 A. That's correct.

15 Q. This probably isn't so relevant -- I think lastly you
16 tell us that in July 2017 through to August 2018 you
17 were also the head of project safety?

18 A. That's also correct.

19 Q. In relation to the period that perhaps we're most
20 concerned with, which is the period from about mid-2015
21 to the end of 2015, going into 2016, you were then the
22 general manager of the SCL civil-NSL?

23 A. Correct.

24 Q. And the general manager for the SCL during that period
25 was Mr TM Lee?

26

1 A. Sorry, could you repeat the dates, just for -- my
2 apologies.

3 Q. Yes. In the latter half of 2015, the general manager
4 for the SCL -- you were the general manager-SCL civil?

5 A. That's correct, yes, and Mr TM Lee was the overall
6 general manager.

7 Q. That's right.

8 A. Correct. Sorry.

9 Q. Not at all. It's a lot to remember, and I apologise for
10 making it a bit of a memory test.

11 During that period, again, while you were the
12 general manager-SCL civil-NSL, your counterpart for the
13 EWL was Jason Wong?

14 A. I can't remember, forgive me, when Jason Wong was
15 appointed as general manager for EWL, in terms of the
16 date.

17 Q. He tells us it was July 2015.

18 A. Thank you.

19 Q. Then that would be right, if that date is correct?

20 A. If that date is correct. Sorry, I can't recall.

21 Q. That's fine.

22 Now, in addition to those various roles, you were
23 also, for a period of time, the competent person for
24 contract 1112?

25 A. That's correct.

26

1 Q. As I understand it, you were the competent person for
2 contract 1112 between the period September 2013 and
3 February 2015?

4 A. That's correct.

5 Q. Then, as I understand it, Mr Jason Wong took over your
6 role as competent person for this project -- sorry, for
7 this contract -- and he remained in that position as the
8 competent person until August of this year?

9 A. That's also correct.

10 Q. My understanding is, under the regime under which this
11 project was operating, the competent person is
12 essentially equivalent to an authorised person or a RSE
13 operating under perhaps the more usual regime?

14 A. That's correct.

15 Q. So, therefore, for the responsibilities of the competent
16 person, one has to go off and look at the Code of
17 Practice for Site Supervision, and perhaps other
18 documents as well but primarily that document?

19 A. That's correct.

20 Q. In addition to your various roles and in addition to
21 being the competent person, my understanding also is you
22 were the engineer's delegate under the 1112 contract
23 between the MTRC and Leighton?

24 A. That's correct.

25 Q. My understanding is that, leaving aside a short period
26

1 back in 2013 which seems to be only a few weeks, but we
2 don't need to worry about that, you were the engineer's
3 delegate for contract 1112 from February 2015 onwards?

4 A. Until --

5 Q. Until August this year.

6 A. Correct.

7 Q. So, if we take a couple of snapshots in time, in, for
8 example, January 2015, which is the first organisation
9 chart Mr Boulding took you to earlier --

10 A. Yes.

11 Q. -- at that point in time, you would have been the acting
12 general manager-SCL civil EWL and NSL, in January 2015?

13 A. That's correct.

14 Q. And also you would have still been the competent person
15 for contract 1112, just about?

16 A. Briefly, yes, that's correct.

17 Q. With one month to go?

18 A. That's correct.

19 Q. Then another snapshot in time, although -- I guess
20 that's right. Another snapshot in time: in September
21 2015, a month that for various reasons this Inquiry is
22 quite interested in because a lot of things seem to have
23 happened in September 2015, you were then the general
24 manager-SCL civil-NSL?

25 A. That's correct, yes.

26

1 Q. And by that time you would have also been the engineer's
2 delegate under contract 1112?

3 A. That's correct.

4 Q. A last snapshot: January 2016 -- so we have moved on
5 a few months -- you would have still been the general
6 manager-SCL-NSL, still the engineer's delegate, but also
7 you would have now become the contract manager of
8 contract 1112?

9 A. That's correct. Can I just clarify there -- I obviously
10 had, if you like, a dual role as GM and PM for 1112.

11 Q. Yes, indeed. Understood. So, when you were -- let's
12 take September 2015. When you were doing your site
13 walks, as I understand took place approximately on
14 a weekly basis --

15 A. Correct.

16 Q. Normally on a Monday morning; is that right?

17 A. At that particular time, sir, it was actually on
18 a Monday afternoon.

19 Q. Okay.

20 A. Not in a morning.

21 Q. Okay.

22 A. They changed to Monday mornings after Chinese New Year
23 2016.

24 Q. Okay.

25 A. So in 2015 they were always in the afternoon.

26

1 Q. Okay. And, when you were doing those site walks,
2 presumably you weren't thinking about which particular
3 role you were playing, which particular hat you were
4 wearing; you were there just to obvious what was going
5 on, look at matters such as safety and progress and
6 activity? Is that right?

7 A. I think I was mindful of the fact that I was the general
8 manager and I was undertaking my weekly site walk for
9 1112 on the basis of the general manager. But you are
10 correct that I would be -- the purpose of the site walk
11 was to look at safety and to look at progress and
12 quality, and the overall condition of the site and what
13 was happening.

14 Q. Okay. And those site walks would involve not just the
15 NSL but the EWL as well?

16 A. They would -- time permitting, they would ideally cover
17 the whole site, from the South Approach Tunnel to the
18 North Approach Tunnel. So that's the full extent of the
19 contract works. And occasionally we would go to the
20 Hung Hom concourse area as well.

21 Q. All right. You would be joined, as I understand it, on
22 those site walks, by senior personnel from the MTRC,
23 from Leightons also, and occasionally perhaps by
24 representative sub-contractors?

25 A. Definitely the senior representatives from my MTR site
26

1 team, and definitely representatives from the Leighton
2 senior construction management team, including the
3 project director and possibly the area manager.

4 Sub-contractors were not specifically invited to
5 those site walks.

6 Q. Would they sometimes nonetheless attend those site
7 walks?

8 A. They would, if you like, attend by invitation, normally
9 on the day, and they would be invited to meet at
10 a particular location on the site relevant to whatever
11 particular issue was felt necessary to discuss with
12 them.

13 Q. Yes, I see. And that invitation, presumably, what,
14 would be made by Leighton to the sub-contractors?

15 A. That would be always made by Leighton directly to the
16 sub-contractors.

17 Q. Right. I think, as you just indicated, it would
18 normally happen if there was a particular issue or
19 a particular problem that needed to be discussed?

20 A. That's correct. And what used to generally happen -- at
21 the start of our site walk, we would meet outside the
22 site office, and we would, as a team -- I would take the
23 lead in suggesting where we should concentrate the walk,
24 and particular areas where I wanted to confirm that my
25 understanding was correct in terms of -- whether it be

26

1 safety or whether it be engineering.

2 But then I would invite the Leighton project
3 director and the team to also contribute in terms of
4 areas that they wanted the team to have a look at. So
5 it was encompassing both parties' views at that time.

6 Q. Right. So it was a process which encouraged open
7 discussion, if there were matters to be raised and
8 discussed?

9 A. Most definitely.

10 Q. All right.

11 In paragraphs 40 to 44 of your witness statement --
12 and, Mr Rooney, you've got the choice. You can look at
13 it on the screen or we can give you a hard copy, or you
14 can have both. It's a matter for you how you prefer to
15 deal with it.

16 A. I think probably the screen is more convenient.

17 Q. That's fine.

18 In paragraphs 40 to 44 of your witness statement,
19 you deal with the site supervision plan?

20 A. Correct.

21 Q. I'm not going to go through all of that.

22 Then, moving on, in paragraphs 45 to 47 of your
23 witness statement, you deal with the BD's coupler
24 requirements.

25 A. That's correct.

26

1 Q. Mr Rooney, would it be fair to say that from the outset
2 of your involvement with the project, you were aware
3 that the couplers had been identified as a particular
4 potential problematic area?

5 A. It was -- I agree, and as a construction professional in
6 Hong Kong it's not the first time that the couplers had
7 been an area of focus, let's put it that way.

8 Q. Right. I say that because when the acceptance letter
9 came in from the Buildings Department, they specifically
10 required -- and we will look at this in a moment --
11 a quality supervision plan in relation to coupler
12 installation.

13 A. Not just the quality supervision plan but within the BD
14 acceptance letter there is a lot of detail, particularly
15 in respect to couplers.

16 Q. Couplers, yes, and in relation to testing of
17 materials --

18 A. Yes.

19 Q. -- and other things like that. Understood. All right.

20 Then, in paragraphs 48 to 52, you deal with the
21 quality supervision plan?

22 A. That's correct.

23 Q. You mention the quality supervision reports that you
24 prepared, or rather certainly signed --

25 A. Signed.

26

1 Q. -- wearing your hat as competent person --

2 A. That's correct.

3 Q. -- in relation to the first and second batches of, as we
4 call them -- in respect of the D-walls, the diaphragm
5 walls?

6 A. That's correct.

7 Q. We'll perhaps look at one of those shortly.

8 A. No problem.

9 Q. Mr Rooney, is it correct that, to your understanding,
10 the quality supervision plan applied, so far as
11 reinforcement is concerned, to the diaphragm wall cages
12 and also the installation of the steel reinforcing bars
13 into the couplers for the purposes of forming the
14 reinforcement to the EWL and NSL slabs?

15 A. That's correct.

16 Q. So the question that arises, perhaps, is what quality
17 supervision records -- or one of the questions that
18 arises is what quality supervision records should be in
19 place in respect of that installation work --

20 A. Understood.

21 Q. -- in order to enable you or your successor to sign off
22 a quality supervision report when you are applying or
23 putting in the BA14 submission?

24 A. That's correct.

25 Q. As far as -- let's just focus on the EWL slab for
26

1 current purposes. We know that there is what we've
2 tried to describe as a bottom mat of reinforcement --

3 A. That's correct.

4 Q. -- and a top mat of reinforcement?

5 A. And those mats are made up of various layers, yes.

6 Q. And those mats are made up of various layers, going --

7 A. Horizontally and longitudinally.

8 Q. -- horizontally and going longitudinally, exactly right.

9 A. Or transversely, transversely and longitudinally.

10 Q. Or east to west or north to south --

11 A. Correct.

12 Q. -- however you want to put it.

13 A. Correct.

14 Q. Right. Odd numbers and even numbers, another way of
15 looking at it.

16 A. Correct.

17 Q. And the evidence that we've had in the Inquiry to
18 date -- of course there is perhaps more to come later
19 today and this week from some of the MTR witnesses -- is
20 that, broadly speaking, inspections would take place on
21 a layer-by-layer basis, not on a mat-by-mat basis but a
22 layer-by-layer basis. Was that your understanding of
23 what was happening?

24 A. That was my understanding, and that's also what
25 I occasionally witnessed on site during my site walks.

26

1 Q. Okay. That would be done by MTRC inspectors of works
2 and Leighton's engineers?

3 A. And MTR engineers as well.

4 Q. Ultimately MTR's engineers, when it came to doing the
5 final sign-off, I think?

6 A. Correct, but also, when they would visit the site,
7 irrespective of their final sign-off, they would also
8 inspect.

9 Q. Right.

10 A. On a routine basis, sorry.

11 Q. However, the position in terms of documentation/records
12 that we have is that there is no record as such as of
13 the layer-by-layer inspections. We don't have --

14 A. That's correct, no. No, we don't.

15 Q. We don't have a piece of paper that says, "Bottom layer,
16 we checked each connection around the perimeter"; we
17 just don't have that sort of document?

18 A. No. The inspection test plan and RISC form system
19 relied upon -- even though it was two mats, it was one
20 RISC form that covered the whole of the reinforcement
21 cage.

22 Q. Yes. So what we have ended up with, so as we understand
23 it, so far as the EWL slab is concerned, and I think
24 probably the NSL is the same, is, as you say, RISC
25 forms?

26

1 A. Yes.

2 Q. One of which is a hold point -- in fact they're both
3 hold points -- but the first one is a hold point at the
4 rebar inspection stage?

5 A. Correct.

6 Q. And that requires the bottom mat to be inspected and the
7 top mat to be inspected?

8 A. That's correct.

9 Q. Before we can go to the pre-pour?

10 A. Pre-concrete, yes.

11 Q. Again, in relation to the inspection at the RISC form
12 stage, the evidence appears to be that the bottom mat
13 would be inspected first, necessarily?

14 A. That's correct.

15 Q. And I think the thrust of the factual witness evidence
16 is that it was impractical to inspect the bottom mat
17 once the top mat was in place. So, for practical,
18 sensible reasons --

19 A. I would agree with that, yes.

20 Q. -- the bottom mat would be inspected first?

21 A. Correct.

22 Q. But what we don't have is any record of precisely when
23 that bottom mat was inspected?

24 A. That's correct.

25 Q. Then of course we have the RISC form, and then we know
26

1 the top mat was inspected as well?

2 A. That's correct.

3 Q. And, if all was well, that would be signed off by
4 Leighton, by MTR, and Leighton were then allowed, as it
5 were, to move to the next stage?

6 A. That's correct.

7 Q. That, as you say, would be the pre-pour -- pre-concrete
8 pour record --

9 A. Inspections, yes.

10 Q. -- where a final, as it were, sweep-up would take place,
11 in order to ensure that the area was in a fit state to
12 receive the concrete?

13 A. Traditionally, it's a bit more than just a sweep-up, if
14 you don't mind me saying.

15 Q. No. Please tell us what's involved.

16 A. There is quite a lot of work involved in -- apart from
17 completing all the reinforcement, making sure that all
18 the formwork is correct, all the -- particularly the
19 nature of that type of work, there's invariably lots of
20 cast-in items, and that could be fixtures, it could be
21 pipes, it could be conduits, it could be -- and they all
22 need to be thoroughly checked to make sure they are in
23 the correct location.

24 So, if you don't mind --

25 Q. No, no.

26

1 A. -- there's quite a lot of work involved in that
2 pre-concrete check and inspection process.

3 Q. Understood, because the rebar is -- the first check, the
4 rebar check, is very much --

5 A. Very much.

6 Q. -- focused on the rebar and there are lots of other
7 matters that need to be checked thereafter?

8 A. Then, even though the main focus of the rebar check
9 is -- the hold point on the rebar is the main rebar
10 cage. Obviously, when the team is carrying out the
11 installation of cast-in items and completing the
12 formwork, there is, from my experience, often a need to
13 amend some of the reinforcement as well. So there is
14 a follow-up on making sure that still the reinforcement
15 is correct during the pre-concrete inspection as well.

16 So, once you complete the reinforcement RISC hold
17 point, it doesn't mean that you just ignore the rebar
18 after that point in time.

19 Q. All right. I think we've heard some evidence -- it may
20 not necessarily relate to these RISC form inspections --
21 that other perhaps more ad hoc inspections where
22 openings and suchlike -- that adjustments had to be made
23 to the rebar to ensure the opening was in the right
24 place and in the right dimensions, et cetera?

25 A. I'm not aware of that but it sounds very practical and
26

1 quite normal, in the process.

2 Q. Okay. I probably don't need -- you're obviously very
3 familiar with the RISC form process, I assume?

4 A. Not only within MTR but very, very similar systems on
5 all government jobs in Hong Kong.

6 Q. Okay. However, could I just take a few minutes to
7 trouble you --

8 A. No problem.

9 Q. -- with some documents in relation to the diaphragm
10 walls.

11 A. Please.

12 Q. The reason I want to do that, Mr Rooney, is to compare
13 and contrast the records that we have available to us in
14 relation to the inspection and supervision of the rebar
15 cages and the connections within them, compared to the
16 documents that we have in relation to the EWL slab and
17 the connections there.

18 A. Understood.

19 Q. Could we first of all -- and I'm going to try to focus
20 on one particular panel. Of course, there are many,
21 many panels.

22 A. Quite a few, yes. No problem.

23 Q. But for present purposes, for illustrative purposes, we
24 are going to try to focus on one, and it is EH76.

25 Could we please, first of all, see bundle F19,

26

1 page 13272.

2 Mr Rooney, this is what we know is a summary sheet
3 prepared by Intrafor, and in this instance signed off by
4 Intrafor and Leighton but not MTR, but don't worry about
5 that. We know that some of these records are signed by
6 all three parties, some by two and some by one. But
7 don't worry about that. That's a point of detail.

8 What Intrafor do here, on this summary sheet, is
9 collect together information which can be gathered from
10 a whole series of documents that are attached to this
11 summary sheet. I don't know whether this is something
12 you've seen before, but --

13 A. To be honest, I haven't seen this particular format, but
14 I've seen similar formats before for diaphragm wall,
15 yes.

16 Q. All right. If we go to page 13279 -- we can probably
17 blow up a part of that for you -- what it is, Mr Rooney,
18 just to tell you what it is, is --

19 A. It looks a very good record.

20 Q. -- rebar by rebar -- sorry, cage-by-cage signing-off
21 sheet, effectively.

22 A. I understand. It looks very good.

23 Q. So MTR/Leighton/Intrafor are inspecting the connections
24 between, to start with, cages 7 and 6 --

25 A. 7 and 6.

26

1 Q. -- and working their way up, as it were, and then we see
2 three signatures at each connection; do you see?

3 A. I see.

4 Q. So that's a source document which, prepared
5 contemporaneously, as we understand it, signed by the
6 parties, a record of the inspections that have been
7 carried out?

8 A. Like I said, it looks very thorough.

9 Q. For purposes we'll come to in a moment, can I just ask
10 you -- if we could blow up the top part of that
11 document, please. You will see at the top, in
12 manuscript, a date of 16 November 2013; do you see that?

13 A. I can.

14 Q. And the time is 17:00 or 17:10; do you see that?

15 A. Sorry, no.

16 Q. Just underneath the date, I think it says "17:10", where
17 the hand is now usefully being put.

18 A. I thought that was -- ah, sorry, yes, I see that now.

19 Q. The signatures are a bit lower down.

20 A. Yes, yes.

21 Q. So that is the starting point, as it were, for the
22 records, in terms of inspection of the rebar cages.

23 Then could I ask you --

24 A. Sorry, sir, can I --

25 Q. Yes, sure.

26

1 A. Does this cover all the cages?

2 Q. In this particular --

3 A. Because there's a lot of --

4 Q. Yes, in particular -- this particular one, I think it
5 does. I think there were just seven cages. The clue,
6 often, is to go to the summary sheet and see how deep
7 the founding level is --

8 A. Okay, no, I was just curious.

9 Q. And if the founding level on this one is actually about
10 minus 22, which equates normally to about six or seven
11 cages, obviously, where you have a founding level of
12 minus 50mPD, you are going to 15, 16 or 17 cages.

13 A. Yes.

14 Q. So it varies from diaphragm wall -- panel to panel.

15 A. Thank you.

16 Q. The next document I'd like to go to is G17,
17 page 12661.250. If we could blow this up, please. In
18 the top left-hand corner, Mr Rooney, again you will see
19 this relates to EM76?

20 A. Yes.

21 Q. And you can see it specifically relates to cage 2 to 1,
22 and you will see the 17:00 --

23 A. Yes.

24 Q. -- and 16 November 2013, which is why I asked for
25 everybody just to note that; do you see that?

26

1 A. I do.

2 Q. This is a sheet, as we understand it, of a checklist
3 which indicates, on, if you like, a coupler-by-coupler
4 connection basis -- do you see the rebar references down
5 the left-hand side, that all of these have been
6 satisfactorily observed, inspected and signed off; do
7 you see that? And if we go to the bottom --

8 A. Is there a signature?

9 Q. Yes. If we go to the bottom of the page, we will see
10 a series of signatures. We understand those to be
11 Intrafor's, across the bottom of the page.

12 A. Okay.

13 Q. I don't know if there's anything further to the right.
14 Can we go to the right, please. And also signed off by
15 MTR and Leighton; do you see that?

16 A. I see. Very good.

17 Q. You get a sheet -- so in addition to the cage-by-cage
18 document that we looked at just a moment ago, you then
19 get this sheet which, as it were, relates into what's
20 been done on the cage-by-cage analysis?

21 A. Understood, yes.

22 Q. Then finally on this, could I ask you to look at
23 H10/4840. That should be a letter, I hope, of
24 27 January 2015.

25 A. That's correct.

26

1 Q. This is --

2 A. Batch 1.

3 Q. -- batch 1, and obviously signed by Andy Leung, sent to
4 the Buildings Department, and the item I'm interested in
5 is item 14 on page 4841, which is "One copy of quality
6 supervision report of coupler for diaphragm wall[s]"; do
7 you see that?

8 A. I do. Thank you.

9 Q. If we go over the page to page 4843, just to pick up
10 a separate point.

11 If we just see the whole of that page to start with,
12 this is the document you signed, Mr Rooney, in your
13 capacity as the competent person?

14 A. That's correct.

15 Q. In fact, this relates, as I understand it, to certifying
16 that various materials, essentially, had been tested and
17 found to be satisfactory?

18 A. That's correct.

19 Q. Then if we go, please, to page 4845, we will see the
20 front sheet of the "Quality supervision report of
21 coupler for diaphragm wall/barrettes"; do you see that?

22 A. That's correct.

23 Q. Then if we go, please, to page 4861, we can pick up the
24 reference halfway down this page, approximately, to
25 EM76?

26

1 A. That's correct.

2 Q. We can see the reference to the seven cages in relation
3 to that panel?

4 A. Correct.

5 Q. And the date of certainly cage 1 and cage 2 of
6 16 November, which we saw on the two previous records?

7 A. The final cages, yes, that's correct.

8 Q. So, in summary, Mr Rooney, is this right, that the
9 information that we have looked at on the cage-by-cage
10 record and then the A3 -- it is A3, I can assure you, if
11 you get it in hard copy sheet, on the other record that
12 we looked at -- enabled you or somebody to prepare on
13 your behalf this quality supervision report, and you
14 were able therefore to have extreme confidence that what
15 you were saying in the quality supervision report was
16 accurate and that all this had been properly supervised
17 and inspected?

18 A. Correct.

19 Q. The question that, therefore, arises is if you put
20 yourself in the position of having to do a quality
21 supervision report to BD in relation to the EWL slab,
22 how would you go about it?

23 I know you've not -- you're probably thankful you
24 haven't got to -- but if you had to do a quality
25 supervision report to BD, for the purposes of the BA14

26

1 submission, how would you go about it?

2 A. I would put together all the records that were
3 available, to confirm that the works were inspected and
4 approved.

5 Q. And all you've got is the RISC form, in relation to the
6 rebar, and the pre-concrete pour?

7 A. From an MTR perspective, that's correct.

8 Q. And you would not be able, would I be right, to be able
9 to do an exercise, as we have seen in relation to the
10 diaphragm walls, on a connection-by-connection basis?

11 A. That's correct.

12 Q. If that were the case, do you think that would satisfy
13 the Buildings Department?

14 A. I believe the Buildings Department could still be
15 satisfied, yes.

16 Q. Okay.

17 A. Obviously the more information you have, the better.

18 Q. Mr Rooney, I think you're well aware that earlier this
19 year both the MTRC and Leighton prepared some
20 retrospective records in relation to the EWL slab
21 itself?

22 A. I'm aware that the MTR team prepared some retrospective
23 coupler records for the EWL slab, yes.

24 Q. Could we please go to those. They are at B7/4538.

25 Mr Rooney, I imagine you have seen these documents

26

1 before?

2 A. I did see a copy in or around mid-June of this year,
3 that's correct.

4 Q. Right. This is, as you can see from the bottom of the
5 page -- it says:

6 "This form serves a retrospective record of coupler
7 installation."

8 Do you see that?

9 A. I see that.

10 Q. It's signed by Mr Kobe Wong, who we're going to be
11 hearing from later day, or perhaps tomorrow, and he's
12 put a date there of 10 February 2017. And there are
13 various manuscript annotations or deletions and lines
14 you can see on the page.

15 A. That's correct.

16 Q. As we understand it, one of the purposes for which this
17 was prepared was because it was important, apparently,
18 to calculate the number of couplers that had been used
19 or incorporated into the EWL slab?

20 A. That's not correct.

21 Q. Right. Do you know what the purpose was of producing
22 these documents?

23 A. The purpose of producing these documents was for the MTR
24 team to be able to substantiate that they had complied
25 with the 20 per cent and 50 per cent coupler assembly

26

1 checking requirement laid down by BD.

2 Q. I see.

3 A. Can I maybe elaborate a little bit, if you don't mind?

4 Q. Please do. Of course.

5 A. Before these sheets were retrospectively prepared, the
6 MTR team -- sorry, I can't give you a date, but let's
7 say in early June 2018 -- did a takeoff of the quantity
8 of couplers for the whole of the EWL slab, both
9 longitudinal and transverse.

10 Q. Yes.

11 A. That exercise was complete and that was based upon the
12 as-built D-wall drawings that were available.

13 Q. Yes, I mean for two of the sides, as it were, not the
14 construction joint sides but the diaphragm wall sides?

15 A. The diaphragm wall sides.

16 Q. Yes.

17 A. But also, my understanding is that we knew where -- or
18 MTR and Leighton were aware of where the construction
19 joints were.

20 Q. Okay.

21 A. And that they could do a reasonable takeoff of the
22 number of couplers that were in each of those
23 construction joints, the 31 construction joints --

24 Q. Yes.

25 A. -- that make up the total EWL slab.

26

1 So, on the basis of, let's say, the available
2 information at that particular point in time, a total
3 number of couplers for the EWL slab was established.

4 Q. Yes.

5 A. Following on from that, there was a requirement for us
6 to be able to substantiate the requirement in the BD
7 letter of acceptance in regards to the 20 per cent and
8 50 per cent, and these sheets were retrospectively
9 produced to substantiate the 20 per cent and 50 per cent
10 of the overall, total number of couplers. I can't
11 remember the exact total number. Maybe you can help me
12 now. 26,500?

13 Q. Well, so far as the diaphragm walls were concerned, both
14 east and west, the total number of couplers derived from
15 whatever exercise was carried out --

16 A. Correct.

17 Q. -- was 23,500.

18 A. Thank you. Then there was an additional number for the
19 construction joints.

20 Q. Which was 19,000-something --

21 A. Thank you.

22 Q. I can't remember precisely either, but it's
23 19,000-something.

24 A. And that made up a total number.

25 Q. Yes.

26

1 A. And our interpretation of the BD requirements was that
2 MTR was specifically required. From a BD acceptance
3 point of view, the MTR team were not required to
4 necessarily check 100 per cent of those, but they were
5 required to check a total of 20 per cent of all the
6 couplers that were in the EWL slab.

7 Q. Yes.

8 A. Plus an additional 30 per cent, to make you up to
9 a minimum of 50 per cent for the transverse slab
10 component of the EWL slab.

11 Q. Right.

12 A. Have I explained that --

13 Q. I think so. My puzzlement, Mr Rooney, is this. We know
14 that the MTR inspected, necessarily inspected,
15 100 per cent of the D-wall connections with the rebar,
16 because they had to do so in order to sign off the RISC
17 form.

18 A. For the EWL slab?

19 Q. For the EWL slab, yes.

20 A. That is 100 per cent correct, that 100 per cent, or
21 let's say 99.9 per cent, of the couplers were checked.
22 But in terms of --

23 Q. Sorry, I say that because we know that there is a sheet
24 here -- this is just the first one, obviously, in
25 area A, but we've got a whole group of sheets here which

26

1 cover every single bay that was concreted, and I suspect
2 that these records could only have been prepared by
3 reference to those RISC forms, so they don't actually
4 tell you anything more than what's on the RISC forms.

5 A. I can't confirm that. My apologies.

6 In terms of the numbers, in the top right-hand
7 corner, there seems to be reference to T1 and T2 and B1
8 and B2.

9 Q. Yes.

10 A. I don't know if that is 100 per cent of the couplers in
11 that bay no. 1.

12 Q. If we look at another example, it may help. If we go to
13 page 4555, one that we've looked at previously, albeit
14 it is a west as opposed to an east panel -- you will see
15 that in the top right-hand corner, but for the purposes
16 of illustration it doesn't matter.

17 A. Yes.

18 Q. What has happened is that somebody, on this one, unlike
19 the previous one, has actually taken some of the
20 sections from the drawing and put it onto this sheet; do
21 you see that?

22 A. I see that, yes.

23 Q. As I understand it, by reference to, if you like, the
24 black dots, a calculation has been done to calculate the
25 number of couplers in this particular area, in relation
26

1 to those four panels?

2 A. I can see the numbers, but again I'm not -- to be honest
3 with you, I'm not sure if that's 100 per cent of the
4 couplers --

5 Q. All right.

6 A. -- or whether it's the percentage that's required to
7 satisfy the 20 per cent and the 50 per cent, because my
8 understanding is that these sheets were retrospectively
9 prepared purely to address the fact, in addition to the
10 RISC forms -- and I 100 per cent agree with you that the
11 RISC forms confirm that all the couplers were checked.
12 The situation that we had running up to 15 June this
13 year was that we, within MTR, did not have -- call it
14 checklists for the BD requirement of 20 and 50 per cent.

15 Q. Okay. But let's assume that's right. So you didn't
16 have any records for 20 and 50 per cent.

17 A. Not specifically, even though we had the RISC forms
18 which, as you quite rightly say, gave us assurance that
19 100 per cent of the couplers had been checked.

20 Q. If you had the comfort that the RISC forms showed you
21 that 100 per cent of the couplers had been checked, what
22 was the purpose of preparing these documents?

23 A. The purpose of preparing the documents was to be able to
24 show internally within MTR, including our CEO, that
25 there was a record that the BD 20 plus 50 had been

26

1 satisfied, in addition to the RISC forms.

2 Q. That suggests to me, Mr Rooney, that you accept that the
3 BD would not have accepted simply the RISC forms as
4 evidence of the 20 per cent and 50 per cent inspection
5 record.

6 A. They may have done. They may have done. Because, under
7 the BD requirements, the BD letter, there's no
8 particular detail in terms of what format the checks on
9 the couplers need to be presented.

10 Q. Yes.

11 A. So I can't say that BD would not accept the RISC forms
12 alone.

13 Q. Right. Would you accept this proposition, that
14 documents in similar format to the one we are looking at
15 on the screen here ought to have been prepared
16 contemporaneously with this work being carried out in
17 2015 and 2016?

18 A. Again, the more detail you have in terms of checks,
19 obviously it is preferred, but the level of detail
20 that's produced in these checklists is probably more
21 than I've ever witnessed or experienced before on
22 previous contracts. They're extremely good records, let
23 me --

24 CHAIRMAN: Sorry, we are talking about this?

25 A. That format, Chairman, the fact that you go into --

26

1 let's say each of those dots, Mr Chairman, represents
2 a coupler.

3 CHAIRMAN: Yes.

4 A. To go to that level of detail, it's extremely admirable,
5 and in respect to the D-wall records, they are
6 an extremely comprehensive set of records, probably some
7 of the best, to be honest, that I've seen.

8 MR PENNICOTT: Yes. I don't think, and if I may say so,
9 Mr Rooney, I don't think there's anything between us on
10 that. Certainly from my perspective, I agree with you
11 about the D-wall records, and that's why I've taken you
12 to them --

13 A. I understand.

14 Q. -- simply for the purpose, as I indicated right at the
15 outset, of contrasting those documents with what we've
16 got in relation to the D-wall, which is only the RISC
17 forms, and we don't have the connection-by-connection
18 records.

19 So I've reached the point where I'm suggesting to
20 you that this type of form, or something like it --
21 because you know the QSP has got an appendix B and C --

22 A. It's got an example, yes.

23 Q. An example?

24 A. Yes.

25 Q. Which the diaphragm wall records very closely follows.

26

1 A. I agree.

2 Q. But we don't have anything similar in relation to the
3 EWL or the NSL slab?

4 A. Not contemporaneously.

5 Q. No.

6 A. Just the retrospective records that MTR's construction
7 team put together in 2015.

8 Q. Yes, and the point which was --

9 A. Sorry, 2018.

10 Q. And the point that was put to some of the Leighton
11 witnesses -- because Leightons prepared virtually the
12 same type of record that we're seeing here on the screen
13 prepared by MTR, virtually the same -- I don't know
14 whether you've seen them -- the template was exactly the
15 same.

16 A. At the time I did not.

17 Q. Right.

18 A. Subsequently, I was shown examples, but the forms were
19 different.

20 Q. There are slight differences, but --

21 A. I think the format was very, very similar.

22 Q. Yes.

23 A. But the actual numbers were different and I was only
24 given a snapshot and I couldn't really understand why
25 the numbers were different.

26

1 Q. All right. But we do know that at the end of the day,
2 certainly at the point in time that the MTR 15 June
3 report was prepared -- but the number that MTRC had come
4 up was very similar, if not identical, to the number
5 that Leighton had come up with?

6 A. When we are talking about numbers, can we just clarify
7 that the overall number of couplers in the EWL slab, and
8 you are correct, was calculated by MTR and separately
9 calculated by Leighton, and there was a reconciliation,
10 and they arrived at -- the two teams reconciled and
11 arrived at a number that was very close to the MTR
12 number.

13 Q. Yes.

14 A. But that's the total number of couplers.

15 Q. Right.

16 A. Now, in relation to Leighton's requirement under the BD
17 stream and the BD requirement, they essentially have to
18 check 100 per cent, and I'm interpreting the words in
19 the BD letter.

20 Q. Yes, of course.

21 A. But from an MTR perspective, the requirement was the
22 minimum 20 per cent and 50 per cent. And so, if you
23 like, the number from a BD checking point of view,
24 putting the RISC forms to one side, there was
25 a difference in the requirements.

26

1 Q. Okay. But when we spoke to the Leighton witnesses about
2 this, they had a similar form in the sense that -- I'm
3 just looking at the items, 1, 2, 3, 4, 5, 6 at the
4 bottom, and focusing on 1, 2, 3 and 4 in particular --

5 A. Yes.

6 Q. -- we see the manuscript line that's put through the
7 "Not satisfactory" column; do you see that?

8 A. I do.

9 Q. And the evidence appeared to be, from the Leighton
10 witnesses, that provided there was a RISC form in
11 relation to this particular area, the line would just be
12 put through the "NS" column. Therefore, a point that
13 the Chairman put to one of the Leighton witnesses, was
14 this document is not actually telling you anything you
15 don't already know from the RISC form, if that's the
16 basis upon which it's been prepared.

17 A. I understand what you're saying but I can't --

18 Q. You can't comment?

19 A. I can't comment, sorry.

20 Q. Okay. All right.

21 A. Can I just say that I am very sure that this document,
22 these checklists, were produced to substantiate the 20
23 and the 50.

24 Q. Okay.

25 A. And for no other reason.

26

1 Q. Right. We've still got some more witnesses coming. We
2 can explore that a bit more if we need to. I think one
3 or two might have gone already, but we've still got the
4 signatory of this particular document so he may be able
5 to shine some light on that particular topic.

6 A. Okay.

7 Q. Could I switch to -- we're going to come back to the
8 June report in a moment.

9 A. No problem.

10 Q. But we'll deal with something else first. Could I ask
11 you, please, to look at paragraphs 63 to 66 of your
12 witness statement, where you deal with non-conformance
13 reports, Mr Rooney.

14 A. Yes.

15 Q. This is obviously a process that you're very familiar
16 with?

17 A. Yes, indeed.

18 Q. And you make reference to PIMS, and in particular you
19 make reference to exhibit 7.9, that's in paragraph 66,
20 of the PIMS document, which sets out the criteria
21 against which it needs to be --

22 A. That's correct.

23 Q. -- judged whether NCR would be issued or not.

24 A. That's correct.

25 Q. One of the criteria, in fact the key criteria, is that
26

1 an NCR should be issued if a matter is "significant"?

2 A. That's correct.

3 Q. And obviously that's a pretty subjective test; would you
4 agree?

5 A. I would agree, yes.

6 Q. And generally left to the construction management team?

7 A. Definitely in accordance with the PIMS.

8 Q. Yes.

9 A. But can I also say that significance is one criteria but
10 from memory there are other criteria as well.

11 Q. Yes, there are.

12 A. It's not just significance.

13 Q. There's more to it than that.

14 A. Thank you.

15 Q. Okay. And we know that one of the non-conformance
16 reports that we've been poring over from time to time in
17 this Inquiry is a document called NCR157, which wasn't
18 issued by the MTR but issued by Leighton --

19 A. That's correct.

20 Q. -- to its sub-contractor, Fang Sheung, in relation to
21 cut rebar, threaded rebar --

22 A. Correct.

23 Q. -- and in relation to rebar that was not screwed in
24 properly.

25 A. Correct.

26

1 Q. And that's an NCR that you presumably weren't aware of
2 at the time but you have subsequently considered; is
3 that right?

4 A. I definitely wasn't aware when it was raised in December
5 2015, but I became aware of it in January/February 2017.

6 Q. Yes, which we are coming to in a moment.

7 I will just ask the general question before we get
8 to January 2017 and Mr Poon's email, and so forth: when
9 you looked at that Leighton NCR --

10 A. Yes.

11 Q. -- in early 2017, presumably you looked at the
12 photographs that were attached to it?

13 A. I did.

14 Q. And you saw the description in the NCR?

15 A. Yes.

16 Q. Did you yourself form -- and perhaps I will ask you now:
17 do you think that that was a significant enough matter
18 for MTR to have issued an NCR to Leighton?

19 A. I would have said, based upon the normal procedures, the
20 MTR procedures, and the PIMS document, the monitoring of
21 site works, the preference would have been to get
22 Leighton to raise the NCR. There had been, if you like,
23 a push to try to get main contractors to be more
24 proactive in terms of managing their quality management
25 system over the years, even before I joined MTR, and

26

1 I can appreciate that approach; okay?

2 So I can see the rationale behind trying to get
3 Leighton to raise the NCR.

4 Q. Right. There was no instruction, I don't think, or
5 order -- direction to Leighton to do that, but they did
6 in fact do that?

7 A. I think -- I recollect that I think it was Kobe issued
8 an email, and I think the tone -- even though he didn't
9 say in his email, "Please raise an NCR", I think the
10 tone of Kobe's words in the email were sort of directing
11 Leighton to raise an NCR.

12 Q. Okay.

13 A. And I suspect that there was probably some conversations
14 held around the time, and Leighton did the right thing,
15 in my opinion, and immediately raised their NCR.

16 Q. Right. In your paragraph 66, to which I made reference
17 just a moment ago --

18 A. Yes.

19 Q. -- you say in the last sentence -- and obviously this
20 applied to NCR157:

21 "MTRC shall obtain a copy of Leighton's NCR ..."

22 Which it did in this particular instance.

23 A. Correct.

24 Q. "... to its sub-contractor to maintain oversight ..."

25 A. Correct.

26

1 Q. Do you see that?

2 A. Correct.

3 Q. Who was responsible within MTR of maintaining oversight?

4 A. Ultimately, the construction manager.

5 Q. Right. And that oversight would involve, what, ensuring
6 that the NCR was closed out and dealt with
7 satisfactorily?

8 A. Whatever action was required and it was closed out and
9 the documentation was put in place to record that, yes.

10 Q. Okay.

11 A. But the CM would obviously have assistance from his
12 engineering and inspection team to follow up on that.

13 Q. Right. So does MTR keep a register or log of
14 contractors' NCRs as they are received and copied to
15 MTR?

16 A. Yes. They keep two logs. They keep a log of, if you
17 like, the MTR NCRs, and they keep -- there's a log of,
18 let's say, the main contractor's NCRs as well.

19 Q. All right.

20 A. And they are I think -- I'm not sure if they are on the
21 same database, but they are regularly reviewed.

22 Q. Right. And do the quality assurance personnel at MTR
23 have access to those registers?

24 A. Yes, they do.

25 Q. So, as I understand it, we're hearing from one witness

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1 probably later this week or early next week who is one
2 of the senior quality assurance personnel at MTR who
3 carries out audits from time to time, internal audits --

4 A. Correct.

5 Q. -- for MTR.

6 A. Correct.

7 Q. So he and his team would have access to those NCR
8 registers?

9 A. Correct.

10 Q. Okay. I'll follow that up with him as to whether he
11 actually looked at them.

12 A. Understood.

13 Q. Now, let's move on to Mr Poon's email of 6 January 2017.
14 Could we go, please, to B10/7528.

15 A. Correct.

16 Q. What had happened, Mr Rooney, as I understand it -- and
17 you describe in paragraph 70 and following in your
18 statement -- is that Mr Michael Fu had forwarded
19 an email to you that he had received from Mr Zervaas?

20 A. That's correct, yes.

21 Q. You say that you've read that email exchange -- and
22 there it is in front of you again, if you need to look
23 at it -- and you say, this is paragraph 72 of your
24 witness statement, if we can get that up, please -- you
25 say that you "directed Mr Fu to work with Leighton to

26

1 understand the background of the allegations and to
2 instruct Leighton to investigate and provide a formal
3 report of the findings of its investigations."

4 In fact, if one looks at the email -- I'm sorry for
5 jumping around here --

6 A. It's okay. I remember the email.

7 Q. -- Mr Zervaas in fact informed Mr Fu that he already
8 requested Mr Lumb to start investigating?

9 A. That's correct.

10 Q. So that was just you emphasising, presumably, that you
11 wanted that investigation to be done?

12 A. And to work with Leighton, yes.

13 Q. Would this be right: there was no attempt to put any
14 restraints or constraints --

15 A. Definitely not.

16 Q. -- on Leighton's investigation?

17 A. Nobody.

18 Q. You didn't tell them to do an internal investigation;
19 you just wanted them to do an investigation?

20 A. That's 100 per cent correct. And apart from obviously
21 the email, I spoke with Anthony. From memory, I spoke
22 to him that night or the following morning, and we
23 agreed that it needed to be investigated in depth and to
24 understand what China Technology were saying.

25 COMMISSIONER HANSFORD: Can I ask, Mr Rooney: did you

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1 require that the investigation was done within
2 a particular time scale?

3 A. I think we agreed, myself and Anthony agreed, that we
4 wanted to do it as quickly as was reasonably possibly,
5 but at the time I don't recall that I put -- I didn't
6 say, "It needs to be done in the next week or so",
7 I don't think that was the case, although I subsequently
8 read that Stephen Lumb was asked to have his report
9 within a week, I think.

10 COMMISSIONER HANSFORD: Right.

11 A. But that time line did not come from MTR.

12 COMMISSIONER HANSFORD: Thank you.

13 MR PENNICOTT: The upshot of all this, Mr Rooney, is that
14 you in fact received two reports: one, the Leighton
15 report prepared by Mr Lumb and his colleagues, and also
16 your own internal report prepared by Mr Carl Wu?

17 A. Carl Wu, that's correct. In parallel with Leighton
18 undertaking their report or their investigation and
19 preparation of the report, in my discussions with
20 Mr TM Lee at the time, we mutually agreed that we needed
21 to carry out an independent investigation, and it was
22 agreed that Mr Carl Wu was probably best placed to
23 undertake that on behalf of MTR.

24 Q. Okay. You presumably received and considered both of
25 those reports?

26

1 A. I did.

2 Q. Were you satisfied that they dealt with the issue
3 properly, thoroughly, and in a manner that satisfied
4 you?

5 A. I was.

6 Q. Could I then --

7 CHAIRMAN: Sorry, if I could just ask here a couple of
8 questions. We have looked at the report prepared by
9 Leighton, and I only wish to talk briefly about that.
10 What puzzled us, me in particular perhaps -- I don't
11 wish to necessarily pull Prof Hansford into this -- he
12 has his own views on these things, although often
13 hopefully we have them together -- but, firstly, there
14 was the issue of if this was by that stage purely
15 historical, a week should have been imposed as a time
16 limit. Secondly, it was seemingly a purely internal
17 investigation, which was taken as meaning effectively
18 and practically that there would be no interviewing of
19 or discussions with people outside of presumably
20 Leighton or MTR. So Jason Poon himself was not
21 interviewed, even though he was the one who had laid the
22 complaint.

23 His photographs, which on study by this Commission
24 appear to show, and I stress "appear", a worker cutting
25 the threads off a reinforcing bar quite openly, and then

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1 joining, perhaps, other workers to put that bar into
2 a diaphragm wall. No mention is made in the report of
3 that at all, even though that was the dynamite, if I can
4 call it that, that came with the allegation, in other
5 words something to back up the allegation.

6 It seems that nobody spoke either to anybody among
7 the sub-contractors, especially the bar fixers, as to
8 what had happened, and it wasn't known, for example, in
9 that report, that apart from the NCR which was
10 identified, there had been two earlier instances of
11 rebar cutting which the people who prepared this report
12 didn't get to, because they didn't interview the people.

13 That puzzles us. Those number of items puzzle us,
14 and I wonder if you have any comment on that.

15 I appreciate that you didn't put the report together and
16 it was put together by another organisation.

17 A. In terms of people to be interviewed, I can appreciate
18 from Leighton's perspective at least, if you like, from
19 a first report point of view that they did not want to
20 speak to Mr Jason Poon or interview Mr Jason Poon
21 directly.

22 In terms of whether they should or could have
23 interviewed, let's say, Fang Sheung or Fang Sheung's
24 workers -- they could have done. I'm not sure that they
25 would have got, from my experience, very much feedback
26

1 from Fang Sheung, apart from possibly not accepting that
2 their workers were ever involved in any trimming or
3 cutting of bars.

4 CHAIRMAN: Although when we looked to Fang Sheung, we
5 discovered that there had been two earlier cuttings of
6 rebars, and those had been dealt with and warnings had
7 been given to the staff and all that sort of stuff.

8 A. Correct. But with due respect to the Commission, that
9 has been established over quite a lot of hard work by
10 people involved, and testimonies and the like.

11 CHAIRMAN: I accept that, yes.

12 A. I think it's good that we now know that Fang Sheung's
13 workers were involved in trimming those bars, but for
14 Leighton to be able to establish or to get Fang Sheung
15 to accept that at that particular point of time, I think
16 that would have been unlikely, from my experience, to be
17 honest.

18 But I accept that, yes, a more in-depth
19 investigation could have been carried out, and I think
20 definitely from an MTR perspective, if let's say the
21 first investigations had identified something more
22 substantial than those investigations did reveal, then
23 I think the investigation would have had to have gone to
24 another level.

25 CHAIRMAN: Yes.

26

1 A. Okay?

2 CHAIRMAN: And could I ask also -- it appears, and I stress
3 that word, it "appears", that Mr Jason Poon was never
4 informed of what the report had concluded. He was never
5 given any feedback.

6 Now, I appreciate that maybe contractors don't need
7 to be liaising/discussing with sub-contractors, but this
8 was a fairly dramatic set of allegations.

9 A. I agree.

10 CHAIRMAN: And clearly, from looking at the emails, they
11 stirred up a concern, quite understandably and quite
12 properly, and you had a gentleman of fairly robust
13 nature, it would appear, who is making certain demands,
14 and I just wonder if, in all the circumstances, at least
15 going back to him and saying, "Look, we've investigated
16 this, it has been properly investigated; we don't find
17 any substance in any of this", or is that just something
18 that's not done in the industry?

19 A. I don't think, generally speaking, it's done in the
20 industry -- and, Mr Chairman, I've considered this
21 amongst a few other points since 7 August, and in
22 retrospect I think it would have been better if we, MTR,
23 and Leighton, had gone back and to China Technology, at
24 the time, and said, "We've investigated and we found no
25 substance to your allegations."

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1 CHAIRMAN: Yes.

2 A. But unfortunately we didn't at that time.

3 CHAIRMAN: Of course that was an exercise of discretion at
4 the time, and I suppose, whenever you look back on
5 a road that leads to a scandal -- I use the term
6 advisedly -- there are often, if you follow the path
7 backwards, little stopovers, if I can put it that way,
8 which if dealt with differently might have a different
9 result. I appreciate that.

10 A. I totally agree. Also, apart from at the site level MTR
11 were aware at a senior project level and MTR were aware
12 from a PR perspective of the allegations. At no time
13 was it felt that having read the reports from both
14 Leighton and the internal MTR report that we should
15 broaden out the subject, either by going back to
16 Mr Jason Poon or going anywhere else with the
17 allegation, because, as I said, there did not seem to be
18 any significant validity in it, apart from the fact that
19 both Leighton and MTR identify the NCR as a record of at
20 least one incident, and the MTR report also acknowledged
21 that there had been a couple of other incidences of --
22 from memory, I think they used the words -- "workmanship
23 issues".

24 CHAIRMAN: Yes. Thank you very much.

25 MR PENNICOTT: The other thing both of those reports refer
26

1 to and record, that is the Leighton report and the
2 internal MTRC report by Mr Wu, is the lack of records.

3 A. In terms of cutting bars or ...?

4 Q. In terms of inspection and supervision of bars, they
5 both say there are no records, other than the RISC
6 forms.

7 A. I can specifically remember that within the MTR report,
8 Mr Carl Wu highlighted the fact that there was there
9 were some records that needed to be completed. To be
10 honest, I can't remember personally from the Leighton
11 report whether they talked about missing records, but
12 you are probably correct, but I can't remember.

13 COMMISSIONER HANSFORD: They --

14 CHAIRMAN: It is stated clearly, "There are no records",
15 which didn't seem to disturb anybody.

16 A. Sorry, I missed that fact.

17 MR PENNICOTT: I wonder whether this might be a point,
18 Mr Rooney, that there was a lack of confidence in
19 Leighton and MTR to go back to Mr Poon and anybody else
20 who was interested because of the lack of records?

21 A. That was never my contemplation at the time, no, and
22 I've got clear recollection that that was never
23 mentioned to me as a reason why we should not go back to
24 Jason Poon or to expand the investigation any further.

25 No, I --

26

1 Q. Because it -- sorry.

2 A. I can understand how somebody could make that link, but
3 that was definitely not my understanding at the time.

4 Q. It just strikes me as a possibility, Mr Rooney, that if
5 you had connection-by-connection records, similar to the
6 ones in relation to the diaphragm walls, one could have
7 said to Mr Poon, or anybody else who was interested,
8 "Well, look, you might have seen somebody cutting these
9 bars, there might have been this NCR, but here we are,
10 we've got a connection-by-connection inspection record
11 which shows every single connection was inspected and
12 signed off by MTR and Leighton. So whatever you might
13 have seen, we've got these records which demonstrate
14 there's absolutely nothing wrong with the workmanship in
15 relation to these connections."

16 A. Again, I don't believe that was ever a contemplation,
17 because we had -- and it was confirmed at least in the
18 MTR investigation report -- all the RISC forms,
19 particularly for the reinforcement, that confirmed that
20 the reinforcement was in accordance with the design and
21 the specification. So just the RISC forms alone were
22 more than enough evidence that the rebar and the
23 couplers were completed and carried out in accordance
24 with the requirements.

25 However, Mr Carl Wu's report did highlight that

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1 there was an absence of the QSP records, that's correct.

2 Q. Yes. Mr Rooney, it was through the production of the
3 two reports, the Leighton report and your internal
4 report by Mr Wu, that I think you then came to know
5 about NCR157 and that's how your knowledge was gained?

6 A. That's correct.

7 Q. As I think you say in paragraph 75 of your witness
8 statement, you and your team, those you discussed it
9 with, Mr Philco Wong and Mr Lee, were satisfied that
10 this was just a one-off incident, an isolated issue, you
11 say, and therefore you were prepared not to take it any
12 further?

13 A. Yes, based upon the investigations, there was no
14 evidence that there was anything more than a limited
15 number of occasions.

16 Q. Right.

17 Returning briefly to Mr Poon's email of 6 January,
18 having had it forwarded to you by Mr Fu, Michael Fu,
19 you, as you say in paragraph 73 of your witness
20 statement, sent an email to Mr TM Lee?

21 A. That's correct, yes.

22 Q. You've actually set it out in your witness statement.
23 The file reference is B10/7523, but we can read it from
24 your witness statement. You say:

25 "Following our discussion at lunchtime regarding
26

1 China Technology and Jason Poon, ref below email from
2 Jason."

3 And that was his email of 6 January.

4 A. Yes.

5 Q. You say this:

6 "This is part of Jason's strategy to put pressure on
7 Leighton to pay him the extra \$3 million this week.

8 As Michael advises we are checking our records to
9 ascertain whether there is any validity in Jason's
10 claim.

11 Jason may leak such claims to the media, we are
12 preparing the line to take."

13 A. That's correct.

14 Q. In the paragraph just above where you set out that
15 email, you say this, Mr Rooney:

16 "The reason why I informed Philco Wong and TM Lee
17 was that it was an alleged incident notified by
18 a sub-contractor who I believed was having commercial
19 issues with the main contractor and had threatened to
20 make a public release of the information that he had."

21 Now, first of all, on what basis did you believe
22 that there was a commercial issue between Leighton and
23 China Technology?

24 A. From discussions I've had with Anthony Zervaas,
25 Leighton's project director at the time.

26

1 Q. Right.

2 A. He -- along with all the Leighton staff, I got on quite
3 well with Anthony and we shared information, and he had
4 told me that at some point in December, and I can't
5 remember exactly when, but he told me, when we met face
6 to face, and it could have been after one of our site
7 walks, that China Technology was raising some issues,
8 commercial issues, which -- and again, to be honest, was
9 not unsurprising at that particular time, because we
10 were -- and I had raised at one of our Thursday morning
11 meetings with Leighton that we were running up to
12 Chinese New Year, and at that particular time of year it
13 was not unusual for some of our sub-contractors, or the
14 main contractor/sub-contractors, to be under some
15 pressure commercially to settle end-of-year bills and
16 the like.

17 So we always anticipated, not just on 1112 but on
18 every job, that that was, let's say, a sensitive time of
19 the year commercially for particularly our
20 sub-contractors, and suppliers as well.

21 Q. Okay.

22 A. So Anthony kept me informed, and it wasn't just China
23 Technology that was at the time seeking some assistance.
24 There were one or two other sub-contractors. But like
25 I say, to be honest, that's not unusual at that time of

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1 the year.

2 MR PENNICOTT: Sir, I'm about to go on to the 15 September
3 situation, so perhaps that would be a convenient moment.

4 CHAIRMAN: Yes, certainly. 15 minutes.

5 Sorry, just one matter --

6 WITNESS: No problem.

7 CHAIRMAN: -- if I could mention it. While you are giving
8 your evidence, you are not permitted to discuss your
9 evidence with anybody else at all; okay?

10 WITNESS: Understood.

11 CHAIRMAN: When you finish your evidence, then of course you
12 can do so.

13 WITNESS: Yes.

14 CHAIRMAN: Thank you.

15 (11.39 am)

16 (A short adjournment)

17 (12.00 pm)

18 MR PENNICOTT: Sir, Professor, Mr Rooney, I'm going to move
19 on to some events in September 2017 --

20 A. Understood.

21 Q. -- that appear in your witness statement.

22 Can we please start by looking at B10/7494. At the
23 bottom half of that page, Mr Rooney, you will see
24 an email of 15 September from Mr Jason Poon to Mr Frank
25 Chan, the Secretary for Transport and Housing; do you

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1 see that?

2 A. That's correct, yes.

3 Q. That, I understand, was forwarded to you, see the top
4 half of the page --

5 A. That's correct.

6 Q. -- by Mr Zervaas, and he tells us that they're trying to
7 get in contact with Mr Poon --

8 A. Yes.

9 Q. -- and to have a meeting?

10 A. Yes.

11 Q. Then back a page, 7493, you write to and forward,
12 I think, the two previous emails to Mr TM Lee?

13 A. That's correct, yes.

14 Q. And you just inform him about what's going on as between
15 Mr Poon and Mr Zervaas?

16 A. Yes. I actually spoke to Anthony that day as well, once
17 I received the email from him. He was in Macau at the
18 time but I managed to get in contact with him.

19 Q. I think you told us he was in Macau at the time and he
20 came back for the meeting later on in the afternoon.

21 A. Yes. And I requested that he try and do that.

22 Q. Then at the top of page 7493 is another email from
23 yourself to Mr Lee and others, including Philco Wong and
24 Carl Wu and Raymond Au, and you say this, Mr Rooney.

25 You refer to:

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1 "The meeting between Karl Speed/Anthony Zervaas and
2 Mr Poon has just been completed.

3 Mr Poon is seeking a payment of alleged \$3 million,
4 for completed works.

5 The agreement is for their respective QS to meet
6 tomorrow to agree this figure.

7 Speed and Anthony will meet with Jason Poon again on
8 Monday ..."

9 Then you say this, Mr Rooney, which I'm interested
10 in:

11 "I have told Anthony [that's Zervaas] that Leighton
12 must finalise and close their 1112 sub-contract account
13 with China Technology next week, once and for all, the
14 legal terms of which to cover all related aspects will
15 need to be agreed."

16 Why did you put it in those terms to Mr Zervaas of
17 Leighton, that he ought to finalise and close the
18 account with China Technology once and for all?

19 A. Again, that was in relation to a number of discussions
20 that I had with Anthony about the fact that China
21 Technology seemed to be repeatedly coming back to
22 Leighton seeking additional moneys, and using the
23 pretext of their allegations going back to 6 January.

24 Q. Right.

25 A. And Anthony agreed with me that they needed to finalise

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1 the account with them.

2 Q. Okay. Is it really in order for somebody in your
3 position at the MTR to tell Leightons, essentially
4 instruct Leightons, that they should close out this
5 sub-contract with China Technology? Is that a usual
6 sort of procedure?

7 A. Again, we work quite closely with our main contractors
8 and share our views openly in terms of issues, and I had
9 discussed it with Anthony. My view was that Leighton
10 should finalise their account with China Technology, and
11 I was basically saying that to him. Ultimately, it's
12 really the main contractor's decision. That was my
13 advice. Like I say, I think Anthony agreed with me, but
14 they don't necessarily need to follow that. With
15 respect, it's not an instruction under the contract
16 or ...

17 Q. It was fairly firmly worded, Mr Rooney, was it not?

18 A. Look, again, I think myself and Anthony had a good
19 working relationship. We talked plainly, we talked
20 plainly, between ourselves.

21 Q. Anyway, you had clearly formed the view that you'd had
22 enough of China Technology and this sub-contract should
23 be closed out?

24 A. I felt that China Technology were not -- and it was not
25 just in relation to the commercial situation, but

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1 I didn't feel that China Technology were adding any
2 value commercially, but there were also lots of other
3 background issues related to China Technology's
4 performance at that time, both in terms of safety, in
5 terms of quality and undertaking remedial works, and
6 also resources.

7 So, with respect, yes, we're talking about here --
8 the subject here appears to be commercial, but there was
9 a much bigger picture there at the time, in terms of the
10 overall performance of China Technology. They weren't,
11 in my opinion, and in the opinion of the MTR team -- and
12 I think it was also supported by quite a number of
13 members of the Leighton team -- China Technology were
14 not adding any value to the contract anymore.

15 Q. Okay. Were you aware at the time that Leighton also had
16 another project with China Technology, although they
17 were in a joint venture with another company, on another
18 project?

19 A. I was, Anthony did tell me, let's say, that was one of
20 the issues.

21 Q. All right. So that was brought up in your discussion
22 with Mr Zervaas?

23 A. Yes, again Anthony was very open. It wasn't just simply
24 an 1112 contract issue. There were complications
25 because of this other contract.

26

1 Q. All right.

2 A. But, to be honest, I didn't interrogate Anthony in terms
3 of the details of the other contract, because it
4 really --

5 Q. All right. That wasn't something that was at the
6 forefront of your mind; it was really focused on 1112?

7 A. Exactly. It was another project and I didn't really
8 have anything to do with that, so ...

9 Q. Okay.

10 A. I appreciated that Anthony informed me again that it
11 wasn't straightforward.

12 Q. Okay. Now, going to your witness statement -- I don't
13 think we need to look at the various emails that you
14 refer to -- but going to -- paragraph 78 sets out the
15 email that we've just looked at.

16 A. Yes.

17 Q. Then, at paragraphs 79, 80 and 81 and 82, you refer to
18 a succession of further emails --

19 A. Correct.

20 Q. -- that were sent on the 15th -- sorry, 18 September?

21 A. That's correct.

22 Q. The upshot is the email that you refer to at
23 paragraph 82. It's the email that we've looked at many
24 times, where Mr Poon says, "During these few days we are
25 working tight and hard on sorting things out", to put it

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1 shortly, and they had sorted it out?

2 A. It would appear so, yes, at that time.

3 Q. That was your interpretation of this email?

4 A. At that point in time, yes.

5 Q. You then say at 83 that you had a discussion with Philco
6 Wong and Mr Lee, and you concluded that no further
7 action was required for MTR?

8 A. That's what we all concluded, yes.

9 Q. So, as far as you were aware, at that stage, had
10 Leightons effectively done what you suggested or advised
11 they might do, that is to close out the sub-contract
12 with China Technology?

13 A. That was my understanding from what Anthony wrote in his
14 email, and what I discussed with him over the phone as
15 well, after he issued the email.

16 Q. Right. Was there ever any discussion between you and
17 Mr Zervaas, or you -- sorry, let me just ask you this:
18 did you have any conversations with Mr Karl Speed or was
19 it just with Mr Zervaas?

20 A. I'm almost 100 per cent certain it was only with
21 Anthony.

22 Q. Okay. And during the course of those conversations with
23 Mr Zervaas, did you have any discussion about
24 a confidentiality agreement?

25 A. That was part of the discussion, yes.

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1 Q. Can you explain to us how that came into the discussion?

2 A. Only that that was one of the documents that Leighton
3 were considering, but in our discussions, between myself
4 and Anthony, we weren't really sure what the ultimate
5 value of that document could be or would be, and we
6 agreed to leave it to his legal department to decide
7 whether there was any value in it.

8 Q. Right. Were you ever shown, back in September 2017,
9 a draft confidentiality agreement?

10 A. No. I didn't see any of the documents associated with
11 closing out to the account, and the discussion on the
12 confidentiality agreement was fairly brief.

13 Q. Right. So how did it arise? Did Mr Zervaas just say to
14 you, "Actually, Aidan, we're thinking about entering
15 into this confidentiality agreement; any views?" Or how
16 did it arise?

17 A. I think it was words to that effect, that -- yes, it
18 just came up in the discussion as to whether there'd be
19 any value in it.

20 Q. All right. I guess if you hadn't seen the terms you
21 wouldn't have been able to form a view about that
22 anyway?

23 A. I think we were -- it wasn't so much the terms, but what
24 value a confidentiality agreement would ultimately have,
25 you know, whether it would protect Leighton or whether

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1 there was any value in it, really.

2 Q. Right.

3 A. And neither myself nor Anthony at the time could come to
4 a conclusion of whether there was value one way or
5 another, either contractually or commercially.

6 Q. All right. Did Mr Zervaas tell you subsequently that
7 a confidentiality agreement had been entered into, even
8 though you didn't see a copy of it?

9 A. He didn't tell me verbally, but I think he said so in
10 his email.

11 Q. All right.

12 A. I think if we go back to --

13 Q. Yes, you're quite right. In the email of 6.28, at
14 paragraph 80, you're quite right.

15 CHAIRMAN: It's highlighted with the dots at the top of the
16 page 28 of your --

17 MR PENNICOTT: You're quite right, Mr Rooney. That's right.
18 Okay. Good.

19 Now, the last topic from me, Mr Rooney: the MTRC
20 report, 15 June this year.

21 A. Yes.

22 Q. Harking back to some discussion we had earlier, were you
23 actually told, at the time that you saw a copy, first
24 saw a copy, of I imagine a draft report before it was
25 finalised --

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1 A. Yes.

2 Q. -- how the total number of couplers had been calculated?

3 A. I recall, from advice from my team, that MTR had
4 calculated it on the basis of the as-built D-wall record
5 drawings. They'd actually gone to those drawings and
6 done what we call a takeoff of the couplers from those
7 drawings.

8 Q. All right. We looked at a couple of examples earlier
9 this morning of the retrospective records that had been
10 prepared.

11 A. Correct.

12 Q. I think you may have described them this morning, and
13 certainly Mr James Ho described them when we heard from
14 him recently, as internal records; is that right?

15 A. That's correct.

16 Q. Is it right that when Mr James Ho passed those records
17 to you just before the report was disseminated --

18 A. Yes.

19 Q. -- that he told you or reminded you that they were
20 internal records and should not be publicised?

21 A. That's correct.

22 Q. However, we know that in fact those records were
23 appended to the June report; that's correct, isn't it?

24 A. I understand that that's correct, yes. That was
25 an administration error, I believe.

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1 Q. Well, you say that, Mr Rooney. Could we go, please, to
2 paragraph 94 of your witness statement, at B211, where
3 you say, the second sentence:

4 "After several rounds of comments on the
5 calculations of the total quantity of couplers required
6 to comply with the BD requirements of minimum
7 20 per cent and 50 per cent of the total quantity
8 referred to in paragraph 92 above, I received the
9 finalised version of Kobe Wong's signed record
10 sheets ..."

11 Now, first of all, can you confirm that those are
12 the ones that we were looking at this morning?

13 A. They are.

14 Q. You received them on 15 June from James Ho, which is
15 what he says --

16 A. That's correct.

17 Q. And you agree. Then you say this:

18 "I was instructed to attach them to the MTR report
19 on the same day."

20 I suspect you can anticipate the question that's
21 coming: by whom were you instructed, Mr Rooney?

22 A. I was initially instructed or advised by the executive
23 team that were putting the report together that they
24 wanted those records to be attached. There was
25 a subsequent discussion, later on in the afternoon of

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1 the 15th, where it was decided that those records would
2 not be attached.

3 Q. Then what happened?

4 A. Apparently they were attached.

5 Q. All right.

6 A. But I believe that that was, as I said,
7 an administration error. I was initially told that they
8 would be attached, then there was a subsequent
9 discussion that they didn't add any value and that there
10 was no necessity to attach them.

11 Q. Can you please tell me who the members of the executive
12 team preparing this report were?

13 A. It was a combination of Lincoln, Philco and the senior
14 legal team.

15 Q. Right. When you received the original instruction to
16 attach then the records to the report, so you would have
17 been told by either Philco Wong, is that right, or
18 Lincoln Leong, or somebody else?

19 A. I believe it was Lincoln.

20 Q. Okay.

21 A. The discussion was primarily with Lincoln, but Philco
22 was there.

23 Q. Right.

24 A. Because Lincoln and Philco wanted to actually see the
25 records.

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1 Q. Did you show them -- did they see the records?

2 A. Yes.

3 Q. So you had a discussion. They were very keen that the
4 records should be attached -- initially?

5 A. I think Lincoln was of the view to attach them.

6 Q. Right. Did you explain to him that they were internal
7 records and that they had been -- presumably, if he read
8 them, he could see they had been retrospectively
9 prepared?

10 A. We didn't -- I do not recall that we discussed the
11 retrospective nature of those records.

12 Q. Right.

13 A. Okay? But we did discuss whether they should -- or
14 whether there was any absolutely in including them in
15 the report. My view was that there wasn't. Lincoln
16 thought that there was, and so he initially said,
17 "Include them." So they were one of the set of initial
18 attachments to go to government. But then in the
19 afternoon, late in the afternoon, I was asked to go
20 through the attachments, and I raised the issue again of
21 not including, not only that, but some other
22 attachments, and they were one of the ones that it was
23 agreed was not necessary to include with the report.

24 Q. And that was a discussion again, what, between you,
25 Dr Wong and Lincoln Leong?

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1 A. No. At that time, there was a group of the legal team,
2 from MTR, and some external legal people helping the MTR
3 legal team, and they were helping to put the attachments
4 together, making sure that they were all in order.

5 Q. So, without going into any great deal about those latter
6 discussions, the afternoon discussions, if I can put it
7 that way --

8 A. Yes.

9 Q. -- you left those discussions believing that the records
10 that we've seen would not be included?

11 A. Correct.

12 Q. And the upshot was -- the mystery is not yet solved --
13 they were in fact included?

14 A. That is -- my understanding obviously later was that
15 they were included.

16 Q. Yes.

17 A. But I honestly believe that there was quite a lot
18 happening that afternoon, in terms of putting, not the
19 report together but more or less the attachments and
20 getting it ready to deliver to BD and to government, and
21 I think there was an honest mistake made there.

22 Q. Why were you of the view they shouldn't be included?

23 A. Firstly, I don't think that they added any value to the
24 report. They were an internal document that had been
25 prepared at fairly short notice, and I think they were

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1 the main two reasons why I felt that there was no value
2 in adding them to the report as attachments.

3 Q. Right. So, in a sense, you and Mr Ho, James Ho, were
4 sort of aligned in the sense that they were internal
5 records, they really shouldn't be publicised and they
6 should have been retained as internal records?

7 A. As I think I said this morning, the main reason why
8 those records were produced was to give Lincoln a set of
9 documents which confirmed the BD requirements for the
10 20 per cent and 50 per cent in terms of actual numbers.

11 Q. And it's that point where I'm having a little bit of
12 difficulty, Mr Rooney, because on the one hand Mr Ho and
13 yourself have described these as internal records, but
14 on the other they appear to be records that are being
15 lined up to be sent to the BD with the BA14 application,
16 and there seems to be a bit of an inconsistency there,
17 unless I have misunderstood the position.

18 A. With respect, I think if we go back to the D-wall BA14,
19 call it the checklist document which is in a similar
20 format, that was never provided to BD and there's no
21 requirement to provide that to BD.

22 So, from a submission document point of view,
23 whether it be for the D-wall or for the slabs, those
24 documents would never have gone to BD.

25 Q. Yes, but the difference, with respect, Mr Rooney, is so
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1 far as the diaphragm wall documents are concerned, if BD
2 had come back to you on, let's say, my example of EM76
3 this morning --

4 A. Yes.

5 Q. -- and said to you, "Where do all these dates come
6 from?", you would have readily been able to say to them,
7 "Look, this document, this document, contemporaneous,
8 signed documents, there's the backup if you want to look
9 at it." So you'd have had 100 per cent confidence in
10 that situation?

11 A. Correct.

12 Q. But with the EWL slab, apart from the RISC forms, which
13 just gave you the general, "One tick, it's all been
14 done", you had nothing?

15 A. I wouldn't say that we didn't have nothing. We had
16 obviously the Leighton records, their QA/QC records
17 related to the slab construction work. I was also aware
18 at the time that we had a set of records that Kobe had
19 maintained himself with regards to what he had actually
20 checked, and he confirmed to both myself and Mr Ho that
21 he had checked over 50 per cent, okay, irrespective of
22 the fact that with the RISC forms we were effectively
23 confirming that MTR had checked 100 per cent, as we
24 discussed this morning.

25 CHAIRMAN: Sorry, just a second -- as far as Kobe Wong is

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1 concerned, what records did he have?

2 A. He had his own internal record. They weren't to the
3 level of detail of the checklists, but he had maintained
4 his own record of his T3 QSP checking of the couplers,
5 irrespective of the RISC form checks.

6 CHAIRMAN: The only reason I ask -- and we will obviously
7 have to go to the horse's mouth, that is Mr Wong,
8 himself in due course -- but another witness has said
9 that a lot of this stuff that was compiled and was in
10 error attached to the June report was based on the
11 recollection of Mr Kobe Wong, accompanied by some
12 photographs; no mention of any other form of written
13 record. So it's simply him saying, "I remember doing
14 this" and, "I remember doing that." Of course,
15 Mr Wong -- we'll have to go to him.

16 A. Yes, Chairman, and I saw a high-level record that Kobe
17 had put together which, if you like, puts a summary of
18 which bays and which couplers he had checked, and he
19 said, although I didn't actually look at the
20 photographs, but he said at the time that he had
21 photographs to support that.

22 But the problem with those records, again, in
23 relation to the BD requirement of 20 per cent and
24 50 per cent was that they didn't numerate the check in
25 terms of how many individual couplers, whether it was --

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1 whether his record amounted to, let's say, 10 per cent
2 or 80 per cent.

3 So it was felt at the time, to satisfy ultimately
4 what the CEO required, which was a document which
5 supported the minimum 20 per cent and 50 per cent, that
6 additional retrospective records had to be produced.

7 CHAIRMAN: Yes. You mention your concern at these records
8 being attached, and you were of the view that as
9 internal records compiled at short notice, it would be
10 better if they were not attached. One of the witnesses
11 earlier has spoken of two of the categories of
12 description of what was done shouldn't even have been in
13 those forms.

14 A. Okay. I'm sure that's correct, but I'm not sure which
15 categories.

16 CHAIRMAN: Perhaps we might just go to one of them.

17 MR PENNICOTT: Yes, of course, sir. If we go to B7/4539.

18 This is as good an example as any.

19 CHAIRMAN: If we look at the descriptions, you will see that
20 in fact, here, "Additional drill-in bars" and
21 "Additional" -- items 5 and 6 have in fact been deleted.

22 MR PENNICOTT: Yes. Sir, they are examples -- the one we
23 went to with Mr Khaw yesterday I think was at 4555 where
24 they are not deleted. Sometimes they're deleted,
25 sometimes they're not deleted.

26

1 CHAIRMAN: That's right, some are deleted and a lot aren't
2 deleted.

3 A. Sorry, Chairman, I can't --

4 CHAIRMAN: I think the point I am trying to make is you had
5 said they had been put together at short notice --

6 A. Which is correct.

7 CHAIRMAN: -- and this would appear to be evidence of that
8 fact and the dangers of doing so.

9 A. I believe you're correct, sir.

10 MR PENNICOTT: Just to pick up one point, Mr Rooney -- if we
11 go to B7/4537, you refer to another checklist that
12 Mr Kobe Wong had prepared. Is this the document you had
13 in mind?

14 A. No.

15 Q. It's not?

16 A. This, I believe, is the overall summary which goes on
17 the front of the retrospective checklist.

18 Q. Okay. I did wonder about that but I couldn't work
19 out -- the way the bundles are prepared, it's not always
20 clear -- so you think this goes on the front sheet?

21 A. No, that is the front sheet to --

22 Q. I see.

23 A. That's what I received from James, along with the
24 checklists behind it.

25 Q. Right.

26

1 A. But a few days or a week before these documents were
2 retrospectively created, Kobe had his own internal,
3 which was not dissimilar, but it didn't have as much
4 detail in terms of areas and bay numbers. It had dates
5 and "Satisfactory". But without having the numbers
6 behind, to be able to substantiate the 20 and the 50, it
7 was felt that the Kobe record was insufficient.

8 Q. Again, this sheet covers not just 20 and 50 per cent;
9 this is, as I understand it, the whole shooting match --

10 A. Yes.

11 Q. -- so far as the EWL slab is concerned?

12 A. That's not my understanding. This was produced as
13 a summary to substantiate the BD 20 and 50 per cent
14 requirement.

15 Q. Can we put that document on one side of the screen,
16 please, and look at H14/35070.

17 Do you see this document now, Mr Rooney? This again
18 looks as though it's something that certainly might have
19 been checked by Mr Kobe Wong. Whether it was prepared
20 by him, we don't yet know. But this says:

21 "More than 60 per cent of the installed couplers
22 were inspected in the mentioned areas."

23 I just wonder whether this is the document that you
24 had in mind?

25 A. The document that I had in mind was similar, but I don't

26

1 think I ever saw the reference to 60 per cent.

2 Q. Right.

3 A. And the document that I saw didn't have Kobe's signature
4 on it, but it could have been the top half of that
5 document.

6 Q. Right.

7 A. But, again, even though, if we take that document, "more
8 than 60 per cent", there is nothing to explain where
9 that 60 per cent comes from in terms of individual
10 couplers in individual bays, particularly in relation to
11 the 20 per cent and the 50 per cent.

12 Q. No. You're absolutely right, and obviously we can ask
13 Mr Wong about it. In rather simplistic terms, because
14 I'm only a lawyer, I counted the number of items there
15 on that page. It's 20.

16 A. 20 bays, is it?

17 Q. Yes, it's 20 bays.

18 A. All right. 20 out of 32.

19 Q. 20 out of 32, I thought that's just over 60 per cent,
20 but I don't think --

21 A. Unfortunately, it's not as -- with respect, it's not as
22 simple as that.

23 Q. I suspect it's not quite as -- I very much doubt it's as
24 simple as that, but there's no other way of coming at
25 it.

26

1 A. True, but the actual calculation of the 20 per cent and
2 the additional 30 per cent to make up the 50 per cent
3 was not a straightforward calculation.

4 Q. No.

5 A. And I don't think I've seen it for a while but James and
6 myself had a few attempts at trying to get to the right
7 20 per cent/50 per cent number.

8 Q. Okay.

9 A. I think I referred to that in my witness statement.

10 Q. Yes.

11 A. And James actually produced an explanation and
12 a double-check on how we got to the final numbers that
13 represented the 20 and the 50 per cent of the overall
14 number.

15 Q. All right.

16 CHAIRMAN: Can I ask -- again, I have to come at it as
17 a layman too -- but if you've got an obligation, shall
18 we say, to look at 50 per cent or check 50 per cent in
19 particular areas, isn't it easier to say, when the
20 inspection time comes, "Right, I've got to do
21 50 per cent in this particular area", and to conduct
22 your inspection, and then immediately record,
23 "Transverse area A", or whatever the area is,
24 "15:00 hours, checked, rough estimate of couplers, X
25 thousand, checked, all okay", and perhaps one that's

26

1 slightly wrong, ask for remedial action, and then you've
2 got your record, as opposed to coming back, what appears
3 to be the case now, sort of two years later, to put
4 together checking specific percentages; do you see what
5 I mean?

6 A. Nearly 100 per cent correct, Mr Chairman. I totally
7 agree with you that that's ideally how it should have
8 been done. But, at the time, Kobe would have gone out
9 and made that record in some format or other.

10 CHAIRMAN: Yes.

11 A. However, based upon -- and forgive me, this is no
12 excuse, if you like, and I don't want to attach blame on
13 any party, whether it be MTR or Leighton -- but based
14 upon the process that was used for the D-wall, where
15 there was, if you like, a countersigning arrangement
16 which we saw this morning and I acknowledge was a very
17 good system, it would appear that that system, for
18 whatever reason, wasn't even applied in a more
19 simplistic way to the EWL slab construction.

20 Again, I'm not putting blame on anybody, but with
21 the benefit of hindsight, if Leighton had said at each
22 of the times of the RISC forms, "Right, this is
23 100 per cent", and there was a separate note on the RISC
24 form which said, for instance, MTR had checked either
25 100 per cent or a minimum of 50 per cent, then that

26

1 would have been extremely beneficial.

2 CHAIRMAN: Yes.

3 A. But regretfully it wasn't done, and I think, rightfully
4 or wrongfully, MTR was waiting for Leighton to instigate
5 the countersigning process, and for whatever reason that
6 in this particular case didn't happen.

7 CHAIRMAN: One of the earlier witnesses, again an engineer
8 had said, to him, the countersigning system was a pretty
9 good system, but it doesn't appear to have been taken up
10 in this respect.

11 A. Not in -- well, there is a form of countersigning within
12 the RISC form, that both parties do sign it, which is
13 obviously good from an MTR specification stream of
14 checking. But without the acknowledgement, either
15 simple or, in the case of Intrafor double-checking,
16 a more elaborate scheme of recording the percentage,
17 whether it be 100 per cent or less than that, then there
18 is a gap. And the idea of the retrospective checklist
19 forms was trying to close that gap.

20 CHAIRMAN: While we're on that, I have highlighted
21 paragraph 95 of your affidavit, in which you say:

22 "At this juncture, I wish to point out that it is
23 acceptable to prepare retrospective records as long as
24 inspections had in fact been carried out at the time.

25 I don't in any way wish to challenge that. What is
26

1 a concern, provisional perhaps, is that while,
2 obviously, you can take contemporaneous records and
3 break them down, in order to obtain from them their
4 individual merits and data, I'm a bit concerned at the
5 fact that you might take what amounts to a general
6 document and from that extract lots of particulars, and
7 as layperson I take, for example -- and I have mentioned
8 it in the past -- somebody says, "I'm a builder, I've
9 checked your house, everything is fine, tick", and then
10 you come along later and you fill in a form saying,
11 "Cupboard hinges? Yes. Door knobs? Yes." Do you see
12 what I mean?

13 A. I do.

14 CHAIRMAN: You can argue there, is it legitimate to have
15 a general, "I've been through your house, everything is
16 fine", and then from that bring up another set, saying
17 "I've checked every door knob and every hinge and every
18 door stopper in the house"?

19 A. I appreciate what you're saying, Chairman, but if you
20 look at it from the perspective of putting the Leighton
21 checks to one side, the MTR inspectors and engineers
22 have confirmed repeatedly that they basically checked
23 100 per cent of the couplers, and those guys are
24 professionals and they are experienced, and I personally
25 trust that what they are saying, they actually did.

26

1 So my belief is that all the couplers were checked,
2 and maybe there is a small percentage that slipped
3 through the net, which can happen, but their intention
4 was -- and they actually went out on a day-to-day basis
5 during the construction and checked all the couplers.
6 So I've got no reason to doubt that. But I do
7 appreciate what you're saying, that if it had been
8 documented in more detail then obviously that would
9 provide greater assurance to all parties concerned.

10 CHAIRMAN: Yes. Thank you.

11 MR PENNICOTT: Mr Rooney, just to complete, as it were, the
12 picture -- what we all know happened was the 15 June
13 report was issued to government --

14 A. Yes.

15 Q. -- and was not made generally public?

16 A. Yes.

17 Q. And then, unfortunately, it was subsequently discovered
18 that there were some errors in the report, and in
19 particular errors in relation to the number of couplers?

20 A. Correct.

21 Q. As I understand your evidence, the discovery was
22 a combination of essentially two lines of enquiry: first
23 of all, MTRC requesting Leighton to provide as-built
24 drawings?

25 A. Correct.

26

1 Q. And, secondly, an analysis by a number of people of
2 photographs and comparing those photographs with the
3 then current working drawings?

4 A. That's also correct, but the two -- if you like, the two
5 examples that you've just quoted, they were correlated.

6 Q. Yes.

7 A. Because they're all part of starting the process of
8 preparing the final as-builts for the slabs.

9 Q. Yes. Essentially, what had happened, without being
10 overly critical of anybody in particular, either of MTRC
11 and Leighton, there was what might be described as
12 collective amnesia about the change to the top of the
13 east diaphragm wall, to the change in detail. It had
14 simply been overlooked.

15 A. I agree with you that it had been overlooked, in I think
16 everybody's -- I don't think it was amnesia, to be
17 honest. I think it was just -- when the report was
18 being prepared, the 15 June report, the biggest focus
19 was, from everybody's perspective, on trimmed bars and
20 the background to the trimmed bars and what records
21 there were related to the trimmed bars. And I agree
22 with you, Mr Pennicott, that I'm not attaching any blame
23 to any person, but the team was under -- particularly
24 MTR but also Leighton were trying to be as helpful as
25 they could at the time, and they were concentrating on

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1 coming up with information particularly related to the
2 report and the primary issue of the trimming of the
3 bars, and I think it's that particular reason, coupled
4 with the fact that we probably didn't have enough of the
5 team that was originally involved in the construction
6 involved in that period from the end of May through to
7 the 15th, to be able to recall clearly and to point out
8 that this change in construction detail had occurred.

9 So I think there was a number of factors which led
10 to our error at that time, in not acknowledging that
11 change in detail, but again I think that was caused by
12 a number of factors, not simply amnesia on the detail.

13 Q. Yes. All right. And obviously I'm not going to go
14 through it with you, Mr Rooney, but we've heard quite
15 a lot of evidence about the way in which the
16 coordination should have worked between Leighton and MTR
17 on the one hand and the involvement of Atkins, and so
18 forth, the interaction between the MTR design team, on
19 the one hand, and the MTR construction management team
20 on the other, and there were, I accept, a lot of factors
21 involved in first of all the introduction of the change
22 of detail, and then a big question mark about who
23 actually knew about it. So, when it came to producing
24 the report in June, I can well understand your point
25 that it rather depended upon who was involved in the

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1 preparation of the report, because if you didn't have
2 the right people involved you weren't going to get the
3 right answer.

4 A. That's in part correct. I think we had some of the
5 right people involved, but with the benefit of hindsight
6 if we'd had a few more people, there would be still no
7 guarantee that somebody would say, "Hold on, guys,
8 remember there was this change in detail?", and then to
9 be able to go to whatever document and say, "Yes", and
10 again, within that two-week period, it just didn't
11 happen.

12 CHAIRMAN: Can I say what is of concern to me -- and I was
13 not intending to be facetious a few days ago but it came
14 out facetiously so I might as well repeat it -- but
15 I put to one of the witnesses who had prepared this,
16 that these records of the coupler installations all
17 being well done and properly done and inspected meant --
18 and he admitted that this was the case -- that couplers
19 that didn't exist were nevertheless properly installed.

20 What that means, more fundamentally, perhaps, is it
21 takes away a certain sense of trust in the accuracy of
22 those retrospective records.

23 A. I understand what you're saying, Mr Chairman.

24 CHAIRMAN: That said, I appreciate this was done very much
25 as an exercise of immediacy, and there were a lot of

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1 records you had to go through, I appreciate that. So
2 I'm not lacking any empathy as to how all this works.

3 A. Okay. If anybody involved at the time had raised their
4 hand and said, "There was a change in construction
5 detail", then I think that would have been taken on
6 board and the team would not have just used the D-wall
7 as-built drawings. They would have taken cognisance of
8 that and -- then -- we would have still, I think,
9 produced the checklists that we produced, but they would
10 have been more representative.

11 CHAIRMAN: There are two things that come from this, and
12 please forgive me, then I hope I'll shut up for a little
13 bit, but please forgive me.

14 A. No problem.

15 CHAIRMAN: On a number of occasions, witnesses here have
16 spoken about backdating things, and the impression,
17 perhaps wrong -- it's a matter for more deliberate
18 consideration -- has become one of almost common
19 occurrence. You do it now but you only actually record
20 it later, and then you put a date to when it was done,
21 and of course that can lead perhaps to mismemory or
22 anything like that.

23 It seems to me, on a large-scale building project,
24 and again I come at it as a layman, but you've got
25 an immense amount of things happening. You've got a lot
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1 of expensive machinery. You've got people being paid by
2 the hour. And if you don't keep an up-to-date record of
3 what's happening, almost a minute-by-minute record,
4 dealing with that within a sensible parameter,
5 of course, it's all going to get lost and confused, if
6 only on the basis of who do you charge for doing what?
7 And coming back to stuff three weeks later and then
8 putting in retrospective records can, as a result, be
9 a little dangerous, if only because it risks inaccuracy.

10 A. Again, Mr Chairman, I agree, and clearly there is
11 evidence that there were retrospective records produced.

12 But the volume of records, whether it be related to,
13 as you say, people or plant or confirmation of the
14 quality of the work in terms of construction records,
15 the volume of records that we already keep on a project
16 like contract 1112 is huge, and keeping pace with all
17 those records, even with all the help of modern
18 technology that we have, I think is still a challenge
19 that we face every day on construction projects. It
20 doesn't matter whether it's 1112 or any other major
21 contract in Hong Kong --

22 CHAIRMAN: I'm sure it is. It's a very real challenge, yes,
23 I accept that.

24 A. And I think there is likely, at least for the
25 foreseeable future, to always be a percentage of
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1 retrospective record-keeping, to various different
2 degrees, and I think the important factor is: are the
3 primary records reliable and can they be used to confirm
4 that the contract requirements were met?

5 In the case of 1112, thankfully, the RISC form
6 records -- I can't say they were 100 per cent, but they
7 are very, very comprehensive, and probably better than
8 some other similar contracts, let's put it that way,
9 whether it be MTR or otherwise, in terms of their
10 completeness.

11 And if it wasn't for the additional BD requirements,
12 if they were taken as a stand-alone set of contract
13 records, I think there wouldn't be any question
14 whatsoever; okay? We have this additional BD component,
15 and that BD component, in terms of checking the
16 couplers, is already, in my opinion, satisfied by the
17 RISC form records; okay? They already satisfy that.

18 But, from the QSP document that was produced by the
19 contractor, there was some additional checks that were
20 required to be put in place, and I think it's not
21 unreasonable, as was in the case of the D-wall, that
22 there was evidence that at least as far as could be
23 done, that that format, in terms of the record of the
24 information, was used. Okay?

25 CHAIRMAN: Yes.

26

1 A. So, with respect, I think we're talking about formatting
2 of information to satisfy a document that was in place,
3 and the document that was in place I'm referring to is
4 the QSP, and there was a let's call it format there.

5 So it's taking recognition that the MTR engineers
6 and inspectors can confidently say the couplers were all
7 checked. I believe that the Leighton construction team,
8 via their quality management system records, are also
9 saying that all the couplers were checked, and using, if
10 you like, that level of check to put into a different
11 format, to basically say the same story.

12 CHAIRMAN: Good. Thank you very much.

13 MR PENNICOTT: Just one final point on that topic,
14 Mr Rooney. Could I ask you, please, to go back to
15 a document we looked at earlier this morning, that is
16 H10/4861.

17 A. This is the D-wall --

18 Q. That's part of the --

19 A. D-wall.

20 Q. That's part of the D-wall submission, your quality
21 supervision --

22 A. Thank you.

23 Q. -- report that went with the letter of 27 January 2016.

24 A. That's the summary that went, yes, with --

25 Q. Sorry, 2015, 27 January 2015.

26

1 A. That's correct.

2 Q. -- with batch 1. We can go back to the letter but
3 that's where we came from.

4 A. Yes, I believe that that's the case, or one page from
5 that.

6 Q. Yes, and we looked at EM76 this morning.

7 A. Yes.

8 Q. What I wanted to ask you about this time was simply the
9 couple of lines at the bottom of the page, the note,
10 where it says:

11 "All logbook signed by quality ... supervisor (CP
12 stream) ..."

13 So that would be MTR?

14 A. Correct.

15 Q. "... and quality control coordinator" --

16 A. Registered contractor.

17 Q. Leighton's stream, or "(RC stream) are kept on site for
18 necessary inspection."

19 It's also the case, is it not, Mr Rooney, that you
20 would not have been able to write that sentence on any
21 BA14 submission in relation to the EWL slab? That is
22 there was no logbook signed so far as the EWL slab is
23 concerned?

24 A. I think it really comes down to the definition of the
25 logbook, and the logbook -- there's no example

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1 specifically of what the logbook format should be or
2 style should be. The logbook is basically a record of
3 checks, that the works have been carried out and checked
4 and certified as being acceptable.

5 Q. All right. Then you are just back to the RISC forms.

6 A. You are, plus any other associated records, whether it
7 be ...

8 CHAIRMAN: Yes, thank you.

9 A. Like I say, it's the RISC forms, plus the Leighton
10 quality management documents.

11 MR PENNICOTT: Yes.

12 Lastly from me, Mr Rooney -- although I may ask for
13 indulgence to have a think about things over lunch.

14 CHAIRMAN: Yes, certainly.

15 MR PENNICOTT: If I could ask you to go, please, to
16 paragraphs 13 and 14 of your witness statement, that's
17 at B1/216 -- there you have a heading, "Item 13(a):
18 comment on Mr Poon's allegations"; do you see that?

19 A. Yes.

20 Q. And you say that you had no knowledge about the alleged
21 defective steel works until they were first reported by
22 Jason Poon to Leighton on 6 January 2017, and we've been
23 over that?

24 A. That's correct.

25 Q. "Prior to that, nobody raised any issues relating to the
26

1 alleged defective steel works during the meetings or
2 site visits that I attended or on any other occasions."

3 A. That's correct.

4 Q. You say:

5 "I did occasionally run into Jason Poon on site.
6 During those occasions when we met, Jason Poon did not
7 mention any issues about the ... defective steel works.
8 On the few occasions that we talked, we discussed the
9 adequacy of the resources provided by China Technology
10 and performance issues in relation to the safety and
11 quality of China Technology's works."

12 A. That's correct.

13 Q. Do you stand by that evidence, Mr Rooney?

14 A. I do, 100 per cent.

15 MR PENNICOTT: Thank you very much.

16 Sir, subject to any thoughts I may have over
17 lunch --

18 CHAIRMAN: Of course.

19 MR PENNICOTT: -- I think I've finished. Would that be
20 a convenient moment to stop?

21 CHAIRMAN: Yes. 2.15.

22 MR KHAW: Sorry, Mr Chairman, just a very brief update
23 following the discussion we had before we adjourned
24 yesterday regarding the opening-up process.

25 CHAIRMAN: Yes.

26

1 MR KHAW: I am pleased to inform the Commission that the MTR
2 and the government have reached some significant
3 milestone in that regard and there will be an important
4 announcement this afternoon.

5 We only wish to just say that all along the
6 government stance has been that MTR would devise
7 a holistic strategy in relation to the opening-up
8 process, and in fact we have received various drafts
9 from MTR in relation to that intended purpose. That is,
10 for the purpose of assessing the conditions and also the
11 acceptability of the built structures at Hung Hom
12 Station.

13 The relevant government departments and also our
14 experts in fact have been tirelessly reviewing the
15 drafts provided by MTR and also we have given our
16 comments, not only from an engineering point of view,
17 but also from a statistical point of view, with a view
18 to achieving some meaningful results from the opening-up
19 process.

20 I would also like to update the Commission that the
21 government has adopted an expedited process by vetting
22 the implementation details, in the hope that the
23 opening-up process could be implemented very soon.
24 I believe that the details which will be announced this
25 afternoon will be useful to the Commission and also to

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1 the Commission's expert in carrying out further work for
2 this Inquiry.

3 CHAIRMAN: Good. Thank you very much. That's very welcome
4 news. Thank you.

5 2.15. Thank you.

6 (1.03 pm)

7 (The luncheon adjournment)

8 (2.18 pm)

9 MR PENNICOTT: Sir, good afternoon.

10 Good afternoon, Mr Rooney. There is just one
11 follow-up question that I have --

12 A. No problem.

13 Q. -- from just before lunch. I wonder if you could be
14 shown, please, part of the QSP, which is in H9 -- it's
15 in a number of places, but H9, starting at 4265.

16 If we could go, please, to page 4270. Mr Rooney,
17 just before lunch, we were talking about the logbook; do
18 you remember?

19 A. I do. Thank you.

20 Q. This is the portion of the QSP or the section of the QSP
21 that deals with the logbook; do you see that?

22 A. I do. Thank you.

23 Q. It gives, as it were, a description of what ought to be
24 essentially contained within the logbook?

25 A. (Nodded head).

26

1 Q. And I think you said that it didn't need to be in any
2 particular form, but at least here we can see it's at
3 least a broad definition of what it should include?

4 A. Thank you.

5 Q. And includes "The site supervision plan" itself, this
6 proposal. So, so far, so good, and pretty easy. The
7 fourth bullet point, "BOSA's thread preparation check",
8 I imagine that's ready available as well?

9 A. Yes, okay, yes.

10 Q. But then it's the third bullet point, "Quality control
11 supervisors (MTRC) and quality control supervisors
12 (registered contractor) record sheet."

13 A. Yes.

14 Q. And really it's the record sheet that, on the face of
15 it, might be regarded as not available; do you agree?

16 A. Again, I'm not sure what the definition of "the record
17 sheet" is, to be honest.

18 Q. Well, is it not the sheet that is appendix B to the
19 quality supervision plan, that is the sheet that should
20 be filled in as we saw similarly with the diaphragm wall
21 this morning?

22 And indeed I'm reminded, if we go back a page, to
23 4269 --

24 A. Thank you.

25 Q. -- and this is under the registered contractor's part of
26

1 the quality supervision plan, at 1(ii) it says:

2 "Supervision and inspection will be recorded in the
3 record sheet (appendix C) ..."

4 Which we know is a typo for "B".

5 A. Agreed.

6 Q. So that is it. As I say, it's that appendix B.

7 A. With respect, if we go to 2(ii), I don't think it says
8 "record sheet" there.

9 Q. No. What, as I understand it, that is suggesting is the
10 inspection record sheet should be prepared by the
11 registered contractor, Leighton, and what MTRC is
12 required to do is to countersign it.

13 A. Thank you. That seems very logical, yes.

14 MR PENNICOTT: Okay. Thank you very much, Mr Rooney.

15 I have no further questions, but there may be some
16 people behind me who do.

17 WITNESS: Fully understood. Thank you.

18 MR CHANG: No questions from Leighton.

19 MR SO: Sir, there are some questions from China Technology.

20 CHAIRMAN: Yes.

21 MR SO: Sir, we adopt the cross-examination that my learned
22 friend Mr Pennicott made insofar as China Technology is
23 related, but we have some questions in addition to that.

24 CHAIRMAN: Yes.

25 Cross-examination by MR SO

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1 MR SO: Mr Rooney, I am Simon So. I represent China
2 Technology.

3 A. Good afternoon.

4 Q. I have some questions for you.

5 A. Thank you.

6 Q. Can we just turn to paragraph 75 of your witness
7 statement. That is on page B206.

8 That is the paragraph where you told us this morning
9 that after having received Mr Poon's email, you have
10 received two reports, one being Mr Stephen Lumb's report
11 from Leighton, and one being Mr Carl Wu's report from
12 MTRC; correct?

13 A. That's correct.

14 Q. After you had reviewed the two reports, you have come to
15 the conclusion that NCR157 was an isolated issue, in
16 your words; correct?

17 A. Correct.

18 Q. Can I just bring you to the Lumb report. I presume that
19 the report that you have received -- you have just
20 received one report from Mr Lumb; correct?

21 A. I believe there was two reports. There was -- I'll call
22 it a first report and then a revised report.

23 Q. Thank you very much. So you have read both of the
24 reports, both the draft report and the final report, or
25 you have just read the final report?

26

1 A. I just read the final report.

2 Q. Thank you very much. Then perhaps I will take you to
3 the final report, which is at bundle C, page C20245.

4 MR PENNICOTT: C27.

5 MR SO: This is the second page of the final report by
6 Mr Stephen Lumb. You have, of course, read this final
7 report before you came to that conclusion in
8 paragraph 75; correct?

9 A. Correct.

10 Q. Can we just focus on section 1.2, which is the
11 "Background" section. The section reads:

12 "Further to allegations of possible malpractice in
13 the fixing of the reinforcement bar coupler connection
14 between the EWL slab and the adjacent supporting
15 diaphragm wall ... Leighton's in-house engineering and
16 design group have been asked by the project director to
17 carry out an independent investigation ..."

18 Now, insofar as you understand, this allegation is
19 the allegation made by Mr Poon in the email; correct?

20 A. I believe so, yes, correct.

21 Q. And it is only because Mr Poon's allegation that gives
22 rise to both this report and the MTR report made by
23 Mr Carl Wu?

24 A. That's correct.

25 Q. Now, can we look at the second paragraph in 1.2. That
26

1 says:

2 "The investigation was carried out on site between
3 9-11 January" -- it should be 2013, I guess, there is
4 a typo there -- "and involved an inspection of available
5 site records, and interviews with key members of the
6 construction team."

7 Now, Mr Rooney, have you ascertained with Mr Lumb or
8 any persons in Leighton what members have been actually
9 interviewed on the construction team?

10 A. I did not, at the time of reading the report, no.

11 Q. And of course there is also no mention in the report by
12 Mr Lumb, in anywhere, that mentions what members have
13 actually been interviewed by the internal independent
14 investigation committee; correct?

15 A. I believe that's correct, yes.

16 Q. Do you know that actually none of the on site
17 superintendents of Leighton were actually interviewed
18 when preparing this report?

19 A. I cannot comment on that. I don't know who was
20 interviewed, sorry.

21 Q. Thank you.

22 Now, in paragraph 70, which I do not need to trouble
23 you to go to, of your witness statement, you told us
24 that the very first time you heard of allegations about
25 cutting of the threaded ends of the rebar was in
26

1 January, where Mr Poon actually gave this email;

2 correct?

3 A. That's the 6 January email to Leighton?

4 Q. Right. Prior to that, you have not heard of and were
5 not aware of any cutting of the threaded ends of rebars?

6 A. That's correct.

7 Q. So of course the logical deduction would be, at that
8 time, when you received the email, you were also not
9 notified that there was an NCR about the cutting of the
10 threaded rebars; correct?

11 A. That's correct.

12 Q. So is it correct that when receiving the report from
13 Mr Lumb and receiving the report from Mr Wu, that's the
14 very, very first time that you actually know that there
15 was actually someone cutting the threaded ends of the
16 rebars on site?

17 A. That's correct.

18 Q. At that time, when reading the three reports, were you
19 not surprised that actually something Mr Poon was
20 raising as a complaint was exactly something that
21 happened on site? Did that not shock you?

22 A. I was surprised that there was evidence of cutting of
23 threaded rebar, yes, because that should not be
24 occurring.

25 Q. But didn't it shock you that Mr Poon, not knowing that
26

1 there was such an NCR, so coincidentally raised
2 something exactly happened on site?

3 A. That didn't shock me or surprise me. What I think
4 surprised me was that Mr Poon was raising it in January
5 2017, in relation to an incident that occurred in
6 I think September 2015. That surprised me.

7 Q. But it didn't surprise you that the allegation or
8 complaint, however you want to name it, was exactly
9 something being documented by both your company and by
10 Leighton? Did it not shock you?

11 A. Can I repeat. It did not shock me in terms of Mr Poon
12 raising the allegation. It shocked me or surprised me
13 in terms of the timing. But obviously, within the site
14 construction team of both MTR and Leighton in December
15 2015, when the NCR in question was raised and closed
16 out, on the basis of the two reports, it was clear that
17 the site teams were aware of at least one incident based
18 upon those reports.

19 Q. Just so I can clarify your answer, is it your evidence
20 that you didn't find it surprising that there is such
21 a terrible coincidence between what Mr Poon said and
22 what was recorded on NCR157? Is that your evidence?

23 A. I'm not quite sure what the question is. Could you
24 repeat the question, please?

25 Q. Sure. Of course. Did it not come to your mind why is
26

1 there such a coincidence that Mr Poon is saying
2 something exactly the same as recorded in NCR157?

3 A. No, it didn't. No.

4 Q. Thank you.

5 Now, when you were answering questions from
6 Mr Pennicott this morning, you told us that MTR
7 definitely wanted to know in depth what was happening
8 when Mr Poon sent you this email; correct?

9 A. That's correct.

10 Q. I would suggest to you that you won't disagree that
11 Mr Poon's email in January 2017 was a fairly short one;
12 correct?

13 A. Correct.

14 Q. So why didn't you or MTR or Leighton go and actually ask
15 Mr Poon, "Hey, come on, give us more particulars of what
16 you actually see or what you actually heard"?

17 MR BOULDING: I don't think he can answer for Leighton, sir.

18 He can answer for MTR but not Leighton.

19 MR SO: I will rephrase my question.

20 Why didn't it occur to you or MTR, "Shouldn't we go
21 and ask Mr Poon what's going on and get more details"?

22 A. Would it be possible to go back to Mr Poon's email,
23 please? Could we have a look at that again, please?

24 Q. Sure. Yes. Sorry, I don't have the reference in front
25 of me, but I think ...

26

1 Or you can take a look at the witness statement,
2 paragraph 71. There, you have also lifted out what was
3 being said in the email.

4 MR CHANG: There is a copy in bundle C12, page 7923.

5 A. Thank you.

6 MR SO: I'm most grateful to my learned friend Mr Chang.

7 A. Sorry, I just want to remind myself exactly what was in
8 the ...

9 Q. Of course. Mr Rooney, there is a copy being displayed
10 now in front of you.

11 A. Okay. It's actually not a short email. There is
12 a little bit of information there, I think. Can I just
13 take a few minutes to read it?

14 Q. Of course. Take your time.

15 A. Thank you.

16 In re-reading it, it reminded me that my
17 interpretation of what Mr Poon was saying to Leighton in
18 the email was that there was, let's say, a significant
19 malpractice related to either the trimming of threaded
20 bars or not connecting bars to couplers.

21 When the investigations by Leighton and MTR were
22 concluded, and their conclusion was, in the case of
23 Leighton, that they had identified from their records
24 one incident, which was the incident in December, and in
25 the MTR report it also refers to that incident, but it

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1 also refers to a number of other issues of workmanship.

2 Myself and my MTR colleagues came to the conclusion
3 that, yes, there had been a number of incidents --
4 exactly how many was a little bit uncertain, but not
5 many -- and from that assessment we believed that there
6 was no evidence that there was any issue of structural
7 safety to the slab, which I think Mr Poon was raising as
8 a concern.

9 Q. Let me try to approach this topic in another way. There
10 were some photographs being attached to the email;
11 correct?

12 A. I believe there were the two photographs referred to in
13 the email.

14 Q. Correct. Exactly. Mr Poon did not mention in the email
15 where these photographs were being taken; correct?

16 A. I believe that that's correct, yes. Yes.

17 Q. So why didn't you or any representatives from MTR try to
18 ascertain these with Mr Poon?

19 A. I believe that on the basis that Mr Poon was referring
20 to a particular date, 22 September 2015, that the
21 Leighton and MTR teams could assess where that
22 particular location was likely to be in terms of the EWL
23 steel fixing works to the slab at that particular point
24 in time.

25 Q. So has that been identified now?

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1 A. I believe it has been, but I can't recall the exact
2 location, sorry.

3 Q. In any event, it is a matter of fact and it is a matter
4 of reality that Mr Poon was never being contacted by MTR
5 for asking for further information; correct?

6 A. Definitely not by MTR, no, correct, at that time.

7 Q. Can you explain why Mr Poon being the instigator or
8 trouble-maker or the person actually raising the
9 complaint was actually not being asked to provide more
10 information? Why was that?

11 A. As I think I -- with respect, I think I just answered
12 that question, that at least in terms of MTR we came to
13 the conclusion that the implication of what Mr Poon said
14 in his email was not correct, based upon the MTR report
15 and substantiated also by the independent Leighton
16 report.

17 CHAIRMAN: Sorry, but that, with respect, might miss the
18 point a little. If one takes a rather stark example, if
19 you're asked to consider who was at fault in a motor
20 accident and draw a report up, and you do not interview
21 the one single eyewitness, it doesn't help to say, "We
22 didn't think it was necessary to interview the single
23 eyewitness because our report said nobody was to blame."
24 Do you see the point? You can't reach the second
25 conclusion until you have seen the eyewitness.

26

1 A. I can understand that view, Mr Chairman, yes, but as
2 I think I said this morning, I think if the MTR and
3 Leighton investigation had revealed that, let's say,
4 there was more than an isolated incident identified,
5 then I think the investigation would have been opened up
6 further, but based upon the investigations that were
7 carried out in January/February, I don't think anybody
8 in MTR or Leighton believed it was necessary to take it
9 any further.

10 MR SO: Thank you, Mr Chairman.

11 Mr Rooney, so let's focus on the NCR, the NCR157.
12 According to your understanding, after reading Mr Lumb's
13 report, is it fair to say that Leighton, in Mr Lumb's
14 report, cannot actually provide any personnel or name
15 anyone that actually witnessed the incident of cutting
16 of the rebars when NCR157 took place?

17 A. I believe you're correct. There's nothing in the
18 Leighton report to that effect.

19 Q. Now, in both the Leighton report and Mr Wu's report,
20 there was numerous emphasis as to the supervision plan
21 in place, both by Leighton and by MTR; right?

22 A. Definitely in the MTR report, yes.

23 Q. So did it not shock you or did it not come to you that
24 it was strange that no one in MTR actually knows what is
25 going on, when there was cutting of threaded rebar?

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1 A. I believe, based upon the fact that MTR or the MTR
2 inspector team actually raised the issue to Leighton in
3 respect of the NCR that you're referring to, and the
4 fact that the MTR inspectors had actually identified,
5 let's say, the cutting of the threaded bars on
6 15 December and brought it to the attention of Leighton,
7 I believe that gave me assurance that the MTR inspection
8 teams were performing their duties.

9 Q. You are certainly familiar with the QSP; correct?

10 A. I believe I am, yes, correct.

11 Q. And, being the contractor, you understand that under the
12 QSP, Leighton is required to have continuous full-time
13 supervision on site; correct?

14 A. That's what's actually stated in -- or implied within
15 the BD letter and the QSP, correct.

16 Q. So did it not shock you that, albeit there was so-called
17 full-time continuous supervision, no one from Leighton
18 actually witnessed the cutting of the threaded rebars by
19 Fang Sheung workers? Did it not shock you?

20 A. It didn't shock me. When we say -- in the industry,
21 when we say full-time -- was it --

22 Q. Full-time continuous.

23 A. -- full-time continuous supervision, the normal
24 interpretation of that type of terminology is that both
25 the contractor and MTR will have people full-time

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1 on site, but they wouldn't necessarily be full -- there
2 wouldn't necessarily be somebody full-time at every
3 location, throughout the whole working day. They would
4 move around the area. So there is still a possibility
5 that, for whatever reason, somebody could undertake some
6 form of malpractice, I believe.

7 Q. Let's see if you can agree with me. Is it fair for me
8 to say that the conclusion you have come to in
9 paragraph 75 of your witness statement -- that is, that
10 you are satisfied that NCR157 was an isolated issue --
11 the only basis is that because there is a system,
12 therefore it is an isolated incident? Is that your
13 logic?

14 A. My logic was that 157 was definitely evidence that the
15 system was working, both in terms of identification of
16 the workmanship issue and the due processes and
17 procedures were followed to address that workmanship
18 issue and close it out. As I said earlier, there was
19 also a reference within the MTR report to the fact that
20 there were a number of other incidents of workmanship,
21 which again, even though they weren't recorded formally
22 in terms of non-conformances, but I believe that
23 information came from Kobe Wong, that there was a number
24 of other, let's say, workmanship issues identified. And
25 again they were duly actioned and rectified or closed

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1 out, in the process of carrying out the actual steel
2 fixing work and before any concrete was actually placed.

3 Q. Let us try not to dilute the issue. Let's put it
4 straight and put it directly. Would it be proper for me
5 to say cutting of the threadings of a rebar is not
6 merely a workmanship issue, it's an ethical issue of the
7 workers; would you accept that?

8 A. Can I speak personally, please?

9 Q. Sure.

10 A. I personally believe that cutting of threaded bars
11 should never occur; okay? From my experience, it's the
12 first time that I have heard of anybody undertaking that
13 type of practice.

14 However, I can appreciate, from a site inspector,
15 site supervisor, probably a young engineer's
16 perspective, that although they would regard it as
17 a serious matter, I believe that there could be a view
18 that it was something that although it shouldn't happen,
19 can actually occur on site, and my impression is that
20 they felt that they were identifying the issue and that
21 when it was identified, it was rectified fairly quickly,
22 if not within the same day.

23 So I think from their perspective -- and we need to
24 appreciate that quite a lot of our supervisors and
25 inspectors are experienced construction people.

26

1 I believe that having worked with many of them, they
2 have lots of years of experience and understanding, they
3 felt that they were in control of the situation and that
4 it was part of their responsibility to address what they
5 considered to be a workmanship issue and put it right in
6 the field, in accordance with their duties.

7 Q. Just let me summarise your answer. So, in short, you
8 have never heard of anyone cutting the threaded rebars
9 before?

10 A. Correct.

11 Q. And to you this is not acceptable?

12 A. Correct.

13 Q. Do you know a staff of MTRC called Kit Chan has come to
14 give evidence?

15 A. I believe Kit has, yes, given evidence, yes.

16 Q. According to Mr Chan's evidence, it was very common for
17 rebar fixers to cut the threaded ends of a rebar. Do
18 you have any comment on this observation?

19 A. With respect, I can't --

20 CHAIRMAN: No, no, no, did he say that?

21 MR PENNICOTT: Why don't you give the reference to that?

22 MR SO: I will have to find that, but according to what
23 I have heard, Mr Chan's evidence was that it is
24 common --

25 MR PENNICOTT: I'm sorry, before the question is put, we
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1 need the reference. I'm not going to allow it to be put
2 without the reference.

3 MR SO: In that case, I'll withdraw this question.

4 You have read Mr Lumb's report, and Mr Lumb's report
5 spanned over 360 pages, in exact; correct?

6 A. Sorry, we're talking about --

7 Q. Mr Lumb's report.

8 A. -- in January/February?

9 Q. Yes, exactly, Mr Rooney.

10 A. Yes, there are a lot of attachments, yes.

11 Q. Can I bring you to one of the pages, being page C20254.

12 There, we can see point 7 and point 8.

13 A. Yes.

14 Q. And that addresses the cutting of the threaded rebars
15 and the NCR?

16 A. 7 covers, I believe, the NCR, yes.

17 Q. And 8 covers the remedial measures that the cutting of
18 the threaded rebars would bring about?

19 A. No.

20 MR PENNICOTT: 8 has nothing to do with the cutting of the
21 rebar.

22 A. I think it -- I would have to re-read it in detail
23 again, forgive me --

24 CHAIRMAN: Sorry to interrupt -- I do apologise. Number 8
25 is standard remedial measures, if for example a coupler

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1 is misaligned or something like that.

2 A. Thank you.

3 CHAIRMAN: So it's not an issue for your concern.

4 MR SO: Yes, thank you.

5 Mr Rooney, that page is the only page, spanning over
6 those 360 pages, addressing the issue of cutting of
7 threaded rebars; correct?

8 A. Forgive me --

9 CHAIRMAN: It's a bit difficult for the witness to answer
10 that, because that would require a very recent and keen
11 memory of the contents of that report, which I doubt he
12 has.

13 A. I regret I don't know. I'd have to re-read the report
14 again.

15 MR SO: Never mind. I'll withdraw that question. I will
16 try another approach.

17 Can I bring you to Mr Carl Wu's report again. It is
18 a shorter report. It is at B4516. This is the report
19 that you received from Mr Wu --

20 A. That's correct.

21 Q. -- when you directed him to do the investigation after
22 receiving Mr Poon's email about the allegations of
23 cutting of threaded rebars.

24 A. That's correct.

25 Q. In those five pages of report, there were no attachments

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1 of Mr Poon's photographs whatsoever there; correct?

2 A. That's correct.

3 Q. And this report certainly was never given to Mr Poon for
4 his reference?

5 A. Correct. MTR never gave the report to Mr Poon.

6 Q. And MTR actually did not report to Mr Poon or notify
7 Mr Poon that an investigation was taken within MTR?

8 A. I believe that's correct, yes.

9 Q. Can we just go to paragraph 76 of your witness
10 statement. That is the second time where Mr Poon again,
11 yet again, is sending an email, this time even to the
12 government, alleging there was malpractice on site, and
13 this has also come to your attention; correct?

14 A. That's correct.

15 Q. Can I say obviously Mr Poon was not satisfied with the
16 investigation or the result, after he made the complaint
17 in January 2017?

18 CHAIRMAN: Again, I'm sorry, I do apologise -- would it not
19 be more accurate to say that on the evidence, Mr Poon
20 had no knowledge that there had even been
21 an investigation, even though it was said that there
22 would be one?

23 A. MTR never informed Mr Poon that they had carried out
24 an investigation. I don't believe that Leighton did
25 either.

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1 MR SO: Thank you very much, Chairman.

2 And in September, obviously Mr Poon still did not
3 have knowledge about this investigation; correct?

4 A. I believe that that's the case. I can't say
5 categorically but I believe that that's the case.
6 Sorry.

7 Q. Thank you. At this juncture, in 15 September 2017, did
8 it ever occur to you to show the report to Mr Poon and
9 tell him, "We have taken investigation, nothing has
10 turned up"?

11 A. No, it didn't occur to me to do that at that particular
12 time, no.

13 Q. Why?

14 A. Again, would it be possible, forgive me, to go to the
15 full email? I think this is just -- what's within 76 is
16 just a snapshot. Could I see --

17 CHAIRMAN: Again, I really am sorry, I don't mean to cut
18 down on your questioning. I appreciate your entitlement
19 to represent Mr Poon. But when a person says "it didn't
20 occur to me" it's difficult to say "why didn't it".
21 Perhaps one can look at it from the point of view of
22 another collateral approach to the issue.

23 MR SO: Sure.

24 CHAIRMAN: Because I think something not occurring to you is
25 a definitive statement. It didn't occur, that's it.

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1 You can ask, "Did you consider other things",
2 a collateral "Were you aware of other issues", that sort
3 of --

4 MR SO: I'll rephrase it, sir.

5 Did you ever think of giving the report to Mr Poon
6 or telling him at least that there was an investigation
7 being taken, to make him, for example, stop these
8 complaints?

9 A. At the time, MTR never considered that, no.

10 Q. Right.

11 A. I understand that Leighton actually told Mr Poon around
12 this time that an investigation had been carried out.

13 Q. Right. I want to turn to the MTRC report that you
14 submitted to the government earlier this year. Did it
15 come to your knowledge that there were a couple of MTRC
16 officers, a couple of Leighton officers, and certainly
17 Mr Poon was also invited to participate in
18 an investigation conference with MTR?

19 A. Can you be a little bit more specific, sorry?

20 A conference?

21 Q. There was an investigation meeting conducted in the
22 Hung Hom site office, where MTRC actually interviewed
23 Mr Poon. Did this come to your knowledge?

24 A. It did, yes, sorry. So we're talking about the
25 interview of Mr Poon by MTR?

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1 Q. Yes.

2 CHAIRMAN: When was this? Sorry, I do apologise.

3 MR SO: In June 2018.

4 Mr Rooney, do you know that in the various
5 interviews that MTRC conducted with different personnel,
6 that interview was actually being audio recorded? Do
7 you know that?

8 A. I believe that I was advised at the time that that was
9 correct, that there was audio, yes, as well as obviously
10 written.

11 Q. Can I bring you to B3082.

12 Can it be blown up a bit. Thank you.

13 Mr Rooney, we can see that -- you are on the top of
14 the list -- you were actually one of the many members of
15 staff being interviewed in that interview process of
16 preparing for the report?

17 A. That's correct.

18 Q. And you were also aware that your interview was actually
19 being audio recorded; correct?

20 A. I believe so, yes, correct.

21 Q. Do you know actually whether other interviews were also
22 being audio recorded? You can tell us if you do not
23 know it.

24 A. I believe that -- I think they were all recorded, but
25 I stand to be corrected. I wasn't part of the team

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1 involved in the interviews, but I recall that I think
2 they were all recorded, but I might be wrong. Sorry.

3 Q. I think you are correct, all were being recorded, save
4 and except Mr Poon's interview was not being audio
5 recorded; correct?

6 A. Sorry, I don't know. I wasn't aware that an exception
7 was made for Mr Poon.

8 Q. Before you came to give evidence before this Commission
9 of Inquiry, were you brought to the notice that all
10 other persons' audio recordings were being produced to
11 this Commission, save and except Mr Poon's audio
12 recordings?

13 A. No, sorry, I wasn't aware of that. Sorry.

14 Q. Thank you.

15 Can I bring you to paragraphs 72 and 73 of your
16 witness statement. These are the parts, this morning,
17 when you were answering to my learned friend
18 Mr Pennicott's questions about -- where you come to
19 acknowledge that there was a commercial dispute between
20 China Technology and Leighton, and you told Mr Pennicott
21 that you knew this from Mr Zervaas of Leighton; correct?

22 A. That's correct.

23 Q. Have you ever talked to Mr Jason Poon, being the
24 managing director of China Technology, whether
25 Mr Zervaas' allegations were true or false?

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1 A. No, I never spoke to Mr Poon.

2 Q. But, nevertheless, you chose to trust what Mr Zervaas
3 told you about the commercial disputes?

4 A. Correct. I did trust Anthony, yes, correct.

5 Q. Can I bring you to paragraph 73, where you have lifted
6 up an email. This email was written by you and it was
7 sent to TM Lee; correct?

8 A. That's correct.

9 Q. Can I bring you to the second paragraph. In the second
10 paragraph, you said:

11 "This is a part of Jason's strategy to put pressure
12 on Leighton to way him the extra 3 million this week."

13 A. That's correct.

14 Q. Where did you gather this information from?

15 A. Mr Anthony Zervaas advised me of that, in terms of --
16 sorry, in terms of the actual \$3 million figure, that's
17 what Anthony advised me.

18 Q. But as to whether the complaint made by Mr Poon is one
19 of the "strategies" to be put pressure on Leighton, is
20 that something told by Mr Zervaas or is that something
21 that you guess or speculate?

22 A. The conversation that I had with Anthony went into more
23 detail than just the 3 million figure, and from the
24 information that Anthony provided to me on or around
25 6 January, and also the information that Anthony had

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1 provided to me in December of 2015 -- sorry, 2016, I beg
2 your pardon -- I believe I came to my own conclusion
3 that it appeared to be, as I said there, a strategy of
4 applying some pressure to Leighton to pay some
5 additional moneys a little bit earlier than they had
6 originally planned to pay China Technology.

7 There was no question that once the related works
8 were completed, China Technology would be paid, but the
9 actual related works hadn't been completed and that was,
10 if you like, part of the commercial issue at that time.

11 Q. Mr Rooney, I have to suggest to you, with respect,
12 claiming that Mr Poon only made these allegations out of
13 commercial grudges is just wrong. Do you accept that?

14 A. I accept that there could well have been other issues,
15 but at the time and prior to the completion of the
16 investigations by MTR and Leighton, from my discussions
17 with Anthony, I came to the conclusion as stated in my
18 email.

19 Q. This morning, when you were answering Mr Pennicott's
20 question -- this was in page 61 of today's draft
21 transcript -- you told us that China Technology had some
22 safety issues that made MTR have concerns about the
23 performance of China Technology, and therefore MTR urged
24 Leighton to close out the relationship with China
25 Technology once and for all -- do you recall that?

26

1 A. I believe you are referring to September --

2 Q. Yes.

3 A. -- as opposed to January?

4 Q. Yes, I'm referring to the email in September,
5 15 September 2017.

6 A. Again, as I think I said this morning, there were
7 definitely issues related to quality, to resource levels
8 and some safety issues as well.

9 Q. I'm focusing on the safety issue part, Mr Rooney. So
10 you say that there were some safety issues regarding
11 China Technology?

12 A. With respect, yes, there were safety issues, but there
13 were other issues as well. It wasn't just -- although
14 safety is our priority at all times --

15 Q. Insofar as safety issues --

16 A. Can I finish?

17 Q. Sure, of course.

18 A. I'd like to reconfirm, safety is our first priority, and
19 I wouldn't ever put any other issue above safety, but
20 having the required resources and the quality of the
21 resources, and the quality of the work under
22 construction, are also key factors in project delivery.
23 Sorry.

24 Q. The safety issue that you mentioned today, that China
25 Technology had, was never mentioned anywhere, both in

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1 your witness statement and in your four police
2 statements; is that correct?

3 A. I'd have to go back and re-read to see if there is any
4 reference to safety.

5 Q. I think you can take that from me. I will be
6 corrected for sure if that is not the case.

7 A. Okay. Then --

8 Q. That is not in your witness statement and definitely not
9 in the four police statements.

10 A. Thank you. I accept your ...

11 Q. Mr Rooney, I have to put it to you that there were never
12 any safety issues created by China Technology. Do you
13 accept that?

14 A. No, I will not accept that. I believe that there are,
15 within the records of contract 1112, various notices to
16 Leighton and from Leighton to China Technology in
17 connection with safety issues.

18 Q. Last point, Mr Rooney. You have received from
19 Mr Zervaas, on 18 September 2017 -- that is at page 27,
20 paragraph 80 of your witness statement -- about the
21 documents and instruments that Leighton entered with
22 China Technology, and it's just over the page at
23 page 28.

24 A. That's correct.

25 Q. There you mentioned a confidentiality agreement.

26

1 A. That's correct.

2 Q. I believe this is not the first contract that MTR had
3 with Leighton; correct?

4 A. That's correct.

5 Q. Were there any previous occasions when Leighton had to
6 enter confidentiality agreement with a sub-contractor,
7 a stand-alone confidentiality agreement?

8 A. Sorry, I've only been involved with one contract
9 involving Leighton as the main contractor.

10 Q. I see.

11 A. So although MTR have worked for a long time with
12 Leighton, I'm not aware of the situation on the other
13 contracts. Apologies.

14 MR SO: Fair enough, sir.

15 Mr Chairman, that's basically all that I have, but
16 regarding the point where Kit Chan has mentioned that,
17 I very much wish that I would have the opportunity to
18 cross-examine on that, just one to two questions.

19 MR KHAW: Mr Chairman, perhaps on this point -- Mr Chow
20 sitting next to me has just reminded me that it might
21 have arisen from his cross-examination with Kit Chan.
22 In fact, if I can just give the Commission the
23 reference. It's Day 26, page 116, even though the
24 answer given by Mr Kit Chan probably is not exactly what
25 Mr So has tried to quote, but I can just -- in all

26

1 fairness, since we are the party responsible for this
2 part of the cross-examination, we should just refer the
3 Commission to the relevant bits.

4 It starts from 115, line 22, where Mr Chow -- 23,
5 yes:

6 "Mr Chan, from the evidence before this Commission,
7 what we see is the several incidents of bar cutting were
8 discovered by MTRC's inspector, not by Leighton's
9 supervisor or inspector. Is that your understanding?

10 Answer: I can't comment on that [point].

11 Question: Okay.

12 Answer: Because I only aware there's only one
13 incident, in December. The other incident, I just read
14 from the report prepared by MTR, because I believe at
15 that time, when my inspector discovered the first and
16 second incidents, they think they are very minor
17 defects, that's why he made a judgment not to report to
18 his superior, because non-conforming couplers are quite
19 common in the industry; right? You don't expect all the
20 steel fixers will do their job 100 per cent correct.
21 Some steel fixers maybe do all kinds of things, you
22 never know. There's no point to find a reason. You
23 better spend more effort to stop that happen."

24 I believe that's the bit that Mr So was trying to
25 refer to, but probably he has given his own gloss on

26

1 what was said by Mr Chan. That's our understanding.

2 COMMISSIONER HANSFORD: Because what I read from that is
3 that Mr Kit Chan told us non-conforming couplers are
4 quite common.

5 MR KHAW: Yes, not bar cutting incidents.

6 COMMISSIONER HANSFORD: Thank you.

7 WITNESS: I would --

8 MR SO: If I can just add, I am certainly grateful for
9 Mr Khaw's assistance on that matter. What I intended to
10 refer to, according to my notes, is a cross-examination
11 by Mr Pennicott and a dialogue between Mr Chairman and
12 Mr Kit Chan --

13 MR PENNICOTT: Yes.

14 MR SO: -- where there was a daily wages discussion.

15 MR PENNICOTT: Yes. In that regard, we have tried to find
16 what we think might be the relevant part, and that is
17 again the same day, obviously Day 26, pages 69 to 70 of
18 the transcript.

19 MR BOULDING: We think that's the bit as well, sir.

20 MR KHAW: I'm sorry, everybody.

21 MR PENNICOTT: That's all right. Nothing like the
22 government wasting a bit of time. Sorry, I couldn't
23 resist that.

24 I don't know if Mr So wants to have a quick look at
25 pages 69 and 70 of the transcript, particularly the
26

1 answer that runs from line 17 on page 69 through to
2 line 7 on page 70.

3 MR SO: I'm afraid -- I can just follow the monitor in front
4 of me. I don't have a hard copy with me. I do
5 apologise. (Handed).

6 Yes, indeed, I'm referring to that part, if I can
7 just pick it up. I'm grateful to my learned friend
8 Mr Pennicott.

9 CHAIRMAN: Sorry, without wishing to prolong the
10 interlude -- I didn't take that as saying that they were
11 busy cutting rebars. I took that to mean it's a sort
12 of -- they are daily paid, they are not the highest
13 skilled workers, their motivation and company loyalty
14 may occasionally be questioned, and therefore we've got
15 to keep a lookout for the fact that there will be minor
16 defects, sort of workmanship issues. I didn't read that
17 as saying that they would then necessarily take it upon
18 themselves to actually cut the rebars.

19 MR SO: In that case, I won't pursue that point, sir.

20 CHAIRMAN: Again, I don't want to cut you down, but I think
21 it would be putting into that response something which
22 is not justified by the content of the response.

23 MR SO: I'm grateful, sir. I will not pursue that point.

24 CHAIRMAN: Thank you.

25 MR SO: I'm sorry to bring all the trouble and be the
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1 instigator.

2 Cross-examination by MR KHAW

3 MR KHAW: Yes, Mr Rooney, I represent the government.

4 A. Good afternoon.

5 Q. Good afternoon. Given the rather detailed discussion
6 that you had with Mr Pennicott, I only have a few
7 questions for you.

8 A. No problem.

9 Q. If I may first trouble you to have a look at your
10 witness statement, at paragraphs 46 and 47, where you
11 refer to the Buildings Department's acceptance letters,
12 and then you went on to talk about the coupler
13 requirements as set out in the QSP.

14 A. Correct.

15 Q. Do you see that?

16 A. Correct.

17 Q. If I can just take you to have a look at page 197, that
18 is your paragraph 47(a). Here, you have quoted from the
19 requirements:

20 "First, qualified site supervision of the mechanical
21 splice works by an experienced and competent person
22 shall be provided to ensure that the works were carried
23 out in accordance with the agreed proposal and that the
24 required quality standards were complied with. In
25 particular and among other requirements:

26

1 (i) The CP [ie MTR] should assign a quality control
2 supervisor to supervise the works, determine the
3 necessary frequency of inspection by the quality control
4 supervisor ..., and devise inspection checklists."

5 Then there's a reference to T3 "as stipulated in the
6 CoP".

7 Then if we can just go to subparagraph (c):

8 "Third, a quality supervision plan of the CP and the
9 RGBC/RSC is required to be submitted to BD ... The
10 quality supervision plan should include the following
11 details:

12 (i) Assignments of the quality control supervisor of
13 the CP and the quality control coordinator of the
14 RGBC/RSC to supervise the manufacturing process of the
15 connecting ends of the steel reinforcing bars, and the
16 installation of the steel reinforcing bars to the
17 couplers;

18 (ii) Frequency of quality supervision of the
19 mechanical couplers works, which should be at least
20 20 per cent of the splicing assemblies by the quality
21 control supervisor of the CP", and then this well-known
22 phrase, "and full-time continuous supervision by the
23 quality control coordinator of the RGBC/RSC".

24 Then you recall that there's also a provision as
25 stated in (iii) regarding the 50 per cent supervision,

26

1 regarding the couplers used at the top of the pile cap
2 and transfer plate; do you see that?

3 A. Yes, that's correct. Thank you.

4 Q. Now, obviously we have all those requirements in
5 relation to the frequency of both supervision and
6 inspection, regarding coupling works. We can all see
7 those requirements.

8 Now, would you agree with me that those requirements
9 relate to how MTR and also other parties, including
10 Leighton, of course, should oversee the coupling
11 installations, both at the time when the coupling
12 installations were being carried out and also after the
13 coupling installations had been carried out; would you
14 agree?

15 A. Aren't they the same thing, sorry? You say the two --

16 Q. Yes. The two things are this: first of all, the first
17 thing is the time when the coupling installations were
18 actually being carried out; second, when we are talking
19 about inspection, we are talking about inspection in
20 relation to the time after the coupling installations
21 had actually been done.

22 A. From my perspective, they're basically one and the same
23 thing, but you need to -- it's all part of the one
24 process and you have to inspect it all. I wouldn't --
25 I think I understand what you're saying, but I don't

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1 think it's two separate items.

2 Q. Right. Would you agree with me that since not only the
3 word "inspection" is used in the requirements, the word
4 "supervision" is also used in the requirement, would you
5 agree that when we're talking about inspection and
6 supervision, these two matters would include how MTR
7 oversee the coupling works at the time when they were
8 being carried out?

9 A. I see what you're saying, but again, to be very honest
10 with you, I hadn't read the supervision component of
11 that to be an MTR responsibility. I can see now how you
12 arrive at that. I had more interpreted that
13 as supervision by the contractor, and the inspection
14 component being by both the contractor and MTR.

15 Q. But would you agree that after seeing these
16 requirements, the MTR was also required to supervise, ie
17 to carry out supervision work, in relation to coupling
18 installations?

19 A. Forgive me, I can recognise how you have interpreted
20 that, but from an overall construction industry
21 perspective, the normal situation is that the contractor
22 will supervise, and the engineer or the engineer's
23 representative and his team will inspect and check.

24 Q. Right.

25 A. My understanding is that these particular clauses within
26

1 the BD approval letter, which have been included here,
2 are relatively common across other BD projects.

3 Q. Yes.

4 A. So my view is that the supervision component --
5 personally, my view is that that's the contractor, not
6 MTR.

7 Q. But what puzzles me a bit is that if you look at (ii),
8 that we've just seen, it says, "Frequency of quality
9 supervision" -- we have a clear word "supervision" --
10 "of the mechanical couplers works, which should be at
11 least 20 per cent of the splicing assemblies by the
12 quality control supervisor of the CP", ie of the MTRC.

13 So that actually has raised my query that I just try
14 to explore with you, as to whether you agree with me
15 that MTRC, at least according to these requirements,
16 would have a role to play in relation to the supervision
17 process, not just the inspection process.

18 A. I think I -- again, sorry to repeat -- I understand your
19 logic, but from an industry standard, it would be
20 unusual and difficult for, let's say, the MTR inspectors
21 to supervise individuals on site to carry out work,
22 because there isn't -- the responsibility line is not
23 there for an inspector to supervise a worker. Strictly
24 speaking, they shouldn't be doing that, from a practical
25 point of view.

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1 Do you follow what I'm trying to say?

2 Q. I heard what you said. Perhaps we can further comment
3 on this point later.

4 If we can take a look at your paragraph 52. There
5 you said:

6 "I ceased to be responsible for submitting further
7 batches of the quality supervision reports to BD after
8 Jason Wong replaced me as CP for contract 1112 in
9 February 2015. Since MTR has still not reached the
10 stage of certification of completion of the works at the
11 EWL slab and the NSL slab, I believe that the quality
12 supervision reports in respect of the EWL slab and the
13 NSL slab had not been prepared as at 7 August 2018 when
14 I left MTRCL."

15 I believe you would agree with me on this, would you
16 not, Mr Rooney, that according to your understanding
17 Leighton ought to have provided such records to MTR, but
18 they didn't?

19 A. It would have been very useful if Leighton had provided
20 all the records, but, as I state there, to my knowledge,
21 up to the 7th, they hadn't been provided.

22 Q. Now, we all know that MTR's internal review took place
23 in around January and February 2017; do you remember
24 that?

25 A. This is as a result of --

26

1 Q. Jason Poon's email.

2 A. 6 January email?

3 Q. Yes.

4 A. That's correct.

5 Q. May I know whether you made the decision to carry out
6 this internal review or it was somebody else's decision?

7 A. I think both myself and Mr TM Lee considered that we
8 would carry out our own investigation, an MTR
9 investigation, and more or less in parallel Mr TM Lee --
10 I can't remember exactly what happened, but we were both
11 thinking along the same lines. I think TM approached
12 Carl. I approached TM and said, "I think we needed to
13 do this", and he said something to the effect that,
14 "Yes, I agree, I've already spoken to Carl", and I said,
15 "Perfect", something to that effect.

16 Q. Thank you.

17 A. I believe that that was what occurred. So we both
18 considered that it would be prudent to do that.

19 Q. Now, in relation to Mr Jason Poon's email -- we
20 obviously know that it's a case where a particular
21 sub-contractor made certain allegations, and the
22 allegations were about what Mr Jason Poon described as
23 malpractice --

24 A. Yes.

25 Q. -- on site.

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1 What I'm interested to know is that, at that time,
2 was there any system or mechanism in MTR which would be
3 responsible for dealing with such an allegation?

4 A. I don't think there would be -- I don't think there's
5 a separate section or body within MTR that would address
6 such an issue. I think, if it's an issue that's raised
7 on a project, then my understanding is that the project
8 division would address the issue.

9 Q. Right.

10 A. I don't think there's a process in place to, let's say,
11 get another part of the organisation to carry out
12 a further sort of separate, independent investigation,
13 if that's the direction you're going in.

14 Q. I was just interested to know whether there was any
15 particular system in place at that time which would deal
16 with such complaint or similar complaints which arose
17 from what happened on site.

18 A. I don't believe so, no.

19 Q. Thank you.

20 We have all seen Mr Jason Poon's email during the
21 course of today's hearing --

22 A. Yes.

23 Q. -- on the screen. Did you at that time have a chance to
24 actually look at the contents of this email and also the
25 photographs attached?

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1 A. I did, yes.

2 Q. Before MTR made a decision to conduct this internal
3 review, did MTR already realise that Leighton failed to
4 provide or maintain the inspection sheets in relation to
5 the coupling works for the platform slabs, or it was
6 simply discovered during the internal review?

7 A. I personally was not aware until Carl Wu, in his report,
8 highlighted the absence of some of the records.

9 Q. I see. So the first time you realised this problem was
10 the time when you actually had a chance to see Carl Wu's
11 report?

12 A. Personally, myself, correct.

13 Q. So, after you realised this problem, did you consider it
14 quite a serious issue, ie the lack of proper records
15 regarding coupling works for a particular area or for
16 certain particular areas on the site? Did you consider
17 that quite a serious issue?

18 A. Yes, I did. Yes.

19 Q. Did you raise any enquiry as to why this issue was not
20 picked up earlier? Because that was already 2017.

21 A. Correct.

22 Q. Was there any discussion with either Carl Wu or anyone
23 else as to why this was not picked up earlier?

24 A. There was the discussion with Carl, and he -- I believe
25 Michael, Michael Fu, was also present during that

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1 briefing, when he briefed us on the report, and we
2 discussed in very general terms the fact that these
3 records didn't appear or hadn't been available, and it
4 was agreed that the follow-up action would be for the CM
5 team to establish whether the records were there or not,
6 and if possible to produce those records, if they were
7 available.

8 Q. At that time, was there any discussion, apart from the
9 recommended follow-up actions as stated in the report --
10 practically, I was wondering how MTR decided to deal
11 with this problem. For example, did anyone at that time
12 ever consider how to produce contemporaneous inspection
13 records if you were asked to do so, for example if the
14 government asked for a check on those records, how would
15 you do so?

16 A. That wasn't discussed in any detail at that time.

17 Q. But, at that time, did you form the view that there were
18 sufficient records, even though Leighton failed to
19 produce their records regarding the inspection sheets
20 for platform slabs?

21 A. My personal view was that we had all the RISC forms --

22 Q. Yes.

23 A. -- and the review by Mr Carl Wu had confirmed that we
24 had substantial RISC records. I believe that they were
25 adequate to confirm that the coupler works were carried
26

1 out in accordance with the requirements, although it was
2 regrettable that we didn't have the full QSP records.

3 Q. And you were aware of the NCR157 before or after you had
4 a chance to look at Carl Wu's report for the internal
5 review?

6 A. I believe that I was first aware of it when I saw the
7 Leighton report. I think the timing was that the
8 Leighton report was a little bit earlier than Mr Wu's
9 report. So I think 157 either became apparent to me by
10 the Leighton report, or possibly Michael had said to me
11 that we had found an NCR -- I can't remember the timing,
12 but I think it was before Mr Wu's report.

13 Q. Would do you agree with me, if we look at the two
14 reports, the report from Leighton and also MTR's own
15 report, none of these reports have addressed the
16 following questions: for example, where and when did the
17 alleged bar cutting incident occur as shown in the
18 photographs attached to Mr Jason Poon's email, who were
19 the workers involved, what were the actual causes for
20 such incident, they were never addressed in the contents
21 of any of these reports; would you agree?

22 A. That's correct.

23 Q. If that is the case --

24 A. Sorry, can I just add to that?

25 Q. Of course.

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1 A. Even though they weren't addressed in the report, we did
2 discuss the issues with Carl and with Michael, and we
3 came to, let's say, our own conclusions related to those
4 three points that you raised. But they weren't included
5 in the report.

6 Q. But if we go to paragraph 75 of your witness statement,
7 the last sentence of this paragraph:

8 "On the basis of the independent review of MTR and
9 the investigation report of Leighton, we concluded there
10 was no need to carry out any further follow-up action."

11 A. That's correct.

12 Q. Looking back now, given the questions that I have just
13 discussed with you, ie where and when did the alleged
14 incident happen, the causes of the incident, who were
15 the workers involved, et cetera -- without knowing any
16 of these details, looking back, would you say that it
17 was a bit premature for you to come to that conclusion?

18 A. I didn't feel that at the time. In terms of the
19 location, we had approximately worked out where we
20 thought the two photographs that Mr Poon provided, dated
21 22 September -- we had, from our records, approximated
22 where that location was, so we had an idea about that.

23 We personally believed that it was Fang Sheung
24 workers that were involved in -- that were present in
25 the photograph, even though I think Mr Poon alludes to

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1 it being Leighton workers, but our view, from our
2 experience, was that it was Fang Sheung workers.

3 Sorry, the final point? You had three points. The
4 third point was --

5 Q. When and where, cause of the incident, and also who were
6 the workers involved.

7 A. Sorry, yes. So the second one was "who", and like
8 I say, we believed it was Fang Sheung workers.

9 And the cause -- and again we discussed this, and my
10 personal view was that the cause of any potential
11 cutting of threaded rebar, as Mr Poon advised -- and
12 it's still not 100 per cent clear from those photographs
13 that there was -- particularly in the second photograph,
14 where you see -- I think it's two workers and they are
15 crouching down and they are doing some work -- my belief
16 was that if a bar had been cut, and those two workers
17 were actually involved in, let's say, taking that bar
18 and trying to install it -- I believe that that was
19 probably a problem related to that type of location,
20 where it was very, very clear that, in those corners
21 between the D-wall, the longitudinal D-wall and the
22 transverse construction joint, particularly down in
23 those bottom corners, that was a particularly difficult
24 area to get all the rebar in place, because all the
25 rebar was running vertically, transversely and

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1 longitudinally, so you had, like, a three-dimensional
2 cage that you had to form, and obviously, when you come
3 to that 90-degree corner, from my experience it can be
4 very challenging.

5 So I had worked out in my own mind that if there was
6 going to be somebody trying to take a short-cut, then
7 that could be one location.

8 Q. Right.

9 A. And I think, in the discussion, that was supported by
10 some of the other MTR staff that we discussed the issue
11 with at the time.

12 Q. And your belief that the workers involved probably
13 should be Fang Sheung workers --

14 A. Yes, we believe so.

15 Q. -- is it fair to say that it was sort of an inference or
16 a deduction that you would be able to draw from looking
17 at the pictures, or from other materials?

18 A. Primarily from looking at the pictures, but also we
19 believe that it would be unusual, it would be strange to
20 have a non-steel fixer worker involved in installing
21 threaded bars into couplers, not impossible, but it
22 would be unusual.

23 Q. Right. If you don't mind, let's just take a look at the
24 two pictures attached to --

25 A. Yes.

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1 MR KHAW: Mr Pennicott has kindly reminded me of the time.

2 Would be it be a convenient moment?

3 CHAIRMAN: Yes, certainly. 15 minutes. Thank you.

4 (3.42 pm)

5 (A short adjournment)

6 (4.00 pm)

7 MR KHAW: Mr Rooney, if I can just take you to have a look

8 at the photographs attached to Mr Jason Poon's email.

9 A. Please.

10 Q. It is at B10/7526. If we can just very quickly look at
11 this picture and also the next page. Maybe we can stay
12 at this page first.

13 Merely from looking at this picture, are there any
14 features which can indicate whether these workers
15 actually work for Fang Sheung or other sub-contractor?

16 A. My impression, at the time when I first saw it, was that
17 they were Fang Sheung workers. That was just my
18 impression. They were handling the rebar quite well,
19 they had the right clothing that seemed to indicate they
20 were steel fixers. My view was steel fixers.

21 Q. Does it mean that you actually met Fang Sheung workers
22 before?

23 A. I would see, during my weekly site walks, walking along
24 during the construction of the EWL slabs and the NSL
25 slabs, I would see Fang Sheung workers.

26

1 Q. Right.

2 A. And so, to me, they look like Fang Sheung workers, steel
3 fixers, yes.

4 Q. But I take it that you would not be able to identify who
5 they actually are?

6 A. I wouldn't, no.

7 Q. Thank you.

8 A. I'm sorry, just staying on that photograph, I was saying
9 before about potentially difficult locations for steel
10 fixing.

11 CHAIRMAN: Yes.

12 A. From my experience, if there was going to be some
13 particularly difficult locations, that would be one of
14 them, you know, because you've got the longitudinal bars
15 there, which they seem to be trying to thread into, and
16 then you've got the transverse ones coming out from
17 what's left of the D-wall at that location, and the
18 vertical ones. That would be a difficult area.

19 MR KHAW: While you were working on the site, did you hear
20 from anybody regarding the difficulties encountered by
21 bar fixing workers?

22 A. Forgive me, I never actually worked on the site, as it
23 were, but I did visit.

24 Q. Yes.

25 A. And, again, during the Monday site walks, there were
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1 instances where, not from the sub-contractors but either
2 from the Leighton people in the site walk or from the
3 MTR people, where we did identify -- not just the EWL
4 slab but other parts of the work where there was some
5 complications with steel fixing. So, again, not
6 uncommon, really.

7 Q. Right. But those complications did not relate in
8 particular to the need for any bar cutting, threaded bar
9 cutting?

10 A. Definitely not.

11 Q. Thank you.

12 A. But couplers in general are problematical, for all the
13 reasons that I think everybody has heard over recent
14 weeks.

15 Q. Going back to the records that MTR prepared recently, ie
16 in June this year -- the contents of those records
17 I believe have been discussed between you and
18 Mr Pennicott rather extensively. I do not wish to go
19 into the details.

20 Now, earlier on this morning, you told us the
21 purpose of producing those documents, ie the
22 retrospective records, was for, quoting from your words,
23 "MTR ... to be able to substantiate that they had
24 complied with the 20 per cent and 50 per cent coupler
25 assembly checking requirement laid down by the BD." Do
26

1 you remember that?

2 A. Correct.

3 Q. We heard your evidence, correct me if I am wrong, you
4 told us that you checked with Kobe Wong, and Kobe Wong
5 told you that he checked at least 50 per cent of the
6 coupler installations.

7 A. That's correct.

8 Q. We also have seen one summary in which, at the bottom,
9 it was put that 60 per cent was checked; do you remember
10 that?

11 A. That's this morning, yes.

12 Q. Yes.

13 A. As I said, I'm not sure that I had seen that before, to
14 be honest.

15 Q. Yes. Then you also told us this morning, on a few
16 occasions, that the RISC form --

17 A. That's right.

18 Q. -- should be able to tell us that in fact 100 per cent
19 were checked; do you remember that?

20 A. Basically, yes.

21 Q. Now, we have a lot of figures here. If MTR were asked,
22 insofar as the level of inspection is concerned, what
23 was the percentage that MTR has actually inspected?
24 50 per cent, 60 per cent or 100 per cent?

25 A. 100 per cent. 100 per cent.

26

1 Q. 100 per cent?

2 A. I would say 100 per cent.

3 Q. So your answer would be based on what you see from the
4 RISC forms; is that correct?

5 A. Plus the confirmation from our MTR engineers and
6 inspectors who carried out the inspections.

7 Q. But the problem is Kobe Wong only said more than
8 50 per cent, or, according to that summary that we saw
9 this morning, 60 per cent.

10 A. Based upon that sheet today, yes.

11 Q. So, based on what the engineers told you, that would be
12 only around 50 or 60 per cent; is that correct?

13 A. No. Our engineers and our inspectors checked
14 100 per cent, and verified that through signing off of
15 the RISC forms.

16 Q. The RISC forms. Okay.

17 A. What I believe Kobe was confirming to me in June of this
18 year and on that summary sheet that was shown this
19 morning was that from a BD T3 perspective, he personally
20 could guarantee to sign off, whether it's 50 or
21 60 per cent; okay? The reality -- that's him
22 personally. The reality, I believe, is that the team as
23 a whole, it's 100 per cent.

24 Q. I see.

25 A. But in terms of Kobe, he's confident, whether it's 50 or
26

1 60 or whatever the percentage is.

2 Q. And obviously you have to trust their memory as to what
3 was done at the material time; is that correct?

4 A. Well, you -- yes, there is trust involved, but there is
5 also a record, in terms of the RISC forms, which people
6 signed off, professional people signed off; experienced
7 professional people.

8 Q. Finally, I would like you to just look at the MTR's
9 15 June report. Before this report was sent out, did
10 you have a chance to look at the contents of that
11 report?

12 A. Yes.

13 Q. Now, if we look at B1, page 29, under the part -- you
14 will see probably in the middle of this page,
15 "Supervision and inspection by MTRCL on site"; do you
16 see that?

17 A. Yes.

18 Q. "Installation works", and then there's a bullet point:
19 "Frequency of quality supervision by the MTRCL
20 TCP-T3 should be at least 20 per cent of the splicing
21 assemblies for the slab in general, and to be increased
22 to at least 50 per cent where the structure acts as
23 a transfer plate. These inspection frequencies are
24 commonly applicable to using splicing assemblies in
25 reinforced concrete construction in Hong Kong."

26

1 Now, there the report says:

2 "Full records are in place. All inspection records
3 indicated that the works were acceptable, with no
4 anomaly."

5 Do you see that?

6 A. Correct.

7 Q. Would you agree that given the lack of contemporaneous
8 records prepared by Leighton, regarding the inspection
9 sheets for the platform slabs -- would you agree that
10 this statement, "[all] records are in place", perhaps
11 does not give a complete and full picture regarding the
12 records kept?

13 A. In terms of the QSP records and the use of the
14 attachment B or C checklist, I would agree, correct.

15 Q. Thank you.

16 At that time, ie at the time when this report was
17 prepared, before it was sent out, did MTR ever consider
18 it necessary to disclose the fact that there were in
19 fact no contemporaneous records regarding coupling
20 installations for the platform slabs?

21 A. No, because, again, as I've said, based upon the RISC
22 forms and the completion of the RISC forms, we are -- or
23 MTR are -- confident that all the -- 100 per cent of the
24 coupler assemblies were checked and verified. The
25 problem that we had was we didn't have a record that was

26

1 in a format which tied in with the particular QSP
2 format. But in terms of whether the work was carried
3 out in accordance with the requirements, we were
4 100 per cent confident that we had the records.

5 So, again, it's a format issue as opposed to being
6 able to verify that the works were carried out in
7 accordance with the requirements.

8 Q. But, Mr Rooney, would you agree with me -- you will
9 probably not but I'll still put it -- that this is in
10 fact not just a format issue, because the
11 contemporaneous records would be able to tell everybody
12 which particular bar, in relation to which particular
13 row, regarding which particular bay, has been checked.
14 So it's a question of substance, not just formatting;
15 would you agree?

16 A. Forgive me, no. As you presumed, I would not agree with
17 you. I believe, again, that the RISC forms confirm that
18 100 per cent of the coupling assemblies were checked and
19 verified to be compliant.

20 Q. Thank you. Going back to the statement that we just
21 saw, ie "Full records are in place", do you know who put
22 down that conclusion in the report? Because we asked
23 James Ho and he said it was not his responsibility. Do
24 you know who actually put down this part of the report?

25 A. The report went through quite a few drafts. I'm not
26

1 sure where the final wording came from. But I was
2 involved in the drafting.

3 Q. Okay.

4 A. And I read and had no problem with that statement.

5 MR KHAW: I have no further questions.

6 CHAIRMAN: Thank you.

7 MR CONNOR: Thank you, sir. No questions from Atkins.

8 Re-examination by MR BOULDING

9 MR BOULDING: Good afternoon, Mr Rooney.

10 A. Good afternoon.

11 Q. I have just one matter I would like to ask a few
12 questions about.

13 Do you recall being asked by Mr So for China
14 Technology about safety issues involving China
15 Technology?

16 A. In connection with this afternoon?

17 Q. Yes.

18 A. Yes, I do recall.

19 Q. If I could remind you of what you said, as recorded in
20 the transcript -- and I'm reading from [draft] page 121,
21 currently line 19 -- Mr So says:

22 "I'm focusing on the safety part, Mr Rooney. So you
23 say there were some safety issues regarding China
24 Technology?

25 Answer: With respect, yes, there were safety
26

1 issues, but there were other issues as well. It wasn't
2 just" -- and then you paused -- "although safety is our
3 priority at all times."

4 Then Mr So says:

5 "Insofar as safety issues --

6 Answer: Can I finish?

7 Question: Sure, of course.

8 Answer: I'd like to reconfirm, safety is our first
9 priority, and I wouldn't ever put any other issue of
10 safety, but having the required resources and the
11 quality of the resources, and the quality of the work
12 under construction, are also key factors in project
13 delivery."

14 A. That's correct.

15 Q. Then the questioning continued from Mr So:

16 "The safety issue that you mentioned today, that
17 China Technology had, was never mentioned anywhere, both
18 in your witness statement in your four police
19 statements; is that correct?

20 Answer: I'd have to go back and re-read to see if
21 there's any reference to safety."

22 A. Correct.

23 Q. I wonder if we could have a look at your witness
24 statement. Could you be taken to B216. Do you see that
25 there's a heading there, "Item 13(a): Comment on
26

1 Mr Poon's allegations"?

2 A. I can. Thank you.

3 Q. Then 113 says, just to read in:

4 "As stated in paragraph 70 above, I had no knowledge
5 about the alleged defective steel works until they were
6 first reported by Jason Poon to Leighton on 6 January
7 2017. Prior to that, nobody raised any issues relating
8 to the alleged defective steel works during the meetings
9 or site visits that I attended or on any other
10 occasions."

11 Just before I read on, do you still stand by that
12 statement?

13 A. I do confirm.

14 Q. Then, coming on to the more relevant bit for present
15 purposes:

16 "I did occasionally run into Jason Poon on site.
17 During those occasions when we met, Jason Poon did not
18 mention any issues about the alleged defective steel
19 works. On the few occasions that we talked, we
20 discussed the adequacy of the resources provided by
21 China Technology and performance issues in relation to
22 the safety and quality of China Technology's works."

23 A. Correct.

24 Q. I know it's a long time ago but can you remember the
25 sort of issues that you would bring to Jason Poon's

26

1 attention?

2 A. It would be primarily related to China Technology
3 workers working at height -- this is on safety?

4 Q. Yes, of course.

5 A. In terms of China Technology workers working at height,
6 particularly on scaffolding or inadequate scaffolding
7 that they had erected themselves, because one of their
8 responsibilities was to provide their own scaffolding,
9 and this was primarily in 2016, when the above-slab
10 walls and staircases and lift shafts were being
11 constructed above the EWL slabs and NSL slabs.

12 Q. I see.

13 A. And there were a number of occasions, again particularly
14 in the middle of 2016, where we would, in our site walk
15 on a Monday morning at that time, we would see workers
16 placing themselves at risk or other workers at risk, and
17 we would stop the works and Leighton would ask whether
18 Jason was on site, and if Jason was on site we would ask
19 him to come and discuss the issue, and he would normally
20 acknowledge that it was a safety issue and he'd promise
21 to try to do better.

22 MR BOULDING: Thank you very much, Mr Rooney. That's very
23 helpful.

24 Sir, Professor, I don't know whether you've got any
25 further questions.

26

1 COMMISSIONER HANSFORD: Just a small point, Mr Rooney. In
2 that very last point, in your reply to Mr Boulding, you
3 said, "If Jason was on site, he would be called". What
4 if he wasn't on site; how would that then be dealt with?
5 A. China Technology had three or four area supervisors, so
6 ideally we would like to speak to Jason, if he was
7 there. If he wasn't there, then we would go to the next
8 level down, which would be one of those supervisors.
9 But normally we would find somebody of a management
10 perspective in China Technology that would assist us.

11 COMMISSIONER HANSFORD: Okay. Thank you.

12 MR BOULDING: Thank you very much, Mr Rooney.

13 CHAIRMAN: Thank you very much. Your evidence is now
14 completed.

15 WITNESS: Thank you.

16 CHAIRMAN: I understand that you delayed a trip overseas so
17 that you could give evidence. Thank you very much.
18 That was considerate.

19 WITNESS: I wanted to give it in person. Thank you.

20 MR BOULDING: Yes, you can go. Get out quick!

21 (The witness was released)

22 MR BOULDING: Sir, Professor, my next witness is Mr Louis
23 Kwan.

24 Good afternoon, Mr Kwan.

25 WITNESS: Good afternoon.

26

1 MR KWAN PAK HEI, LOUIS (sworn in Puntì)

2 Examination-in-chief by MR BOULDING

3 MR BOULDING: Thank you. If you'd be kind enough to give
4 your full name to the Commissioners, please.

5 A. Good afternoon, Professor, good afternoon, Mr Chairman.
6 My name is Kwan Pak Hei, Louis.

7 Q. Thank you. It's correct, is it not, Mr Kwan, that you
8 prepared two witness statements for the assistance of
9 the Commissioners in this Inquiry?

10 A. That is correct.

11 Q. Please can we have a look at the first page of your
12 first statement, which should be B273. That's the first
13 page of your first statement, is it not, Mr Kwan --

14 A. Yes.

15 Q. Then if you could be find enough to go on to B398.
16 There do we see your signature, under the date of
17 13 September 2018?

18 A. Correct. That is my signature.

19 Q. Splendid. I'm not going to ask you at the moment
20 whether that's all true, because you make one or two
21 minor corrections and clarifications in your second
22 statement, so if we could go on to the second statement,
23 please, which is B13622. There do we see the first page
24 of your second witness statement, Mr Kwan?

25 A. Yes.

26 Q. If we were to scroll down to paragraphs 18 to 21,

1 I think that's -- splendid, and there you take the
2 opportunity, do you not, to set out certain
3 clarifications and minor amendments that you'd like to
4 make to your first statement; is that right --

5 A. Correct.

6 Q. -- through to paragraph 21? Then if we could scroll
7 down to the end, if we could go, please, to B13627, do
8 we there see your signature under "8th October 2018"?

9 A. Yes, that is my signature.

10 Q. Taking account of those clarifications and amendments,
11 are the contents of both of those statements true to the
12 best of your knowledge and belief?

13 A. Correct.

14 Q. Just to see where you are in the organisation, Mr Kwan,
15 if you could go to B563 -- splendid -- and if you can
16 see Ms Chu at the top, and if we go down, do we see your
17 picture there, Mr Kwan?

18 A. I see it.

19 Q. And that, we can see, can we not, was effective from the
20 end of May 2014; correct?

21 A. Correct.

22 Q. But things changed slightly, if we go to B566, and here
23 we've got the chart effective from 15 January 2015, and
24 again if you go down, this time under the photograph of
25 Suzanne Mak who's almost at the top, do we see your
26 picture and name there, and title, Mr Kwan?

1 A. Yes, I see it.

2 Q. Does that show the reporting lines involving you in the
3 MTR organisation from that date?

4 A. Yes, I report to Terence Chan, who's my ConE-I at that
5 moment, yes.

6 Q. Thank you very much. What's going to happen now,
7 Mr Kwan, is that counsel for the Commission is going to
8 ask you some questions first. Then there may well be
9 questions from other lawyers in the room. Then I might
10 take the opportunity of asking you questions at the end.
11 But the Chairman and Professor can ask you questions
12 whenever it takes their fancy.

13 A. Fully understood, yes.

14 MR BOULDING: Thank you.

15 Examination by MR PENNICOTT

16 MR PENNICOTT: Mr Kwan, good afternoon.

17 A. Good afternoon, Mr Pennicott.

18 Q. I have been unreliably informed that you were going to
19 give evidence in Cantonese.

20 A. I prefer speaking in Cantonese because that is my mother
21 tongue so I speak more fluently in Cantonese.

22 Q. It's entirely up to you, Mr Kwan, whether you wish to
23 speak in English or in Cantonese, or a bit of both.

24 A. A bit of both, yes.

25 Q. It's up to you, but if it's going to be Cantonese, we
26 need to put these [headphones] on.

1 A. Yes. I prefer in Cantonese first.

2 Q. Let's put the headphones on then.

3 Mr Kwan, am I right in suggesting, from your witness
4 statement, that you've been involved in the project
5 since April 2014?

6 A. Yes.

7 Q. If we could just go to one more organisation chart, at
8 page 567, that's one on from where we were just a moment
9 ago with Mr Boulding, we can see this is now February
10 2015; do you see that, Mr Kwan?

11 A. 見到。

12 Q. And on the previous page, there's a blank. You can see,
13 if you go up from yourself through Terence Chan, and
14 then there's a blank, do you see, no photograph?

15 On the next page, please, we can see that James Ho
16 is now there?

17 A. Yes.

18 Q. So would it be right that from February 2015, the
19 person, as it were, immediately above you on the chart
20 is Derek Ma, who we've heard from, and then it's James
21 Ho, who ultimately you would report to?

22 A. Yes.

23 Q. As I understand it, you were a construction engineer 3
24 up to December 2014?

25 A. 正確。

26 Q. Then, when you became a chartered engineer in

1 December 2014, a construction engineer 2?

2 A. Yes.

3 Q. I also understand, Mr Kwan, that since the date of your
4 witness statement, your first witness statement at
5 least -- perhaps your second one, I don't know -- you're
6 no longer working for MTR but you're at the Airport
7 Authority; is that correct?

8 A. Yes.

9 Q. When did you move there?

10 A. I resigned from MTR on 8 October, and I joined --

11 Q. This year?

12 A. This year, 2018, and I joined the Hong Kong Airport
13 Authority on 16 October.

14 Q. Right.

15 Sorry, I should have said earlier, because I say
16 this to all witnesses, thank you very much for coming to
17 give evidence to the Commission.

18 A. My pleasure.

19 Q. Even more so now you're not working for MTR.

20 In your witness statement, you tell us that you were
21 involved in the hold point inspections in areas B and C,
22 except for C3-2 and C3-3?

23 A. Yes.

24 Q. I think we can pick up from your statement that it was
25 Mr Jeff Cheung who was responsible for C3-2 and C3-3?

26 A. Yes.

1 Q. In paragraph 9 of your witness statement, you explain
2 your involvement in the preparation of the site
3 supervision plans?

4 A. 正確。

5 Q. You explain that the task of preparing those site
6 supervision plans was indeed delegated to you
7 personally; is that right?

8 A. 正確，正確。

9 Q. We don't have to go into detail, so you would prepare
10 a draft and then submit it to somebody else was
11 approval -- was that how it worked?

12 A. 喺我負責嘅範圍，我係負責預算TCP嘅文件嘅工程師，我完成咗之後，我就
13 會畀相關嘅同事去簽名作實，到最後完成晒一份文件之後，我就會畀相關
14 嘅同事出一封信，係under MTR嘅title，畀屋宇署做一個紀錄作實嘅。

15 Q. Right. In paragraph 11 of your witness statement,
16 B1/375, you explain how you calculated the supervision
17 requirements, by reference, as I understand it, to the
18 Code of Practice for Site Supervision?

19 A. 正確。

20 Q. Then you refer in your witness statement to your
21 personal assignment, that's paragraph 12, as the TCP-T3
22 grade under the CP stream?

23 A. 正確。

24 Q. I'm just waiting for a possible translation.

25 I think that was a "yes", was it?

1 A. Yes, that is correct.

2 Q. In my limited understanding of that.

3 You I think confirm in your witness statement --
4 again, Mr Kwan, let's just get this point out of the
5 way -- two things. You were not informed, when you
6 joined the project in April 2014, of the quality
7 supervision plan, the QSP, in respect of the couplers?

8 A. 我並冇通知--並冇被通知。

9 Q. Although the D-walls were still being constructed in
10 April 2014, when you joined, you had no involvement with
11 the diaphragm walls, as I understand it?

12 A. 冇錯，我並冇involve。

13 Q. In paragraph 19 of your witness statement -- that's
14 B1/379 -- you explain and describe a typical splicing
15 assembly; do you see that?

16 A. Yes.

17 Q. You explain in paragraph 20 the various hold points as
18 set out in the inspection and test plan, which I presume
19 you were familiar with when you were doing your
20 inspections, Mr Kwan?

21 A. 正確。

22 Q. At 20.4 of your witness statement, you refer to one of
23 the hold points being the inspection of the rebar fixing
24 works, bottom and top layers?

25 A. 正確。

1 Q. As I understand it, you were involved in those hold
2 point inspections?

3 A. 正確。

4 Q. Can I ask you this, although I think -- as you explain
5 in paragraph 48 of your witness statement, let's jump
6 forward, so far as the inspection of the rebar in the
7 bottom mat and the top mat and the various layers within
8 those two mats, you say:

9 "... I should stress that the inspection of each bay
10 was not done on a single occasion -- as a matter of
11 common sense, if the top layers had already been
12 completed, it would be difficult to visually inspect the
13 bottom layers. Therefore, I typically inspected the
14 bottom layers of rebars once they had been completed
15 (and prior to the commencement of the fixing of the top
16 layers of rebars), and then returned for a second
17 inspection once the fixing of the top layers of rebars
18 had also been completed."

19 Now, just pausing there for a moment, Mr Kwan -- we
20 know that Leighton issued to you, to the MTR, RISC
21 forms, in respect of the inspection of the bottom and
22 top rebar.

23 A. (Nodded head).

24 Q. Would they issue those RISC forms when the bottom layer
25 had been completed and ready for your inspection, or
26 when the top mat was ready for your inspection? How did

1 it work? How was the timing in relation to the issue of
2 the RISC forms?

3 A. 喺正常嘅情況下，我哋係會要求禮頓嘅工程師喺before嗰一個bay嘅rebar
4 fixing嘅works commence之前，就入張RISC form嘅，但係有情況就係
5 佢哋會commence咗個bottom mat嘅rebar fixing之後，佢哋先會有張
6 RISC form畀我去做一個檢查，嗰個時間會係喺個bottom mat嘅rebar
7 fixing complete之前，就張RISC form就會由禮頓去send咗畀我哋MTR
8 嘅。

9 Q. So you're saying, as I understand it, that you would
10 receive the RISC form at the point in time that the
11 bottom mat had been completed, and was ready for
12 inspection, on or before?

13 A. Before, on or before.

14 Q. On or before. Okay. And did that happen on every
15 single occasion, Mr Kwan?

16 A. 我唔能夠好肯定咁去話每一次個情況都係喺個bottom mat complete之
17 前入張RISC form，因為都即係發生咗三年前嘅事，我有辦法去好清楚去
18 記得，但係就有情況佢哋係喺個bottom mat commence--in between
19 commence同埋completion之前，就擺張RISC form畀我哋MTR嘅。

20 Q. Were you responsible for, if you can recall, C1-1,
21 area C1-1?

22 A. Yes, I try to.

23 Q. Can we just look at H1/118, please.

24 COMMISSIONER HANSFORD: Sorry, I don't understand that
25 answer. Were you answering whether you could recall for

1 Mr Pennicott C1-1, or were you answering were you
2 responsible for area C1-1?

3 MR PENNICOTT: It's probably my question.

4 A. I was responsible for C1-1, rebar fixing.

5 COMMISSIONER HANSFORD: Okay, thank you.

6 A. Sorry for the misunderstanding.

7 COMMISSIONER HANSFORD: No, no. I was just looking at the
8 transcript.

9 MR PENNICOTT: I'm afraid it's very indistinct, and
10 I apologise, although frankly it's not my fault. If you
11 look at H118, this is the RISC form in relation to C1-1.
12 I think we can just about make that out.

13 A. I can see that.

14 Q. It's actually better on the screen than it is in hard
15 copy.

16 We can see, on the right-hand side, that the date
17 upon which Leighton's assistant engineer, Sasa Leung,
18 was sending this to you was 23 July 2015; do you see
19 that?

20 A. I see that.

21 Q. And what was being requested was an inspection on
22 25 July 2015, two days later; do you see that?

23 A. That is the request, yes, I see that.

24 Q. And we can see, at the top, under "Part A", number (2),
25 that it relates to the top and bottom rebar; do you see
26 that?

1 A. I see that.

2 Q. As I understand it, tell me if I'm wrong, the inspection
3 was carried out by one of your colleagues, is that
4 right, on 27 July?

5 A. Which 27 July do you refer to?

6 Q. I'm just looking at "To be completed by MTR
7 Corporation" --

8 A. Because there are three "27 July" on the document, so
9 which one are you referring to.

10 Q. You tell me, Mr Kwan.

11 A. Right.

12 Q. What date do you think the inspection would have taken
13 place?

14 A. 我睇番呢一張RISC form，會見到 "To be completed by MTR
15 Corporation" 嘅隔離有一個7月27號八點半嘅時間嘅，嗰個時間就係我哋--
16 如果我有理解錯，就係我哋MTR嘅team就收到呢一張RISC form嘅時間，so
17 我推論呢一張form 需要做個inspection嘅時間會係7月27號或之後嘅時間
18 嘅。

19 Q. Right. You've signed this off?

20 A. Yes.

21 Q. So what is that indicating, that you are acknowledging
22 that one of your senior inspector of works had done the
23 inspection?

24 A. No, no, no, that is not the case.

25 Q. You did the inspection yourself?

1 A. Yes, I would say so.

2 Q. Would I be right in saying that you did that inspection
3 on 27 July at 15:00 hours -- sorry, 17:00 hours?

4 A. I cannot remember exactly the timing, when I went
5 on site and did the -- carried out the inspection.

6 Q. Right. We can see that on this one, there are the words
7 "late submission" written under your name and under
8 item (6), "Notes"; do you see that?

9 A. I see that.

10 Q. Did you write that? Is that your writing?

11 A. Based on the writing shown on the form, I don't think
12 that is my handwriting.

13 Q. Right, okay. What I'm puzzling over, Mr Kwan -- and
14 this goes back to when you actually received these RISC
15 forms in relation to when the inspections were carried
16 out in the bottom mat and the top mat -- my
17 understanding is from the records that concrete was
18 actually poured on C1-1 on 27 July, and so I'm rather
19 puzzled by this form. Are you able to help?

20 A. I will try to help.

21 Q. There were times when you received late submissions of
22 RISC forms from Leighton; would that be right, for
23 a starting point?

24 A. Correct.

25 Q. And might inspections take place by you and your
26 colleagues, if necessary, without receipt of the RISC

1 form, on occasions?

2 A. 都有咁嘅情況發生嘅。There will be occasions that --
3 because I did my surveillance, on-site inspection
4 by myself.

5 Q. Yes.

6 A. And during that occasion, even without the RISC form,
7 I can still go on site to have the inspection for the
8 rebar.

9 Q. Yes.

10 A. But it's just informal inspection.

11 Q. Yes. What I'm driving at here is quite a lot of
12 reliance is being placed on these RISC forms and their
13 accuracy and their reliability, and I'm just trying to
14 understand precisely how this process worked in relation
15 to these RISC forms. This is just one. There are loads
16 of others.

17 Have we got any record at all of when you inspected
18 the bottom mat of rebar and when you inspected the top
19 mat of rebar? Do we know when you did that?

20 A. 根據個RISC form個紀錄, as far as我嘅understanding就係top and
21 bottom嘅RISC form for rebar inspection係得一張嘅啫, 所以我哋
22 喺個RISC form嘅層面上面唔會好清楚去記錄咗幾時去睇底浸bottom mat
23 或者top mat嘅時間。

24 Q. Yes. And this one is particularly complicated because,
25 as I say -- and we can look at page H124 -- the cast in

1 situ quality control checklist was also signed on
2 27 July 2015; do you see that?

3 A. I see that.

4 Q. I'll correct myself on one point, Mr Kwan. I think
5 I suggested to you that the concrete was poured on
6 27 July. It was 28 July, the following day.

7 So what one had was a situation where you were being
8 sent the RISC form on 23 July, you were being asked to
9 carry out the inspection on 25 July, for the rebar. It
10 appears that the inspection was done perhaps on 27 July,
11 the same day as the cast in situ concrete quality
12 control checklist is dated, as we have seen. And
13 there's simply no way of knowing when you inspected the
14 bottom mat of rebar and the top mat of rebar; would you
15 accept that, on looking at these documents?

16 A. 我同意嘅，喺紀錄上面，即係喺呢張RISC form上面嘅，係喺個紀錄上面係
17 的確show得唔清楚係幾時睇到個bottom mat。

18 Q. Do we know -- are we sure that the top mat was inspected
19 on 27 July?

20 A. 正如我頭先有講過，三年半前嘅紀錄，我有辦法可以好100% confirm究竟
21 我係咪喺27號嗰一日去carry out呢個top mat嘅inspection，不過紀錄
22 上面嘅，我相信係。

23 Q. Right. Going back to page 118 of H1, was it your
24 practice and habit to sign the RISC forms, as you have
25 done on this one, on the actual date of inspection, or

1 would it sometimes happen that you would do it later?

2 A. 我會係檢查完之後，當日檢查完，on site做完一個inspection，做完一
3 個檢查之後，返番上去office，我就會將個inspection紀錄就會記錄在
4 案，就簽番喺張RISC form度，所以正確，我會係即日會簽得番張RISC
5 form嘅。

6 Q. All right.

7 Let's just look at one more RISC form. You were
8 responsible for C1-3. Let's check that. If we could go
9 to H1/142, please. This is in relation to, as I say,
10 EWL slab C1-3; do you see that, Mr Kwan?

11 A. I see that.

12 Q. An area of which you are responsible. We can see
13 further down your signature again.

14 This time, again, it refers to the inspection of the
15 rebar for the top and bottom layers?

16 A. Correct.

17 Q. And this time it's being sent by Leighton on
18 4 September, with an anticipated inspection date the
19 following day, 5 September; do you see that?

20 A. I see that.

21 Q. And again, it appears, so far as the dates are concerned
22 in the MTR "Part B" box, they all appear to be
23 7 September?

24 A. I see that.

25 Q. Again, we've got the words "late submission" appearing;

1 do you see that?

2 A. I see that.

3 Q. Again it looks as though perhaps an inspection has taken
4 place by you at 14:45 hours on 7 September?

5 A. I think 16:45.

6 Q. Sorry, 16:45 on 7 September; is that what we are to
7 conclude from this?

8 A. From the record, I suppose yes.

9 Q. How do we know from this document, Mr Kwan, that you
10 inspected the bottom mat of rebar, and if so when?

11 A. 我哋喺throughout個inspection個practice裏面，其實--但係即係頭先--
12 正如我頭先咁講過，我哋喺一張RISC form cover top and bottom嘅
13 rebar inspection嘅，particular喺呢一個例子上面，我自己就有作一
14 個bottom mat嘅inspection嘅時間，我就有好清楚咁樣寫咗喺嗰個RISC
15 form度嘅，但係通常我哋嗰個practice都係我哋會好清楚知道禮頓或者泛
16 迅佢哋喺--particular喺呢一bay嘅C1-3嘅位置度，佢哋開始做一個--
17 start off一個rebar fixing，因為都容易去知道佢哋做嘅，因為個範圍
18 都幾大同埋個工作量都大嘅咁樣。

19 所以其實儘管係有喺呢張form度好清楚咁反映到有做過嗰個inspection
20 嘅時間，但係亦都我可以confirm我自己親身係有落過去睇過bottom mat
21 嘅inspection嘅，我自己親自冇carry out過inspection嘅。

22 Q. Mr Kwan, I'm not going to challenge you on that, that
23 you inspected the bottom mat of the rebar, but what
24 I would suggest to you is that you couldn't have done

1 that by reference to this RISC form, because there
2 simply wasn't enough time.

3 A. Mmm, understood.

4 我而家嘗試緊解釋番個件事，就係我哋會知道禮頓佢會喺bay C1-3呢
5 個位置做緊呢個rebar inspection--rebar fixing嘅動作，而我去
6 carry out嗰個inspection，並唔係話佢入咗RISC form我先去睇嘅，
7 因為我喺我嘅statement都有講過話我係有carry out過surveillance
8 嘅site inspection，一個禮拜我都會有carry out四次嘅，during
9 嗰啲surveillance嘅inspection，儘管唔係一個formal嘅inspection
10 或者未必有RISC form去做一個紀錄，但係我自己係有睇過，喺呢個case
11 上面嘅係未必反映到嗰個事實嘅全部。

12 Q. All right. But the reason I'm a little bit confused,
13 Mr Kwan, is that you told us early -- at least I thought
14 I had heard you tell us earlier --

15 A. Yes.

16 Q. -- that the inspection of the bottom rebar, and the top
17 rebar but the bottom rebar I'm focusing on at the
18 moment, would be triggered by the receipt of one of
19 these RISC forms. I'm sure that's what you told me
20 earlier, and I was a little surprised at that because if
21 you look at paragraph 49 of your witness statement,
22 page B1/389.

23 A. I see that.

24 Q. You say:

25 "In practice, Leighton's representative (Mr Mok and

1 Man Sze Ho ...) usually contacted me when the fixing of
2 the bottom layers of rebars had started in order to
3 request an inspection of those bottom layers."

4 And I thought, on the basis of when I read that,
5 what you were going to tell us was the way it worked was
6 that you would be informed by Mr Mok or Mr Man when the
7 bottom rebars, the bottom mat was ready to be inspected,
8 and you would go along and you would inspect, and in
9 fact the RISC forms would be issued to trigger the
10 inspection of the top mat. I thought that was what you
11 were going to tell us. It does seem to me that
12 certainly the two we've looked at, that's the more
13 likely scenario than the RISC form triggering the
14 inspection of the bottom rebar.

15 Would you agree with that, on what we've looked at
16 so far?

17 A. 或者我嘗試用另外一個方法去解釋，particular for C1-3個個情況，
18 okay，base on我paragraph 49嘅description -- sorry, if you
19 can spare me a couple of seconds, then I can go through --

20 Q. Yes, of course.

21 A. I apologise for that。明白，係喇，我重新講多一次，關於C1-3個個
22 情況，就係儘管佢係9月4號入一張form畀我喇，喺而家呢一刻嘅情況，我並
23 唔能夠去記得100%好清楚究竟C1-3個bottom mat究竟係幾時完成嘅，所以
24 其實我paragraph 49講嘅嘢亦都係正確嘅，有機會，有可能嘅情況就係喺
25 C1-3 bottom mat complete咗，佢哋喺4號complete咗，即係純粹係我

1 一個記憶，就係我有辦法好清楚咁去記得番C1-3個top mat究竟用咗幾多日
2 嘅時間，有機會係我收到4號收到嗰一日嘅RISC form，其實係已經睇咗個
3 bottom mat，okay，and then，subsequently佢哋就carry out做
4 bay C1-3嘅top mat嘅時間。

5 Q. The other reason I thought you were going to tell us
6 that the RISC form really related to the top layer was
7 what you say in paragraph 50 of your witness statement,
8 because you refer to the fact that some of these RISC
9 forms, as we have just seen, refer to late submission,
10 and then you say, halfway down paragraph 50:

11 "In practice, an arrangement was in place on site
12 such that I was requested by Leighton to inspect the top
13 and bottom layers of rebars in each bay on separate
14 occasions."

15 A. Correct.

16 Q. So, again, I had inferred from that -- tell me if I'm
17 wrong -- that you would get a request by Leighton to do
18 the bottom mat, bottom layers, unconnected with the RISC
19 form, but then the RISC form would be issued because the
20 top layer was now ready for inspection?

21 A. 個情況係好大部分--根據我嘅記憶，好大部分嘅時間我都係當禮頓同埋泛迅
22 佢哋做緊一個bottom mat嘅--towards the end of個completion of
23 個bottom mat嘅時候，我就會收到份RISC form嘅。

24 Q. All right. So perhaps the answer is this, is it,
25 Mr Kwan, that there was no consistency in what happened?

1 Sometimes you would, on the two we've looked at, receive
2 a late submission of the RISC form?

3 A. Sometimes on time.

4 Q. Sometimes you would get one when the bottom layer of
5 rebar was ready to be inspected, but that RISC form
6 would cover both the bottom and top layers?

7 A. I would say so, yes.

8 Q. And sometimes you would get a request to inspect the
9 bottom layer, and then the RISC form would be issued
10 subsequently in respect of the top layer? So a number
11 of permutations, potentially?

12 A. More likely個情況會係當禮頓做完個bottom layer-- towards the
13 end of個bottom mat completion嘅時候，我會收到張RISC form，
14 可能有一、兩個情況which is好似C1-3嘅情況，好似個時間性上面係做完
15 個bottom mat，去到個top mat嘅時候先至畀張RISC form我，有可能
16 有一、兩個exceptional case嘅。

17 但係以我所記得嘅，就係通常我都會係收到禮頓嘅工程師嘅通知，同我
18 講某一bay嘅bottom layer--bottom mat做緊個rebar inspection，
19 大概幾多日之後會complete，「Louis，麻煩你落去現場同我carry out
20 個formal inspection。」即係有一啲咁嘅形式嘅dialogue嘅。所以喺
21 RISC form嗰個日子上面，就我會有咁嘅理解。

22 Q. Yes.

23 COMMISSIONER HANSFORD: Can I ask, Mr Kwan, you talk about
24 there would be that sort of dialogue. What sort of
25 nature would the request to do informal inspections

1 take?

2 A. 禮頓嘅工程師團隊，佢哋會同我講--一個例子，就係let's say, C1-3個
3 個bottom mat個rebar fixing係開始咗，我跟住就會問佢大概幾多日嘅
4 會完成，我可以做一個formal inspection，但係可能係講緊四日後、一
5 個禮拜後，大概我有個時間嘅一個掌握，但係through out喺佢通知我去
6 到我做一個formal inspection嘅中間，我都會carry out我嘅site
7 inspection。

8 COMMISSIONER HANSFORD: And was this communication email or
9 WhatsApp or oral? How did it work between you?

10 A. Mainly by telephone call.

11 COMMISSIONER HANSFORD: Telephone calls?

12 A. Yes, or WhatsApp, because basically we sit across their
13 office, so we can communicate quite easily.

14 COMMISSIONER HANSFORD: Okay. Thank you.

15 A. And there is no need to have the email to notify me,
16 "Let's go on site for inspection." That kind of wastes
17 time.

18 COMMISSIONER HANSFORD: Okay. I get it. Thank you.

19 MR PENNICOTT: And the general -- we'll come back to perhaps
20 some more examples tomorrow morning, perhaps not, who
21 knows. One problem I've got, Mr Kwan, is I have
22 a schedule in front of me, which has on it the dates
23 upon which the request for rebar checking was made;
24 okay?

25 A. (Nodded head).

1 Q. So two dates we've been looking at, the last one was
2 4 September for C1-3; do you remember?

3 A. Yes.

4 Q. And I have the concrete pour dates, and with one or two
5 exceptions the dates are always very close, within two
6 or three days of each other, and that suggests to me --
7 whether it was intended or not, I don't know -- but that
8 suggests to me that the RISC forms were triggering the
9 top bar inspections, and the bottom bar inspections were
10 done rather more informally by a telephone request or
11 some other means between yourself and the Leighton
12 engineers?

13 A. Mmm.

14 Q. Perhaps you could reflect on that overnight and we will
15 come back to it tomorrow morning.

16 A. (Nodded head).

17 MR PENNICOTT: Sir, would that be a convenient moment?

18 CHAIRMAN: Yes, certainly.

19 MR PENNICOTT: Sir, Mr Kwan needs the usual warning.

20 CHAIRMAN: Yes, of course.

21 Mr Kwan, you are still giving your evidence, and
22 it's a rule that applies to all witnesses, not just you,
23 that while you are in the process of giving your
24 evidence, you are not entitled to discuss it with
25 anybody else, friends, lawyers, anybody.

26 At the end of your evidence, when you're told that,

1 "That's it, you can now go", of course you can then do
2 as you wish, but not until then; okay?

3 WITNESS: Fully understood. Thank you, Mr Chairman. Thank
4 you, Professor.

5 CHAIRMAN: Tomorrow morning, 10 am.

6 MR PENNICOTT: Thank you, sir.

7 (5.09 pm)

8 (The hearing adjourned until 10.00 am the following day)

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