

<p>1 Monday, 13 June 2016 2 (10.30 am) 3 Housekeeping 4 MR JUSTICE BLAKE: Good morning. 5 MR TER HAAR: Good morning, my Lord. 6 My Lord, as you know, this is the first day of the 7 appeal of two groups of appellants in relation to what 8 occurred at Christmas Island some 50 years ago. 9 There are people in this court who are, I think, new 10 to the matter, so can I start first of all by 11 introducing myself. My name is Roger ter Haar. I am 12 leading counsel for what has been known as the 13 Hogan Lovells group of appellants, the group of 12 14 appellants. 15 I appear with Mr Sage and -- 16 MR JUSTICE BLAKE: You are operated by cardboard boxes but 17 you are together in spirit. 18 MR TER HAAR: We are together in spirit. Nothing, even 19 cardboard, can come between us. 20 In those appeals, Mr Adam Heppinstall and Ms Cohen 21 appear for the Secretary of State. 22 In the other group of appeals, two appeals, behind 23 me are Dr Busby and Mr Charlton, who are going to be 24 conducting those appeals on behalf of those appellants. 25 As the Tribunal, will have seen, sadly Group Captain</p> <p style="text-align: center;">Page 1</p>	<p>1 would not I think be of great assistance to those who 2 have come to see what the proceedings are. But it's 3 important to say openly that there are written 4 proceedings. These cases are of vital importance to the 5 individual appellants who I represent and are 6 represented by those behind me, and also raise very 7 important issues as to what happened in this nuclear 8 testing programme which took place all those years ago. 9 But subject to the Tribunal's directions, I am not 10 intending today to expand upon what is in those written 11 submissions but of course I am here to answer any 12 questions that you might find helpful. 13 MR JUSTICE BLAKE: Well, thank you. 14 What provisionally we imagine we could spend the 15 next hour or so doing is first some issues of 16 housekeeping and whether we have now got all that we 17 should have. There was quite a lot of traffic, 18 electronic and otherwise, last week and I am by no means 19 confident that everything has got into its place, 20 although a great deal has, although that slightly 21 interrupted the reading process. 22 Then there is a preliminary issue, not I think 23 concerning you directly -- 24 MR TER HAAR: I take a neutral position on that. 25 MR JUSTICE BLAKE: -- about Mr Williams and what appears to</p> <p style="text-align: center;">Page 3</p>
<p>1 Ades who was going to be conducting the matter -- 2 MR JUSTICE BLAKE: Yes. 3 MR TER HAAR: -- was taken ill last week. I am happy to say 4 it has not proved mortal. He is in hospital I gather 5 still undergoing tests, clearly unable to be here. 6 MR JUSTICE BLAKE: I know Judge Whiteley expressed his best 7 wishes, and we wanted to associate ourselves with that, 8 for his recovery. I'm sorry not to see him but glad to 9 hear he is well. 10 MR TER HAAR: I think we also share in that. He has always 11 been immensely courteous and helpful whenever I have had 12 any engagement in this matter. 13 MR JUSTICE BLAKE: Yes. 14 MR TER HAAR: My Lord, you will have seen, I hope, or the 15 Tribunal will have seen that in accordance with the 16 Tribunal's directions there are written opening 17 statements. 18 MR JUSTICE BLAKE: Yes. 19 MR TER HAAR: And whilst those sitting in the public 20 gallery, as we would say in other courts, might not have 21 had the opportunity of reading them, we know the 22 Tribunal has. Therefore, I rather take the view, 23 subject to the Tribunal's views, that the matters in 24 issue are so complex that to attempt to summarise them 25 would not be of great assistance to the Tribunal and</p> <p style="text-align: center;">Page 2</p>	<p>1 be meteorological evidence that we would like to hear 2 Mr Busby on, and indeed Mr Heppinstall. Thank you for 3 the skeleton which I anticipate you have provided to 4 others. 5 And then we get underway, it seems, with the 6 evidence. If you are content to leave your written 7 opening statement in writing -- does the draft timetable 8 have a common consensus attached to it? 9 MR TER HAAR: The answer is you have a draft timetable. The 10 latest version I saw takes us through the first two 11 weeks. 12 MR JUSTICE BLAKE: Yes. 13 MR TER HAAR: So far as those are concerned, we are very 14 content with that, it seems realistic. There is a blank 15 doing the second Friday which we may or may not achieve. 16 MR JUSTICE BLAKE: Yes. 17 MR TER HAAR: But we are going to make sure, so far as we 18 are concerned, that our part in this will be concluded 19 on the evidence by the end of the second week. 20 MR JUSTICE BLAKE: Yes. 21 MR TER HAAR: We regard that as a fixed timetable, to which 22 we will adhere. 23 MR JUSTICE BLAKE: Yes. 24 MR TER HAAR: I have a request in respect of the following 25 week. That's the week which we have thought of for</p> <p style="text-align: center;">Page 4</p>

<p>1 submissions in the interlocutory hearing. For different 2 reasons, Mr Sage and myself have difficulties on the 3 Monday. Were it possible for the Tribunal not to sit on 4 the Monday, that would be very gratefully received by 5 us. 6 MR JUSTICE BLAKE: Yes. 7 MR TER HAAR: As to the Friday of that week, that's the last 8 day, I at the moment am committed to sit in another 9 court in this building. 10 MR JUSTICE BLAKE: I will not be sitting on the Friday -- is 11 that the 8th? 12 MR TER HAAR: That's the 1st. 13 MR JUSTICE BLAKE: Sorry, I jumped ahead. No, no, Friday 14 the 8th is always -- 15 MR TER HAAR: That was always after this oral phase was 16 over. 17 MR JUSTICE BLAKE: That's when your work may have finished 18 and our work certainly won't have. 19 MR TER HAAR: Mr Sage can be available on that day. We 20 think our submissions will be completed by then, subject 21 to any questions the Tribunal may have. 22 MR JUSTICE BLAKE: So the suggestion is not to sit on the 23 27th? 24 MR TER HAAR: If that is convenient to the Tribunal. 25 MR JUSTICE BLAKE: On my shopping list which I'll introduce</p> <p style="text-align: center;">Page 5</p>	<p>1 or examination and we can focus upon the main issues may 2 be a helpful exercise and I imagine you would need some 3 time to prepare that. 4 So I'm perfectly sympathetic to Monday, 27 June 5 being a day not sitting but other teams might be wanting 6 to think about how to present final submissions. 7 If that means that -- well, we'll see how we go, 8 whether four days will then be sufficient. 9 As you know, we are going to be constituting for the 10 following week, the week of July, but that's in order to 11 think and have our own discussion before we go our 12 separate ways. 13 MR TER HAAR: I understand that. 14 MR JUSTICE BLAKE: One of us will be here until the end of 15 term working on this. 16 MR TER HAAR: We will talk certainly among ourselves as to 17 what we can do to assist. That sounds, not 18 surprisingly, a very sensible suggestion and we will see 19 what we can do to implement it. 20 MR JUSTICE BLAKE: Yes. 21 MR TER HAAR: I think the only other matters I would mention 22 before the Tribunal's list of housekeeping is that there 23 are shorthand writers so we have a transcript being 24 prepared. 25 MR JUSTICE BLAKE: Who is providing that?</p> <p style="text-align: center;">Page 7</p>
<p>1 into the housekeeping side of it, it occurred to me that 2 it would probably be helpful for us, when we have to 3 absorb all that has been gone through, if there was some 4 form of a Scott schedule that could inform closing 5 submissions. If it's not going to be possible, it's not 6 going to be possible but I think some thinking, and it 7 will certainly take some time for reflection which 8 certainly could happen on the Monday, if not the 9 previous Friday, of the core submissions -- what makes 10 either dosimetry difficult to make an assessment upon or 11 you are asking the wrong questions in order to make the 12 assessment, which would then have, in respect of each 13 appellant, just the page references in the bundle, 14 nothing else, by way of analysis, the counter-page 15 references and the core points to and fro, in a bullet, 16 if it was no more than 10/12 pages. That could be 17 a working document, if only to ensure that when we come 18 to do our analysis we don't miss anything out that 19 anybody considers important because the longer this 20 material is in terms of case statements, skeleton 21 arguments, opening statements, go back to 5 years ago, 22 find a bit there, put that to there, it becomes quite 23 an interesting or challenging search. To have something 24 which everyone thinks at the end of the day we can 25 exclude what may have disappeared by cross-examination</p> <p style="text-align: center;">Page 6</p>	<p>1 MR HEPPINSTALL: The Secretary of State. 2 MR JUSTICE BLAKE: Thank you very much. 3 MR TER HAAR: The Secretary of State has also been primarily 4 in charge of the bundles so if the Tribunal has any 5 questions on the bundles I am going to neatly deflect 6 the ball in Mr Heppinstall's direction because I think 7 he will be much more master of the changes which took 8 place in the last couple of days -- 9 MR JUSTICE BLAKE: I anticipated that so I wasn't going to 10 fire any difficult questions to you on that. 11 MR TER HAAR: Otherwise, so far as this week is concerned, I 12 think we are principally going to be spectators rather 13 than participators. 14 MR JUSTICE BLAKE: I suspect that's right. 15 MR TER HAAR: Unless there's anything else with which I can 16 assist today ... 17 MR JUSTICE BLAKE: We have Hogan Lovells' SB20 or 21 -- 18 I forget the numbering -- which was the academic papers. 19 I think those arrived on Friday. I haven't even 20 attempted to read them and I'm behind on my reading but 21 I've done the core reading. 22 MR TER HAAR: We gave you a rather terrifying reading list. 23 MR JUSTICE BLAKE: I realise I should have had a month for 24 reading it rather than a week, but there we are. 25 Thank you.</p> <p style="text-align: center;">Page 8</p>

<p>1        So on the question of transcripts, the idea is that 2        we will get a transcript of the evidence from time to 3        time. 4        MR HEPPINSTALL: It's evening delivery system as I 5        understand. That will probably mean it will come in the 6        morning but we will try our best to deliver it. 7        MR JUSTICE BLAKE: That can be done electronically? 8        MR HEPPINSTALL: Indeed. I suspect we'll get a Word and 9        a PDF version. 10       MR JUSTICE BLAKE: You all have my clerk's e-mail address? 11       MR HEPPINSTALL: I have. 12       MR JUSTICE BLAKE: Probably rather than going to Fox House 13       and then back here, it is probably preferable -- 14       MR HEPPINSTALL: Yes, a more direct route. 15       MR JUSTICE BLAKE: -- to do that. Yes. 16       So on bundles -- 17       MR HEPPINSTALL: Yes, my Lord. 18       MR JUSTICE BLAKE: -- I'm not in a position to say whether 19       everything that ought to have been slotted in has been, 20       although I think a number of things are, when I could 21       see what it was, but reviewing the matter -- and this is 22       only a partial review of the supplementary bundles, 23       I haven't even attempted to look at the library 24       documents which are over there -- I noticed that on 25       volume 2 in Mr Hallard I seem to have a blank tab at</p> <p style="text-align: center;">Page 9</p>	<p>1        Yes, SB21. 2        As far as you know, everything has been supplied 3        pre-equipped in the dividers or there's a DIY -- 4        MR HEPPINSTALL: Yes, but if there is anything that has 5        slipped we will rectify it. 6        MR JUSTICE BLAKE: I thought that one was probably rather 7        important. 8        MR HEPPINSTALL: Yes, that one ought to be in there. 9        MR JUSTICE BLAKE: Right. 10       Secondly, on the issue of Mr Battersby, there is at 11       the moment, I think, in my mind at least, and I think my 12       colleagues share it, some confusion as to the issues. 13       We understand that his pancreatic cancer was the subject 14       of an award. 15       MR HEPPINSTALL: That's right, my Lord, yes. Between the 16       first FTT decision and the appeal resetting the world, 17       as it were, there was an award to Mr Battersby. 18       MR JUSTICE BLAKE: Right. Do we infer from that that it is 19       accepted that there was a reasonable doubt as to 20       causation between his pancreatic cancer and his service 21       at Maralinga? 22       MR HEPPINSTALL: On the basis of the FTT's judgment, yes. 23       But that doesn't necessarily carry forward now that the 24       matter has been reviewed and the Secretary of State has 25       new experts.</p> <p style="text-align: center;">Page 11</p>
<p>1        2/15. I suspect I shouldn't have done. 2        MR HEPPINSTALL: That's the supplementary report you are 3        missing. 4        MR JUSTICE BLAKE: Yes. 5        MR HEPPINSTALL: We'll have that -- 6        MR JUSTICE BLAKE: I mean, was that something, a DIY -- 7        MR HEPPINSTALL: I think so. There were a couple of rounds 8        of that last week or maybe even the week before and that 9        was including one of the packs I received. So 10       I apologise if -- 11       MR JUSTICE BLAKE: Right. 12       MR HEPPINSTALL: It may be somewhere between here and Fox 13       Court. 14       MR JUSTICE BLAKE: It looks like we are all in that 15       position. 16       MR HEPPINSTALL: Right. 17       MR JUSTICE BLAKE: I just don't know whether there are other 18       things missing towards the end but -- 19       MR HEPPINSTALL: Well, you should now run from SB1 down to 20       SB21. 21       MR JUSTICE BLAKE: Yes. Those were the last two 22       Hogan Lovells -- 23       MR HEPPINSTALL: Yes. 24       MR JUSTICE BLAKE: I think they are somewhere around here. 25       Let me just get my master index, please.</p> <p style="text-align: center;">Page 10</p>	<p>1        MR JUSTICE BLAKE: That's too subtle for me. There was 2        an award based upon reasonable doubt, but you now want 3        to say -- 4        MR HEPPINSTALL: Well -- 5        MR JUSTICE BLAKE: Are we concerned only with the medical 6        issue as to whether CLL or the relevant leukaemia, 7        chronic lymphatic leukaemia, is caused by Maralinga or 8        are we concerned with the whole issue? Because if 9        that's all that's left on Maralinga that might -- 10       MR HEPPINSTALL: No, it's just that -- forgive me -- the 11       award for pancreatic cancer stands, it was made between 12       the first First Tier Tribunal and the Upper Tribunal. 13       No one is reversing that or taking it away in any sense. 14       The finding on -- the fact that (inaudible) paid 15       that shouldn't mean that the appellants don't have to 16       prove their case on any other pancreatic cancer, as 17       I think there may be one other -- 18       MR JUSTICE BLAKE: Quite. 19       MR HEPPINSTALL: So Secretary of State's position today is 20       that pancreatic cancer is not radiogenic; that's the 21       expert advice it has. A different decision was made on 22       the basis of the case of Williams, which was the one 23       appeal which succeeded before the first Tribunal, and 24       based on that finding and consistent with the 25       Secretary of State's at that time position that it would</p> <p style="text-align: center;">Page 12</p>

<p>1 implement if you like the first First Tier Tribunal's 2 decision, it was implemented in the case of 3 Mr Battersby. 4 So what remains in his case -- 5 MR JUSTICE BLAKE: Did Williams ever go on appeal to the 6 Upper Tribunal? 7 MR HEPPINSTALL: Williams didn't, no. He had his war 8 pension and there was no cross appeal. Consistent with 9 the Secretary of State's policy that once you have your 10 war pension it is not something the Secretary of State 11 wants to take away. 12 MR JUSTICE BLAKE: I'm sure that's right and I am sure you 13 can't, if you didn't appeal against it. Well, "sure" 14 may be too strong a word. 15 But what's going on? If there is an acceptance that 16 pancreatic cancer at Maralinga was on the basis of an 17 FTT decision -- 18 MR HEPPINSTALL: Mr Williams was on Christmas Island, and 19 the finding of the first First Tier Tribunal was that he 20 may have had more than average background environmental 21 exposure because he did -- 22 MR JUSTICE BLAKE: Okay. 23 MR HEPPINSTALL: Yes. 24 MR JUSTICE BLAKE: So there are dosimetry issues relating to 25 that award.</p> <p style="text-align: center;">Page 13</p>	<p>1 this case, of course, is divorced from the language one 2 would use in a normal case because we are not dealing 3 with what the Secretary of State admits as fact or what 4 the Secretary of State's public position is on the test; 5 we are dealing with the test as laid down by Mr Justice 6 Charles, which is to deal in possibilities. 7 And you'll see that Mr Hallard has admitted into his 8 dose assessment of the upper limit all the possibilities 9 that Mr Battersby has alleged, including something that 10 the Secretary of State does not and has never accepted, 11 that he worked in the active handling flight. 12 Now, notwithstanding that the Secretary of State 13 accepts that if you like as his public position, because 14 of the way Mr Justice Charles has drawn the approach, we 15 can't rule it out as a possibility and therefore it's 16 gone through. 17 In fact Mr Hallard has gone one step further and he 18 is giving you an assessment based on washing down the 19 six least contaminated planes and the six most 20 contaminated planes, so it's the upper upper limit. So 21 all that has gone into the assessment and out comes the 22 upper limit of dose. So the question then is: even at 23 that upper limit, is there causation of CLL? And our 24 position is as a matter of principle CLL is not 25 radiogenic.</p> <p style="text-align: center;">Page 15</p>
<p>1 MR HEPPINSTALL: Exactly. 2 MR JUSTICE BLAKE: But nevertheless pancreatic cancer would 3 be radiogenic. 4 MR HEPPINSTALL: Yes, yes. 5 MR JUSTICE BLAKE: So -- 6 MR HEPPINSTALL: The Secretary of State's position on 7 pancreatic cancer now is that it's not radiogenic, and 8 we may or may not discuss that going forward because 9 I understand that Mr Butler very unfortunately has 10 passed away with that condition. I'm unaware whether 11 a new claim has been made in respect of that and I'm 12 further unaware whether Secretary of State has made 13 a decision. It's only on making a decision that a right 14 of appeal would arise. So to be clear, the 15 Secretary of State's position in these appeals is that 16 pancreatic cancer is not radiogenic. 17 Then in Mr Battersby's case -- 18 MR JUSTICE BLAKE: Well, he is not concerned with pancreatic 19 cancer, he is concerned with CLL. 20 MR HEPPINSTALL: CLL. 21 MR JUSTICE BLAKE: Your case there is it's not radiogenic. 22 MR HEPPINSTALL: It's not radiogenic. 23 MR JUSTICE BLAKE: Is it also your case that he was not 24 exposed to -- 25 MR HEPPINSTALL: No, no -- well, because the language of</p> <p style="text-align: center;">Page 14</p>	<p>1 MR JUSTICE BLAKE: We have to track through what happened at 2 Maralinga with the same degree of scrutiny as we are 3 going to have to track through Christmas Island then? 4 MR HEPPINSTALL: I hope that you don't have to track through 5 any of the appellants. I hope that the 6 cross-referencing document makes it clear that in terms 7 of the risk factors, the pathways, apart from I think 8 Mr Hughes and some sort of dummy run test that he 9 alleges happened, which we cannot accept on 10 a possibility basis, all the other possibilities have 11 gone forward into Mr Hallard's -- 12 MR JUSTICE BLAKE: I appreciate that. I appreciate there is 13 going to be a debate about how you calculate and whether 14 you can calculate and whether you are using the right 15 protection test. 16 MR HEPPINSTALL: Yes. 17 MR JUSTICE BLAKE: But to some extent the pre-reading of the 18 last week persuaded me that in order to understand these 19 pathways and the possibilities of exposure one has to 20 understand what was going on and the nature of the 21 military activity or the testing, and the difference -- 22 there seem to be significant differences between the 23 devices at Maralinga and at Christmas Island. 24 MR HEPPINSTALL: Absolutely, my Lord. 25 MR JUSTICE BLAKE: But all of that is still live if CLL</p> <p style="text-align: center;">Page 16</p>

<p>1 non-radiogenic, and we say, and you say, even if some 2 CLLs could be radiogenic in certain circumstances, which 3 is not a submission you make but even if we thought that 4 that was still within the realms of the possible it's 5 not these circumstances because dosimetry doesn't show 6 sufficient exposure. 7 MR HEPPINSTALL: What I don't yet know, and hopefully we 8 will know at least by the end of two weeks, is whether 9 the Battersby/Smith appellants are saying that 10 Mr Hallard has missed something out. I mean on 11 Battersby he has gone to the -- 12 MR JUSTICE BLAKE: We don't have to go there. We'll find 13 out -- 14 MR HEPPINSTALL: I would have thought then that would be the 15 only factual difference between us. 16 I appreciate the Tribunal will want to read the 17 background and understand what happened. I understand 18 that, but in terms of the forensic difference between us 19 I hope, particularly with the Hogan Lovells' appellants, 20 the cross-referencing document shows that on the 21 individual facts of what the appellant did, saw and 22 experienced, apart from I think one single issue with 23 Mr Hughes, there's nothing between us. They were only 24 cross-examined lightly on the first occasion. They are 25 not here to give evidence on the second occasion.</p> <p style="text-align: center;">Page 17</p>	<p>1 MR HEPPINSTALL: In addition to that, obviously we also pass 2 on our good wishes to Mr Ades and -- 3 MR JUSTICE BLAKE: Sorry, I missed that. 4 DEFENCE: We pass on our good wishes to Mr Ades. I think 5 Mr Verma has written to him. 6 In addition, I am sure we will all lapse into using 7 surnames and shorthand for the veterans and the 8 appellants, including for those who have sadly passed 9 away. Obviously no disrespect is intended to any of the 10 veterans or their relatives in so doing. It's just that 11 in the course of legal argument and cross-examination we 12 may refer to them by their surnames rather than their 13 full names. 14 MR JUSTICE BLAKE: Yes. That does remind me of one thing 15 that Mr ter Haar can help me on. I think in the Lovells 16 skeleton or statement of case, I know that a number of 17 the servicemen as they were have died. Are their widows 18 all with us? Because I wasn't clear whether they had 19 died as well. 20 MR TER HAAR: The answer is no. Can I hand up a list at 21 a convenient moment? 22 MR JUSTICE BLAKE: I would be grateful, just to make sure 23 I get it right. 24 MR TER HAAR: Thank you. 25 MR HEPPINSTALL: I can confirm, apart from the new claim</p> <p style="text-align: center;">Page 19</p>
<p>1 MR JUSTICE BLAKE: I think the nature of the issues between 2 that group and the Battersby/Smith group is different. 3 MR HEPPINSTALL: Yes. 4 MR JUSTICE BLAKE: But the appellant I am asking you about 5 falls into the second group. 6 MR HEPPINSTALL: Yes. 7 MR JUSTICE BLAKE: Yes, right. 8 Well, are there any other housekeeping matters that 9 are going to affect the next few days that you want to 10 raise? 11 MR HEPPINSTALL: We hope that we have captured most of the 12 important documents in the SB bundles. When 13 I cross-examine over the next week, I think there are 14 three or four documents that have fallen outside of the 15 SBs and are in your library but because they're such 16 a low number we will just hand round copies of those 17 documents, so we don't have to go flying for the 18 library. We will just hand them round and maybe we can 19 find a convenient place and description in due course. 20 MR JUSTICE BLAKE: The document-retrieving functions you are 21 going to undertake, given by where you sit, will 22 probably reduce. 23 MR HEPPINSTALL: Well, that was my guess. So there are only 24 a few in number and we will just hand them up. 25 MR JUSTICE BLAKE: Right.</p> <p style="text-align: center;">Page 18</p>	<p>1 I think being made by Mr Butler's widow, all the appeals 2 are properly constituted, so where there has needed to 3 be a new appeal going in by a widow or a continuation of 4 an in life appeal, I think Mr Battersby's next of kin -- 5 MR JUSTICE BLAKE: If the serviceman has died and the widow 6 has died then the claim is continued by the estate. 7 MR HEPPINSTALL: Exactly. DBS, that is the relevant MoD 8 agency, has ensured that all the appeals are properly 9 constituted before the Tribunal. 10 MR JUSTICE BLAKE: Very good. Shortly we will then deal 11 with Mr Williams and expert evidence. But before we get 12 there, Mr Busby you would have seen that I issued some 13 further directions on Friday which direct a preliminary 14 hearing about Mr Williams, that's item 1. You will see 15 that paragraph 2 deals with the application of 16 Mr Justice Charles' ruling, although I'm not sure 17 whether that followed an oral hearing. And paragraph 4 18 seeks to clarify what I think we discussed last time we 19 all met, which is that under the timetable, 20 evidence-in-chief will take the form of tendering your 21 witness with their witness statements and supplementary 22 questions should be restricted to corrections, 23 amendments and clarification. Do you follow? 24 DR BUSBY: I follow what you said, my Lord. 25 MR JUSTICE BLAKE: Yes, and that is the way that I propose</p> <p style="text-align: center;">Page 20</p>

<p>1 to deal with it at the moment. 2 That then raises the question that this afternoon, 3 I think, we are going to hear from Professor Sawada. 4 DR BUSBY: That's right. 5 MR JUSTICE BLAKE: Now I know that you wanted a PowerPoint 6 and screen, and we have that arranged, but I am entirely 7 unclear as to what use is to be made of that because we 8 have a set of PowerPoint presentations attached to his 9 report at tab 2.6, but those, insofar as they are 10 relevant to the issues -- and I confess I have some 11 doubts as to some of them -- would form part of his 12 evidence-in-chief, and others have a lot of Japanese in 13 them, which is difficult. 14 Is it your intention to supplement his evidence by 15 a presentation of some form? 16 DR BUSBY: My Lord, the Secretary of State was concerned 17 about the complexity of Professor Sawada's evidence, and 18 he himself felt it would be helpful if he were to be 19 permitted to either give a PowerPoint presentation in 20 order to illuminate what it was he was saying, make it 21 more easy, because it is a complex issue for everyone to 22 understand, and because we didn't know that we would be 23 able to get a projector we actually printed his 24 PowerPoint presentation and we've handed out copies to 25 all of the parties.</p> <p style="text-align: center;">Page 21</p>	<p>1 cross-examine they can make clear what they need 2 assistance from. If he then needs to use the PowerPoint 3 to put up these graphs, for example, that seems to be 4 a possible reason, but I'm somewhat reluctant -- well, 5 I am reluctant -- and it's inconsistent with the 6 direction to, as it were, hear de novo pieces of primary 7 evidence on interpretation of these PowerPoint slides if 8 it deals with matters which are not already there. 9 DR BUSBY: Well, my Lord, it's not de novo evidence, it's 10 merely an elucidation of what it was he has already put 11 in. 12 MR JUSTICE BLAKE: That's the risk. If you are going over 13 and he is adding things which aren't already there -- 14 either he is adding things which aren't already there, 15 in which case that's not what I want, or he's just 16 repeating what is already said, in which case there's no 17 point unless the respondent wants to cross-examine about 18 it. 19 I have to say I got an e-mail this morning which 20 I think probably contained these slides but it came from 21 the Government Legal Service and I wasn't sure whether 22 the Government wanted to cross-examine. 23 DR BUSBY: Well, we'll have to ask them. 24 MR JUSTICE BLAKE: Just take a second to clarify that. Is 25 it you who wanted these slides --</p> <p style="text-align: center;">Page 23</p>
<p>1 MR JUSTICE BLAKE: But that's including the ones with the 2 photographs -- 3 DR BUSBY: Yes that's the stuff we brought in this morning, 4 my Lord, yes. We have three copies here. My daughter 5 will let you have those (Handed). 6 MR JUSTICE BLAKE: This is something new. I have slotted 7 in an August 2010 Bomb Survivors Association 8 presentation. I thought that was what I was putting in. 9 DR BUSBY: That was the original thing that we sent in, my 10 Lord, but since then he has helpfully provided -- 11 MR JUSTICE BLAKE: We take that out, do we? 12 DR BUSBY: Yes, and just supplant it with these ones that 13 we've handed you there, sir. 14 They are effectively the same. It's just that they 15 are nicer, they are posher. We've made them bigger and 16 more colourful and put them on nicer paper too. 17 MR JUSTICE BLAKE: Sorry, I am not having these first few 18 images. What is he seeking to do by these PowerPoints? 19 DR BUSBY: He is seeking to provide evidence to the 20 Tribunal -- 21 MR JUSTICE BLAKE: He has done that in a written report, 22 yes? 23 DR BUSBY: He wasn't sure whether the respondent understood 24 what it was he was saying. 25 MR JUSTICE BLAKE: If the respondent is going to</p> <p style="text-align: center;">Page 22</p>	<p>1 MR HEPPINSTALL: No, I think that was for assistance, we 2 were just being helpful. 3 MR JUSTICE BLAKE: It looked like you were wanting the 4 PowerPoint to be available. 5 MR HEPPINSTALL: Well -- 6 MR JUSTICE BLAKE: Do you want to ask Professor Sawada about 7 these graphs? 8 MR HEPPINSTALL: No. It's a matter for Dr Busby how he 9 presents his case. I have to say that I remain 10 perplexed, especially by the imagery. 11 MR JUSTICE BLAKE: Well, that's simply not going to happen, 12 those photographs. I am taking them out. I appreciate 13 these are emotive issues and I will understand why 14 Professor Sawada would feel the way he does, and it's no 15 comment about his feeling, but we've really got to keep 16 out the heat and turn up the light. That's the object 17 of this hearing. 18 DR BUSBY: Thank you, my Lord. With regard to turning up 19 the light and turning down the heat, Mr ter Haar said 20 that he didn't propose to make an opening statement. 21 However, there are a number of people here who have come 22 to the Tribunal at the back here, who are unaware of the 23 process as it has gone on in the past and is going on at 24 the moment. 25 MR JUSTICE BLAKE: I don't think these graphs are going to</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 tell them that.  2 DR BUSBY: No, my Lord. I've put that one to bed now.  3 MR JUSTICE BLAKE: I see. I only raised that under the  4 section of housekeeping.  5 DR BUSBY: Very good.  6 MR JUSTICE BLAKE: So if you can just -- you will need to  7 have some chance to talk to him -- when you present his  8 evidence this afternoon, if you can look at those  9 directions and ask questions if you need to before he is  10 cross-examined, which clarify, supplement or correct.  11 DR BUSBY: Perhaps we could go to certain of those during  12 that process, my Lord?  13 MR JUSTICE BLAKE: That's the direction. You will know what  14 you need to ask that fits into those three limbs. If  15 you need to do that by putting up a slide, but we're not  16 going to just sit here and watch --  17 DR BUSBY: I understand --  18 MR JUSTICE BLAKE: Obviously we've had it, but it doesn't  19 seem to us -- significant parts are not relevant.  20 The next topic I was about to move on to was then  21 the question of Mr Williams and expert evidence and  22 meteorology. But do you have something to say? You  23 wanted to open --  24 DR BUSBY: What I suggested might be helpful, my Lord, is  25 that unlike Mr ter Haar I did want to make an opening</p> <p style="text-align: center;">Page 25</p>	<p>1 MR JUSTICE BLAKE: It just hasn't reached me. I'm pretty  2 sure I was in yesterday and I looked through e-mails.  3 DR BUSBY: Mr Charlton will deal with this issue. It seems  4 immodest for me to talk about myself. So if Mr Charlton  5 can take over ...  6 MR JUSTICE BLAKE: Right. Well, I have the application.  7 I am going to hold that. Are you going to deal with the  8 legal issues about Mr Williams?  9 MR CHARLTON: Yes, both, my Lord.  10 MR JUSTICE BLAKE: Okay, excellent. Well, let's move on to  11 that and then I will deal with this after we've dealt  12 with that.  13 MR CHARLTON: I am grateful, my Lord, yes, because before we  14 get on to that we've had a word with Mr Heppinstall and  15 I think perhaps the position may be that we may be  16 managing to reach agreement on that, if I have  17 understood that right.  18 MR HEPPINSTALL: I can take that first if you want. On the  19 Dr Busby issue, the Secretary of State recognises that  20 it is a difficult issue. There are a number of experts  21 obviously apart from Dr Busby who are coming to the  22 Tribunal to give evidence, one of which I think is  23 a co-author of a paper that was starred in the Busby  24 reading list as the key document.  25 I think the Secretary of State's position is,</p> <p style="text-align: center;">Page 27</p>
<p>1 statement.  2 But the other two --  3 MR JUSTICE BLAKE: How long do you think that will be?  4 DR BUSBY: Ten minutes.  5 MR JUSTICE BLAKE: All right.  6 MR HEPPINSTALL: I apprehend from what my Lord is saying  7 that my Lord may not have received an application to  8 vary your direction in respect of Dr Busby's -- there  9 was an application on Friday afternoon --  10 MR JUSTICE BLAKE: I haven't received it.  11 MR HEPPINSTALL: -- which Dr Busby made to vary the ruling  12 that you'd made in respect of his evidence.  13 MR JUSTICE BLAKE: Of Dr Busby's?  14 MR HEPPINSTALL: Yes.  15 MR JUSTICE BLAKE: I haven't seen that, I'm afraid. If you  16 have a hard copy of that, that can be done when we move  17 on to the preliminary issue --  18 MR HEPPINSTALL: Yes, I just wanted to make sure ...  19 MR JUSTICE BLAKE: That was lost in the ether.  20 DR BUSBY: My Lord, when we came to this issue of the  21 question of whether the name of Busby somehow ruled out  22 any scientific evidence that had the name of Busby on  23 it, we did make an application on Friday to vary that.  24 MR JUSTICE BLAKE: Well, I haven't seen that.  25 DR BUSBY: We have a copy here, my Lord (Handed).</p> <p style="text-align: center;">Page 26</p>	<p>1 insofar as those experts are going to come into the  2 witness box and attest to their own paper that they  3 happen to have co-authored with Dr Busby, it seemed to  4 me that subject to two important caveats which are (1)  5 where that has already been done, it's done and there's  6 no more referencing to Dr Busby's papers done merely out  7 of convenience of finding a way of getting them in and  8 (2) that obviously the Secretary of State will make  9 submissions about whether it was right, wrong or  10 otherwise for that to have been done by that expert upon  11 which they will also be cross-examined, it seems that if  12 that co-authored paper becomes part of that expert's  13 evidence then that will then just become a matter of  14 weight for the Tribunal.  15 MR JUSTICE BLAKE: I'm not -- I see the position. No one is  16 suggesting -- I am not encouraging an exercise of going  17 through all the bundles and ripping out material. De  18 bene esse it is there and it can remain there. It's the  19 question of the use which can be made of it to be  20 consistent with Mr Justice Charles' judgment. I am not  21 entirely sure I agree with the position you have just  22 indicated but we'll explore it.  23 I propose to deal first with Dr Williams. Thank  24 you, we'll deal with that first and come back to  25 Mr Busby's papers once we've explored some principles in</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 that issue.</p> <p>2 MR HEPPINSTALL: I understand, my Lord.</p> <p>3 MR JUSTICE BLAKE: You have helpfully put in a clip which</p> <p>4 says that, although I think the general position in</p> <p>5 tribunals is that everything goes in, it's all a matter</p> <p>6 of weight and relevance, and I am conscious of the fact</p> <p>7 that there is some statement to that even about expert</p> <p>8 evidence in the handbook, or the Bench Book of the issue</p> <p>9 for the War Pensions and Armed Services Compensation</p> <p>10 Tribunal, and I think in fairness to Dr Busby I will</p> <p>11 read this next paragraph out.</p> <p>12 This is the starting point but it may not be the</p> <p>13 finishing point:</p> <p>14 "Opinion evidence can be given by any person,</p> <p>15 whether he is recognised or qualified as an expert or</p> <p>16 not and so should not be dismissed out of hand by a</p> <p>17 tribunal but clearly, if given by a non-expert, will</p> <p>18 carry less weight than if given by an expert."</p> <p>19 Paragraph 12 of the Bench Book 2015 that I was</p> <p>20 supplied as part of my training into this when I took on</p> <p>21 this role.</p> <p>22 However, you've pointed out that the Tribunal rules</p> <p>23 permit the individual constitution to give directions to</p> <p>24 restrict evidence so that it complies with the</p> <p>25 principles of CPR 35 and the practice directions made</p> <p style="text-align: center;">Page 29</p>	<p>1 the unfortunate tribunal to see what weight there is, in</p> <p>2 this particular appeal I think there may be a case to</p> <p>3 limit expert evidence, opinion evidence, to opinions</p> <p>4 from recognised experts. That seems to be what</p> <p>5 Mr Justice Charles was doing, although I don't -- was</p> <p>6 that the outcome of a process? Was there argument with</p> <p>7 these authorities being put before them?</p> <p>8 MR HEPPINSTALL: Yes, the authorities Ikarian Reefer,</p> <p>9 Meadows --</p> <p>10 MR JUSTICE BLAKE: There was a debate.</p> <p>11 MR HEPPINSTALL: The speed of delivery of these submissions</p> <p>12 belies the fact that they have been made before, both</p> <p>13 before the FTT and the Upper Tribunal.</p> <p>14 MR JUSTICE BLAKE: Were they made in writing or orally?</p> <p>15 MR HEPPINSTALL: Writing definitely in front of the Upper</p> <p>16 Tribunal. In fact there was a submission along these</p> <p>17 lines also in respect of Dr Busby before the first First</p> <p>18 Tier Tribunal.</p> <p>19 MR JUSTICE BLAKE: Well, I am not going to go back into the</p> <p>20 other --</p> <p>21 MR HEPPINSTALL: No, no. There is no need to.</p> <p>22 MR JUSTICE BLAKE: I thought we needed to bring some of</p> <p>23 these principles up into being. There we are.</p> <p>24 You would say this is an appropriate case for the</p> <p>25 Tribunal to exercise its case management powers to</p> <p style="text-align: center;">Page 31</p>
<p>1 thereunder. You cite Chandanmal where the Tax Chamber,</p> <p>2 First Tier, reached that. You didn't in fact cite that</p> <p>3 in the division of the Tribunal which I am more familiar</p> <p>4 with, Immigration and Asylum, there was from its</p> <p>5 constitution a practice direction issued by the Senior</p> <p>6 President of Tribunals in February 2010 incorporating</p> <p>7 all the provisions of CPR 35.</p> <p>8 MR HEPPINSTALL: No, I didn't put it in front of you but I'm</p> <p>9 aware of that.</p> <p>10 MR JUSTICE BLAKE: Yes. Often in asylum appeals a question</p> <p>11 of medical evidence as to whether the Istanbul Protocol</p> <p>12 has been complied with becomes a not inconsiderable</p> <p>13 issue, but anyway, it's there and clearly that's</p> <p>14 a strong indicator that in immigration and asylum, when</p> <p>15 you have expert evidence -- when you have opinion</p> <p>16 evidence it ought to meet the standards of CPR.</p> <p>17 MR HEPPINSTALL: Yes.</p> <p>18 MR JUSTICE BLAKE: The standards of CPR themselves reflect,</p> <p>19 as you tell us in your skeleton, Ikarian Reefer, as</p> <p>20 endorsed in Meadows, Ikarian Reefer being a civil case</p> <p>21 and then Meadows was disciplinary about use of expert</p> <p>22 evidence in criminal, and therefore you have to have</p> <p>23 appropriate experience before it should be admitted.</p> <p>24 Now it seems to me that despite the general steer of</p> <p>25 tribunals that everything goes in and then it's up to</p> <p style="text-align: center;">Page 30</p>	<p>1 restrict opinion evidence to opinions from recognised</p> <p>2 experts --</p> <p>3 MR HEPPINSTALL: Yes.</p> <p>4 MR JUSTICE BLAKE: -- who must explain their qualifications.</p> <p>5 MR HEPPINSTALL: Yes, yes.</p> <p>6 MR JUSTICE BLAKE: And you have Meadows in the bundle but</p> <p>7 I have extracted the relevant paragraph from it adopting</p> <p>8 what Mr Justice Cresswell said in the Ikarian Reefer,</p> <p>9 and just in case Mr Busby wants to be reminded or</p> <p>10 whoever is dealing with the matter:</p> <p>11 "(1) expert evidence should be an independent</p> <p>12 product of the expert, uninfluenced as to the form or</p> <p>13 content by the exigencies of litigation; (2) provide</p> <p>14 independent assistance by way of objective unbiased</p> <p>15 opinion in relation to matters within his expertise ...</p> <p>16 should never assume the role of an advocate. An expert</p> <p>17 witness should state the facts or assumptions upon which</p> <p>18 his opinion is based."</p> <p>19 This is where part 2 may come in as to the nature of</p> <p>20 the articles.</p> <p>21 It seems to me that when we come to Professor --</p> <p>22 I don't know how you pronounce the name --</p> <p>23 DR BUSBY: Schmitz Feuerhake, my Lord.</p> <p>24 MR JUSTICE BLAKE: -- Schmitz Feuerhake, thank you very</p> <p>25 much, which we are going to get to later on, obviously</p> <p style="text-align: center;">Page 32</p>



<p>1 she will give her opinion about what her opinion is.  2 Then the Ikarian Reefer requires her to identify what  3 sources, I think outside her opinion, that she bases her  4 opinion on. If she has co-authored an article with  5 Mr Busby, then insofar as she is the co-author, well,  6 it's what she is telling us rather than what she wrote  7 in an article that is important.  8 MR HEPPINSTALL: Yes, my Lord.  9 MR JUSTICE BLAKE: If she relies upon support for her  10 opinion by Mr Busby's evidence then that directly hits  11 the conflict with Mr Justice Charles' direction, as  12 I see it, which was in fairly broad terms, although I  13 was doing it from memory, we have it down there by any  14 other means. I think we just need to maintain this  15 discipline of what is legitimate support for an opinion  16 expressed orally by a witness.  17 MR HEPPINSTALL: Well, I don't think there's much between  18 us, my Lord, because my inelegant description of the  19 Secretary of State's position is not very far off what  20 you have just set out.  21 MR JUSTICE BLAKE: Well, I just think we should play it out  22 at the beginning of this case because we may have to  23 re-visit it from time to time.  24 MR HEPPINSTALL: Establishing the ground rules and making  25 them clear is extremely important, my Lord, and indeed</p> <p style="text-align: center;">Page 33</p>	<p>1 you can use in this Tribunal because everything is  2 admissible. That's really what the three man or three  3 judge Upper Tribunal in the Hampshire case is saying.  4 If a Tribunal is going to attempt to rely on evidence  5 outside of an expert's expertise or a witness'  6 expertise, it need to be very careful, it needs to  7 explain itself and it is an exercise fraught with  8 danger. So technically admissible, but highly  9 dangerous, for the reasons set out in Ikarian Reefer and  10 Meadows and so forth.  11 MR JUSTICE BLAKE: But are you saying that we cannot say  12 that evidence which is not from an expert we propose to  13 exclude?  14 MR HEPPINSTALL: Well, Mr Justice Charles has given that  15 direction. His direction in tribunal language is: no  16 weight can be given to evidence from Dr Busby and  17 therefore the Tribunal should not receive it --  18 MR JUSTICE BLAKE: You think that's a direction on weight or  19 admissibility?  20 MR HEPPINSTALL: Well, we were very careful in the  21 Upper Tribunal only to use the language of weight  22 because whether something is admissible or not is not  23 a question which arises before a First Tier Tribunal  24 because it receives day in and day out inadmissible  25 evidence by the civil standard.</p> <p style="text-align: center;">Page 35</p>
<p>1 the lack of such a strong position at the beginning of  2 the first tribunal led to confusion and complications  3 later on, so I think without doubt.  4 My submission on the principles is that the Ikarian  5 Reefer rules which were reproduced in Meadows are there  6 just to protect the administration of justice from bad  7 evidence. It doesn't matter what jurisdiction you are  8 sitting in, whether it be crime, civil or administrative  9 justice, such as this Tribunal, bad evidence has a place  10 in none of those jurisdictions. That's what the Tax  11 Chamber is saying: why wouldn't you want CPR 35 to  12 apply? We don't want to receive bad expert evidence.  13 Someone who couldn't sign up to part 35 is not going to  14 be able to assist the Tribunal.  15 MR JUSTICE BLAKE: In principle this issue opens up the  16 distinction between admissibility and weight and --  17 MR HEPPINSTALL: Yes.  18 MR JUSTICE BLAKE: -- I'm sure Mr Justice Charles, in saying  19 at 110, "Dr Busby may not give expert evidence (whether  20 in writing, orally or otherwise)" is making a ruling on  21 admissibility, which is what you would expect in  22 a CPR 35 type of case, rather than simply of weight.  23 MR HEPPINSTALL: Indeed, my Lord. The problem is that the  24 effect of the rule, the CPR rule -- sorry, the Tribunal  25 rules -- is that "admissibility" is not a language that</p> <p style="text-align: center;">Page 34</p>	<p>1 MR JUSTICE BLAKE: I appreciate there are no rules of  2 evidence and hence I read the citation I did from the  3 Bench Book.  4 MR HEPPINSTALL: Which reflects my personal experience --  5 MR JUSTICE BLAKE: I am well aware and there are decisions  6 of myself in another chamber which say that in terms of  7 hearsay evidence and matters of that sort.  8 MR HEPPINSTALL: Yes.  9 MR JUSTICE BLAKE: But we're dealing here with opinion  10 evidence.  11 MR HEPPINSTALL: Indeed, my Lord.  12 MR JUSTICE BLAKE: And it seems to me that in this  13 particular case we can require CPR 35 criteria to apply.  14 MR HEPPINSTALL: Indeed, my Lord. I agree.  15 MR JUSTICE BLAKE: But if someone cannot sign up to a report  16 because they do not have the requisite qualifications to  17 make it, then what is the consequence?  18 MR HEPPINSTALL: I agree, and save in some extreme  19 circumstance that I find it very hard to imagine what it  20 would be, I don't think a tribunal should ever receive  21 evidence otherwise than in accordance with part 35.  22 MR JUSTICE BLAKE: "Ever" is a big word. This case today,  23 these issues, this lengthy set of directions --  24 MR HEPPINSTALL: Yes.  25 MR JUSTICE BLAKE: -- and the peculiar nature of the</p> <p style="text-align: center;">Page 36</p>

<p>1 standard of doubt are all factors which at the moment 2 are in the back of my mind as to what we should do. But 3 as I understand it, focusing upon Mr Williams' evidence 4 what you are saying is that insofar as he produces 5 an interesting, lovely diagram of winds and shapes he 6 has derived from other data, that is an expression by 7 him of an opinion on the expert science of meteorology. 8 And no disrespect to him, whatever his skills are, they 9 don't include expertise in meteorology. 10 MR HEPPINSTALL: No, my Lord. 11 MR JUSTICE BLAKE: Therefore he can't make a CPR 35 12 declaration. Therefore? 13 MR HEPPINSTALL: Therefore they can't be received into the 14 evidence. You would be unable to give them any weight 15 and therefore you shouldn't receive them. 16 MR JUSTICE BLAKE: Because it would be irrelevant? 17 MR HEPPINSTALL: Indeed. 18 MR JUSTICE BLAKE: Which rather sounds like admissibility. 19 MR HEPPINSTALL: Well, we are dancing on the head of a pin. 20 It's just the way that the tribunals operate differently 21 to a court. 22 MR JUSTICE BLAKE: Yes. Right, okay. Well, we've had that 23 little exchange. Now what would you like to say? 24 MR CHARLTON: Yes. May it please you, my Lord. 25 MR JUSTICE BLAKE: If we focus on Williams first and then</p> <p style="text-align: center;">Page 37</p>	<p>1 he has expertise. Does that mean we shouldn't receive 2 it? Question 1, 2 and 3. 3 MR CHARLTON: The first point, in any event, my Lord, the 4 second document, it's at number 7 in Mr Heppinstall's 5 initial submission, where the two documents in question 6 are outlined, so in Mr Heppinstall's submissions where 7 he says "No expertise which will enable him to present 8 the evidence set out" and he mentions SB8/134 and 9 SB10/158, the first point I make is that SB10/158 isn't 10 an issue, wouldn't be relied upon in any event so we 11 need only talk about SB8/134. 12 MR JUSTICE BLAKE: So SB10 -- I have it loose. 13 MR CHARLTON: SB10 we don't need to worry about. 14 MR JUSTICE BLAKE: You mean to say you are taking it out? 15 MR CHARLTON: Yes, my Lord, in any event. 16 MR JUSTICE BLAKE: Right. So you are not going to rely upon 17 that. 18 MR CHARLTON: Exactly. 19 MR JUSTICE BLAKE: All right. So we can take it out of the 20 bundle. 21 MR CHARLTON: Yes, my Lord. 22 MR JUSTICE BLAKE: Thank you. 23 MR CHARLTON: Now -- 24 MR JUSTICE BLAKE: Right. 25 MR CHARLTON: The other one, SB8/134, the reality is,</p> <p style="text-align: center;">Page 39</p>
<p>1 we'll see where we go. 2 MR CHARLTON: As you will see already, actually, my Lord, 3 we've gone straight into the Busby question as well. 4 MR JUSTICE BLAKE: I'd like you to focus on Mr Williams 5 first, then we'll deal with Busby. 6 MR CHARLTON: My Lord, yes, for the last time I am going to 7 say this. I am appearing as a rule 11 representative. 8 I'm not appearing as an instructed barrister for the 9 purpose of these hearings. I have mentioned it to 10 your Lordship before but I am not claiming a right as 11 an audience as a qualified practising barrister. 12 MR JUSTICE BLAKE: No, no, but you don't need that. 13 MR CHARLTON: I don't need any of that but just for the 14 record. 15 MR JUSTICE BLAKE: It only becomes tricky in the 16 immigration, where those who are not qualified 17 barristers who appear as representatives are guilty of a 18 criminal offence unless they also happen to be regulated 19 by the solicitor -- the regulating authority. 20 Fortunately, we don't have that problem when it comes to 21 war pensions appeals. 22 MR CHARLTON: I am grateful. Again, I don't think we need 23 spend that long on Mr Williams who sits behind me. 24 MR JUSTICE BLAKE: The question is, it looks like he is 25 being adduced for expert evidence, it doesn't look like</p> <p style="text-align: center;">Page 38</p>	<p>1 my Lord, that in fact things have moved on quite 2 substantially and so again I'm not even sure whether -- 3 I can't say we will definitely rely on that in any event 4 because things have moved on since then so I don't want 5 to spend too much time arguing about something which may 6 not come up. 7 MR JUSTICE BLAKE: That's the topic I'm seeking to consider. 8 If you are not going to rely upon it that's a very, very 9 easy answer, I'll take it out. If you are going to rely 10 upon it then we'll need to have the -- 11 MR CHARLTON: We may wish to rely on it. For the sake of 12 argument I will proceed as if we may. 13 MR JUSTICE BLAKE: Yes, right. 14 MR CHARLTON: The only short point I will make there, 15 my Lord, is that as we see it he's not purporting to be 16 an expert in meteorology; it is on the whole merely 17 a compilation. It is what you might call a librarian's 18 exercise. Where he does express an opinion on 19 meteorology, if that's thought that is what he is doing, 20 then I agree with your Lordship he does not qualify as 21 an expert although he does have meteorological knowledge 22 which is required for a UK and Canadian pilot's licence. 23 So he has -- 24 MR JUSTICE BLAKE: Is this his compilation? 25 MR CHARLTON: My understanding is that's something he has</p> <p style="text-align: center;">Page 40</p>

<p>1 put together. Yes, my Lord.</p> <p>2 MR JUSTICE BLAKE: I thought that was -- Mr Heppinstall can</p> <p>3 -- this is the particular focus of your submissions, is</p> <p>4 it?</p> <p>5 MR CHARLTON: Yes, my Lord.</p> <p>6 MR JUSTICE BLAKE: We have that. I mean, there it is, it's</p> <p>7 putting together data that he has obtained from</p> <p>8 somewhere into a plan.</p> <p>9 MR CHARLTON: Yes.</p> <p>10 MR JUSTICE BLAKE: As I understand it, if I'm wrong you'll</p> <p>11 let me know, my present understanding is that that is</p> <p>12 him trying to interpret some primary factual data to</p> <p>13 give an opinion as to where the winds were blowing at</p> <p>14 the relevant time.</p> <p>15 MR CHARLTON: Yes. It's supporting Joe Pascini's(?) witness</p> <p>16 statement. Now --</p> <p>17 MR JUSTICE BLAKE: It's a piece of opinion evidence? That's</p> <p>18 what I'm trying to ascertain. Yes or no?</p> <p>19 MR CHARLTON: Well, in the sense that he is putting</p> <p>20 together -- it's a good point, my Lord. Whether it's</p> <p>21 a satisfactory compilation, I don't know if it's said to</p> <p>22 be, but the more important point -- I'm sorry, my Lord,</p> <p>23 the best point is that this evidence has in any event</p> <p>24 been put before the First Tier Tribunal, was adduced in</p> <p>25 the First Tier Tribunal and Mr Johnson was</p> <p style="text-align: center;">Page 41</p>	<p>1 proceedings.</p> <p>2 But the real point, and I think my best point,</p> <p>3 because I understand the expert point which does go</p> <p>4 rather against me, is that this has already been argued,</p> <p>5 has already gone in in the first tier and what the SSD</p> <p>6 is trying to do is have a second bite at an argument he</p> <p>7 has already lost. That's my best point, I think,</p> <p>8 my Lord because I agree I'm on weak ground on expertise.</p> <p>9 In other words, so even if I concede the expertise point</p> <p>10 it's already gone in and been cross-examined on.</p> <p>11 MR JUSTICE BLAKE: I've got that. I'll hear from</p> <p>12 Mr Heppinstall on that point.</p> <p>13 Now, moving further, if I may, I infer from the way</p> <p>14 you've just argued that point that you don't take issue</p> <p>15 with the proposition that in this appeal, whatever else</p> <p>16 one can do, that we ought to have the rigour of CPR 35</p> <p>17 in expert evidence.</p> <p>18 MR CHARLTON: I submit at this stage, my Lord, that would be</p> <p>19 over-rigorous in this particular --</p> <p>20 MR JUSTICE BLAKE: Right, that's where maybe the wind is</p> <p>21 blowing a little bit against you. We don't need</p> <p>22 meteorology but you just need some smart submissions.</p> <p>23 MR CHARLTON: Perhaps I am waiting for a little entrainment</p> <p>24 or rain on top of it.</p> <p>25 If I can now address the Dr Busby point?</p> <p style="text-align: center;">Page 43</p>
<p>1 cross-examined on it at the First Tier Tribunal.</p> <p>2 MR JUSTICE BLAKE: I am running this one and I am setting</p> <p>3 the ground rules now.</p> <p>4 MR CHARLTON: I appreciate that, my Lord, but what</p> <p>5 Mr Heppinstall didn't say in his submission to you, he</p> <p>6 has not made that clear to you.</p> <p>7 MR JUSTICE BLAKE: There is a question I was going to ask</p> <p>8 about when did it first emerge, but at the moment I am</p> <p>9 trying to deal with an issue of principle.</p> <p>10 MR CHARLTON: I appreciate that, my Lord, but I am hoping --</p> <p>11 my Lord, I am trying to go one behind that and saying in</p> <p>12 any event what is happening here is that Mr Heppinstall</p> <p>13 having -- the Secretary of State having failed to get it</p> <p>14 excluded in the first tier is having a second bite at</p> <p>15 the cherry. I see him rising. My understanding is that</p> <p>16 what happened at the first tier is it was raised,</p> <p>17 Mr Justice Stubbs said, well, he must produce a CV which</p> <p>18 would explain it. That was the end of the matter. At</p> <p>19 which point Mr Williams' evidence was apparently</p> <p>20 accepted and used and put to witnesses.</p> <p>21 So our objection, my Lord, is that it's too late now</p> <p>22 for Mr Heppinstall to raise this particular issue,</p> <p>23 especially bearing in mind, my Lord, that one of your</p> <p>24 first directions was that all the evidence that was</p> <p>25 before the first tribunal is evidence in these</p> <p style="text-align: center;">Page 42</p>	<p>1 MR JUSTICE BLAKE: Yes.</p> <p>2 MR CHARLTON: My Lord, it seems to me it's absolutely clear</p> <p>3 from the Charles judgment that what he is talking about</p> <p>4 at 239 and 240, "The reason I've concluded ..."</p> <p>5 MR JUSTICE BLAKE: The judgment or the order?</p> <p>6 MR CHARLTON: I have both but your Lordship will need the</p> <p>7 judgment.</p> <p>8 MR JUSTICE BLAKE: Where do I find that? Is it 17?</p> <p>9 MR HEPPINSTALL: SB18, tab 4. (Pause)</p> <p>10 MR CHARLTON: Someone is saying SB110.</p> <p>11 MR JUSTICE BLAKE: 110?</p> <p>12 MR CHARLTON: 1.10.</p> <p>13 MR HEPPINSTALL: Are we after the order or the judgment?</p> <p>14 MR JUSTICE BLAKE: The order, I can tell you --</p> <p>15 MR CHARLTON: We've agreed --</p> <p>16 MR JUSTICE BLAKE: -- is in volume 1, SB1. The judgment I'm</p> <p>17 not sure --</p> <p>18 MR HEPPINSTALL: Tab 4, SB18.</p> <p>19 MR JUSTICE BLAKE: SB18, tab 4. Thank you very much,</p> <p>20 Mr Heppinstall.</p> <p>21 MR HEPPINSTALL: Paragraph 237 onwards.</p> <p>22 MR CHARLTON: That's right. Can I just remind ourselves, as</p> <p>23 your Lordship has just done, "may not give expert</p> <p>24 evidence, whether in writing or otherwise, at the</p> <p>25 remitted hearings".</p> <p style="text-align: center;">Page 44</p>

<p>1 MR JUSTICE BLAKE: Yes.</p> <p>2 MR CHARLTON: We say, my Lord, basically this is</p> <p>3 anticipating the fact that he will not become a witness.</p> <p>4 MR JUSTICE BLAKE: No, he can't give expert evidence. Yes.</p> <p>5 MR CHARLTON: Well, and again it's -- again, if you look at</p> <p>6 the reasons, in particular at 240, the reason is that</p> <p>7 when he gives evidence in a case -- when he preparing</p> <p>8 a report for a case, which of course don't forget there</p> <p>9 were six reports that he had been commissioned by</p> <p>10 I think the court to write at the first tier, the point</p> <p>11 was being made there that his reports might have been</p> <p>12 tainted by his enthusiasm. That's what he is saying.</p> <p>13 MR JUSTICE BLAKE: It's because of the matters set out there</p> <p>14 that he doesn't meet the test of objectivity in the</p> <p>15 Ikarian Reefer, 241.</p> <p>16 MR CHARLTON: Yes.</p> <p>17 MR JUSTICE BLAKE: So that's the reason for the exclusion.</p> <p>18 MR CHARLTON: Yes.</p> <p>19 MR JUSTICE BLAKE: So that means his views, no doubt</p> <p>20 honestly, passionately held, are not going to enter the</p> <p>21 difficult arena of this case, either orally by giving</p> <p>22 witness evidence viva voce, or in writing or otherwise.</p> <p>23 That means, I think, therefore, that we should not</p> <p>24 base any conclusion as to the reasonable doubt case on</p> <p>25 Mr Busby's views on the issues in this case, including</p> <p style="text-align: center;">Page 45</p>	<p>1 reference at 241:</p> <p>2 "The evidence should be seen ... independent product</p> <p>3 of the expert uninfluenced as to the form or content by</p> <p>4 the exigencies of litigation."</p> <p>5 MR JUSTICE BLAKE: Quite, but pause there. If you are</p> <p>6 running a campaign for recalibration of the protective</p> <p>7 principles of radiation and you are saying that the</p> <p>8 conventional wisdom is wrong and you reason that</p> <p>9 consistently and thoroughly in a number of tribunals</p> <p>10 where the issue comes up, you are seeking a result and</p> <p>11 you are committed to a result. That means that when you</p> <p>12 give information or expertise to the case there is</p> <p>13 a real risk that the expertise is influenced by the fact</p> <p>14 that you are seeking a result, and you are seeking</p> <p>15 a result before you became involved. And that is why we</p> <p>16 don't in the CPR and Ikarian Reefer, or the Ikarian</p> <p>17 Reefer first and the CPR later says: no, courts don't</p> <p>18 want to receive that kind of evidence because there's</p> <p>19 too much of a risk.</p> <p>20 MR CHARLTON: So if Dr Busby has written a report with</p> <p>21 a view for proceedings as he has done then that applies.</p> <p>22 So I'm not disputing the fact that where Dr Busby on his</p> <p>23 own has written a report for proceedings, and these were</p> <p>24 the ones that were explicitly excluded at the first</p> <p>25 hearing, that we are stuck with that. But to go on and</p> <p style="text-align: center;">Page 47</p>
<p>1 the views he has put into his articles, and I also think</p> <p>2 that when you look at the other limbs of the Ikarian</p> <p>3 Reefer, namely Professor Sawada and Professor Schmitz</p> <p>4 Feuerhake, they have got to explain what materials they</p> <p>5 identify as supporting their opinions. If the answer</p> <p>6 is, "Well, it's an article by Dr Busby," that is</p> <p>7 a breach of the "or otherwise" limb of the direction.</p> <p>8 MR CHARLTON: If I could take your Lordship to two points on</p> <p>9 that. One, I simply say that's far too broad</p> <p>10 an interpretation of the "or otherwise" direction.</p> <p>11 MR JUSTICE BLAKE: "Otherwise" is quite a broad word, isn't</p> <p>12 it?</p> <p>13 MR CHARLTON: Not if taken in the context of purporting to</p> <p>14 be a witness. I don't think Judge Charles is to say</p> <p>15 anything that Dr Busby has ever said even where it's</p> <p>16 peer reviewed and agreed with other people cannot --</p> <p>17 MR JUSTICE BLAKE: You can tell us about peer review in</p> <p>18 a moment but I don't read it that way.</p> <p>19 MR CHARLTON: If I can make my first more simple point,</p> <p>20 which again the wind seems to be against me, but it</p> <p>21 seems to me it's absolutely clear he is talking about</p> <p>22 evidence prepared with a view to litigation. The</p> <p>23 Ikarian Reefer case is all about experts giving evidence</p> <p>24 in the box, and the problem is that if -- the</p> <p>25 phraseology is that -- it's particularly in an Ikarian</p> <p style="text-align: center;">Page 46</p>	<p>1 say everything that Dr Busby has ever written on the</p> <p>2 subject, even though it wasn't with a view to</p> <p>3 proceedings, it was with a view to participating in the</p> <p>4 scientific debate, to say that all that has to go</p> <p>5 I respectfully say, my Lord, is positively Orwellian</p> <p>6 particularly when we bear in mind he has been one of the</p> <p>7 leading lights in challenging the conventional model and</p> <p>8 in effect we are going into court with our hands tied</p> <p>9 behind our back.</p> <p>10 MR JUSTICE BLAKE: Well, I think you are.</p> <p>11 MR CHARLTON: That, with the greatest of respect, is not</p> <p>12 something that one wants these courts to do.</p> <p>13 MR JUSTICE BLAKE: I think one does if one starts off with</p> <p>14 the principle that we are not to hear Dr Busby's views,</p> <p>15 he can present the views of others and that's what we're</p> <p>16 going to be doing this afternoon. If it turns out that</p> <p>17 the others in fact rely significantly on his views, then</p> <p>18 one is actually relying upon his views in this case.</p> <p>19 MR CHARLTON: I --</p> <p>20 MR JUSTICE BLAKE: And that's where I am drawing the line.</p> <p>21 MR CHARLTON: There is some force in that, my Lord, but if</p> <p>22 in fact they are relying on empirical data that he has</p> <p>23 referred to, then that would be admissible, even under</p> <p>24 your Lordship's current rather harsh ruling, wouldn't</p> <p>25 it?</p> <p style="text-align: center;">Page 48</p>

<p>1 MR JUSTICE BLAKE: It's not harsh, it's logical. Empirical 2 data is empirical data but if he has devised it all and 3 it requires expertise to devise it -- I appreciate I am 4 only now, after being involved in this case for a year, 5 beginning to see the various threads, and "beginning to" 6 is the highest I put it, because there is a lot I have 7 to learn in the course of this case as to all the 8 intricate elements, but it seems to me that if, for the 9 reasons set out in Mr Justice Charles' judgment, based 10 upon argument and well known principles, that view is 11 taken and the consequential order is whether it's 12 orally, in writing or otherwise, that is the ground 13 rules which have governed the hearing of this appeal. 14 Nothing is intended to be said to disrespect anyone's 15 views, which I am sure are genuinely held but those are 16 the ground rules. 17 Therefore, if others are going to tell us about 18 their opinions -- I mean we can see, for example, that 19 this afternoon Professor Sawada is going to refer to the 20 other witness about her work on Chernobyl. Obviously we 21 don't need hearsay from Professor Sawada on that, we are 22 going to hear from the horse's mouth. That is the way 23 we do it. If it turns out that she or someone else is 24 saying "Well, actually the real core piece of material 25 that I rely upon for this view is an opinion of</p> <p style="text-align: center;">Page 49</p>	<p>1 sums properly -- 2 MR JUSTICE BLAKE: Well, I think there are people; not me, 3 but others have but we've got that elsewhere -- 4 MR CHARLTON: My Lord, you can go through the transcript but 5 for three days I don't believe there was a single 6 scientific point made against him during the three days' 7 hearing, my Lord, and I had to sit through it. 8 So it's not his science that's at risk, it's his 9 enthusiasm and that may mean that it's been decided that 10 therefore he will taint his reports for litigation. I 11 repeat, my Lord, the Ikarian Reefer talks about the 12 exigencies of litigation. 13 If I can move on, but I'm only repeating myself on 14 that point, my Lord. The point being the litigation 15 point is important because otherwise you have a court 16 saying: what is the point of peer review? I am sure 17 your Lordship is familiar with the peer review process. 18 MR JUSTICE BLAKE: Yes. 19 MR CHARLTON: If needs be I was going to ask someone else -- 20 as I'm not a scientist -- but as I understand it peer 21 review, it is submitted to editors and looked at by 22 other people. 23 MR JUSTICE BLAKE: Quite, but we don't know in some of these 24 journals who was doing the peer reviewing. If you'd 25 like to -- over the intervening period, if there is some</p> <p style="text-align: center;">Page 51</p>
<p>1 Dr Busby's," then, unless there's something about that 2 opinion and its age or its status which would exempt it 3 from the general provision which I've kept open, it 4 seems to me it shouldn't be there because otherwise 5 one's just getting round, circumventing the direction. 6 MR CHARLTON: Your Lordship appears to be against me -- 7 MR JUSTICE BLAKE: I am trying to unpack -- that is why 8 I wanted to go through first of all what are our powers. 9 (2) what are the principles, (3) how do we apply the 10 principles particularly now on the subtopic of 11 Dr Busby's articles? 12 MR CHARLTON: My Lord, you are relying on the Charles ruling 13 and I think your Lordship currently hasn't been terribly 14 persuaded yet that I don't think Judge Charles was 15 making anything like the broad ruling that is now being 16 interpreted. "Or otherwise" -- I mean if Judge Charles 17 had said, you know, "Well, I don't think that anything 18 that Busby has ever said should ever be relied upon by 19 anybody." He didn't say that, my Lord. 20 The other point is again as Judge Charles observes, 21 having been in the witness box for three days -- quite 22 why that happened I don't know, it is a separate story, 23 my Lord -- but there is virtually no criticism of 24 Busby's scientific work at all. No one is suggesting 25 that he is not a good, competent scientist who does his</p> <p style="text-align: center;">Page 50</p>	<p>1 article that you think is critical to this appeal that 2 has been co-authored by Dr Busby, I think I -- and I am 3 only speaking for myself because we haven't had much 4 chance to discuss it, we will retire in a moment -- we 5 will hear who peer reviewed it and whether it commands 6 support from other colleagues in the field. That's 7 a process which we can engage upon. 8 But at the moment, for example, I have Dr Busby's 9 advocate's skeleton argument that a really critical 10 document was published in January 2016. Well, I'm 11 afraid that's precisely the kind of document which falls 12 within the Ikarian Reefer. He is now writing about the 13 very topic that he's an advocate in the litigation. No 14 way, nothing doing. 15 MR CHARLTON: So be it. Well, then in that case, my Lord, 16 it's just blowing a hole through the standard scientific 17 peer review process and judges appear to know better 18 than scientists. 19 MR JUSTICE BLAKE: No. You can tell me about the standard 20 scientific process, if you ever need to rely upon 21 a particular document if we get to that point. I think 22 there are issues about that as well, but we -- 23 MR CHARLTON: We are on notice -- well, the final point I'll 24 make because I don't think your Lordship has made 25 a definitive ruling --</p> <p style="text-align: center;">Page 52</p>

<p>1 MR JUSTICE BLAKE: We are having an argument but I am hoping 2 to focus your mind upon the issues that are of concern 3 to me, and they are me personally at this stage because 4 having heard what you say we will then go and consider 5 the position. 6 MR CHARLTON: I'm grateful, my Lord. 7 The final point I make, of my three points, is that 8 this comes to us at a very late stage. At the pleas and 9 case management hearing your Lordship observed that, you 10 know, Dr Busby appeared to be making statements in his 11 statement of case that amounted to opinion and therefore 12 we spent quite a lot of time rewriting the statement of 13 case to take out what appeared to be Dr Busby's 14 statement of opinion. But at no stage did anybody say 15 "Oh and by the way you'd better make sure that nobody 16 relies upon anything that Dr Busby's ever said or 17 co-authored". So suddenly, the day before we come into 18 court, not having an opportunity to argue our case at 19 all, we're suddenly presented with, "Hang on, half your 20 case you can't rely on" and this is the day -- if 21 somebody had said this -- 22 MR JUSTICE BLAKE: I don't know -- be careful of the 23 forensic language you use. If it does turn out that 24 half your case is relying upon the opinions of Dr Busby 25 then frankly --</p> <p style="text-align: center;">Page 53</p>	<p>1 MR JUSTICE BLAKE: 2014, it's pretty broad. (b) we did 2 touch upon the topic last time and I explained as best 3 I could -- I haven't looked at the transcript -- that 4 what we are going to conduct this time is that Dr Busby 5 is here as a representative, he knows who the experts 6 are that he is relying upon, and he is going to present 7 those experts independently and we will value their 8 evidence for what they tell us. If it turns out that an 9 expert simply comes in the witness box and says, "Well, 10 the critical document is the opinion of Dr Busby," 11 I will say "Are you going to stand on your own two feet 12 or are you just a surrogate for Dr Busby?" If it turns 13 out to be the latter -- 14 MR CHARLTON: Well, your Lordship is against me on the 15 limiting it to, as it were, specific litigation 16 orientated documents and your Lordship is against me and 17 we're taken by surprise by that. 18 MR JUSTICE BLAKE: Just deal with the point I've made. 19 I mean, fight your corner by all means. We haven't made 20 a ruling, we're having a discussion. But 21 the January 2016 article in your view was not written 22 with a view to litigation therefore it's admissible? 23 (Pause) 24 MR CHARLTON: My Lord, apparently the January 16 article is 25 not by Dr Busby. So now we are here -- that's right, my</p> <p style="text-align: center;">Page 55</p>
<p>1 MR CHARLTON: No, I dug a hole for myself, I appreciate 2 that. 3 MR JUSTICE BLAKE: Get it back again. I'm not going to hold 4 it against you. The point of principle is, insofar as 5 your case does rely upon the opinions of Dr Busby, 6 insofar, and I am not at all clear, that there are 7 certain issues in cross-examination that we would like 8 to hear Mr Hallard answer matters raised, but insofar as 9 a positive case relies upon the evidence of Dr Busby 10 then I'm afraid the reading of the directions is that 11 that's not on. Australia maybe, Canada maybe, but this 12 Tribunal not. 13 MR CHARLTON: All I am saying, my Lord, is that I hope when 14 it comes to the various assessments you are going to 15 make that the Tribunal will be sympathetic to the fact 16 that this particular ruling comes to us the day we walk 17 into court, my Lord, and I hope the court will be 18 sympathetic to the fact that had we known this 19 earlier -- 20 MR JUSTICE BLAKE: Not entirely because it was there 21 whenever Mr Justice Charles gave his direction, and I'm 22 afraid the years are passing by at a rate now -- 23 MR CHARLTON: I appreciate that, but the point is we've 24 interpreted Judge Charles' direction differently. 25 That's the problem, my Lord.</p> <p style="text-align: center;">Page 54</p>	<p>1 learned friend touches -- I mean my non-learned friend 2 touches upon the point that -- I think -- and if I can 3 dig myself back out of my half eye case hole that I have 4 dug for myself -- I think it's the co-authored documents 5 in particular that caused the problem, because Dr Busby 6 participates to a greater or lesser extent on those and 7 that's the one that really causes the problems. 8 MR JUSTICE BLAKE: If you want to look at it in order to 9 tease out this -- I mean I've read it and maybe we don't 10 have to. Look, answer my problem: we have the 11 direction, we have the principle, we have an article 12 that's come into existence since this litigation and the 13 issues have been raised. It is co-authored by X and Y. 14 X is giving evidence and therefore on the general 15 principle you don't bootstrap, you don't say, "My 16 opinion is good because I said so", and what else do you 17 have to support y"our opinion if it's controversial? 18 "Well," you say, "it's not just X, it's Y." But Y 19 you've already said is not going to form part of the 20 expertise in the case and if it's only X or Y then one 21 route or the other, that article simply can't form part 22 of the reasoning. 23 MR CHARLTON: I haven't read any of the articles and 24 I wouldn't understand them if I did, so I am at a slight 25 disadvantage but the point as I understand it is --</p> <p style="text-align: center;">Page 56</p>

<p>1 MR JUSTICE BLAKE: Oh dear, I've read them --</p> <p>2 MR CHARLTON: I tried to.</p> <p>3 MR JUSTICE BLAKE: I tried to read the ones which Dr Busby</p> <p>4 told me were the most important because I've taken his</p> <p>5 word for it.</p> <p>6 MR CHARLTON: I think the point as I understand it, though,</p> <p>7 if the expert says "Well, actually no this is my</p> <p>8 conclusions based on my research, original material that</p> <p>9 I have looked at and formed my opinion," that would in</p> <p>10 any event be admissible. I am reluctantly conceding</p> <p>11 that even though it's for a scientific journal -- I'm</p> <p>12 not conceding, but I'm conceding your Lordship's --</p> <p>13 MR JUSTICE BLAKE: There are scientific journals and</p> <p>14 scientific journals. Some are well known, some are</p> <p>15 online, I don't know who the editors are, I don't know</p> <p>16 about the process. If you want to dig out -- in the</p> <p>17 course of your case if there's some particularly</p> <p>18 important co-authored article which precedes this</p> <p>19 litigation as opposed to being generated during it, that</p> <p>20 you say has been peer reviewed and therefore has</p> <p>21 a degree of credibility beyond the assertion of the</p> <p>22 authors, my direction leaves open that possibility if</p> <p>23 you tell us something about it.</p> <p>24 MR CHARLTON: Well, I think as long as your Lordship is</p> <p>25 leaving something open then I'll be grateful. I know</p> <p style="text-align: center;">Page 57</p>	<p>1 important, this is the important one, which was</p> <p>2 co-authored by Professor Schmitz Feuerhake and myself</p> <p>3 and another German scientist, Dr Pflugbeil, we could of</p> <p>4 course make a separate application for a relaxation of</p> <p>5 your direction for this particular paper, but before</p> <p>6 I do that I should just say that this was not written</p> <p>7 for these proceedings, it was actually written by</p> <p>8 Professor Schmitz Feuerhake, whose English is not</p> <p>9 terribly good, and so she sent it to me to just turn it</p> <p>10 into better English and then it was submitted to quite</p> <p>11 a --</p> <p>12 MR JUSTICE BLAKE: Well, she no doubt can talk about it but</p> <p>13 generally speaking you would not -- forget you, take you</p> <p>14 out of the picture altogether. I am going to</p> <p>15 depersonalise it to explain it. We have an expert X who</p> <p>16 is presenting a proposition for this Tribunal. The</p> <p>17 Ikarian Reefer tests requires expert X to identify all</p> <p>18 the sources of facts or information or scientific</p> <p>19 indications on which the opinion is based. The reason</p> <p>20 for that is so the factual basis for the opinion can be</p> <p>21 tested and clarified. If the factual basis for the</p> <p>22 opinion is the opinion of another then you can see why</p> <p>23 one then is drawn to the focus from expert A to the</p> <p>24 subordinate expert. But if it's not, and if the expert</p> <p>25 X simply relies upon their own previous writings, well</p> <p style="text-align: center;">Page 59</p>
<p>1 Dr Busby --</p> <p>2 MR JUSTICE BLAKE: That's what it says, the paragraph,</p> <p>3 without varying the directions. You've made a general</p> <p>4 variation. You are not going to get far at the</p> <p>5 moment --</p> <p>6 MR CHARLTON: I see, my Lord. I hadn't understood that part</p> <p>7 either that when it comes up we may now as it were</p> <p>8 reapply --</p> <p>9 MR JUSTICE BLAKE: I think you have to reflect on this. You</p> <p>10 will have some time because the first witness isn't</p> <p>11 concerned with this topic. But it may come up I think</p> <p>12 by Wednesday. I think you should see which articles</p> <p>13 which are co-authored you think are really important</p> <p>14 that you want to put to the witness as the supportive</p> <p>15 evidence, and if it precedes, i.e. is not created during</p> <p>16 the course of this litigation or it has been generally</p> <p>17 endorsed by a respectable body of academic opinion, in</p> <p>18 which case we'd like to know when, who and how, we can</p> <p>19 take it as a case by case issue.</p> <p>20 MR CHARLTON: I think the respectable body of academic</p> <p>21 opinion is the respondents. But, my Lord, I know</p> <p>22 Dr Busby is reluctant to say something but he feels he</p> <p>23 does want to deal with the one issue because I am not --</p> <p>24 DR BUSBY: If I may, my Lord, with regard to this document</p> <p>25 that I suggested was on your reading list which was</p> <p style="text-align: center;">Page 58</p>	<p>1 generally speaking that's stand on one hand clapping</p> <p>2 save insofar as that intervention into the academic</p> <p>3 discourse has received general approbation. Who is it</p> <p>4 receiving approbation from? Well, Mr Y. I hope you can</p> <p>5 see the mechanics of where this goes?</p> <p>6 DR BUSBY: I do have some difficulty -- similar ones,</p> <p>7 I won't go into them, I have much the same concerns as</p> <p>8 Mr Charlton advanced in this regard. It seems to me to</p> <p>9 be a sort of lese majeste relating to the whole concept</p> <p>10 of scientific peer review and what is accepted as</p> <p>11 scientific fact.</p> <p>12 MR JUSTICE BLAKE: You can tell us about scientific peer</p> <p>13 reviews. We've made some attempts to find out and we</p> <p>14 find some of the interesting articles seem to be online</p> <p>15 journals --</p> <p>16 DR BUSBY: There are some really bad journals, I agree, my</p> <p>17 Lord, but this not one of them. This is a journal which</p> <p>18 is cited by the National Institute --</p> <p>19 MR JUSTICE BLAKE: Some of them you are editor of, I think.</p> <p>20 DR BUSBY: No, not at all --</p> <p>21 MR JUSTICE BLAKE: Tell us about that in due course when we</p> <p>22 come to it.</p> <p>23 DR BUSBY: Thank you, my Lord.</p> <p>24 MR JUSTICE BLAKE: Is there anything else you wish to say?</p> <p>25 DR BUSBY: We are done on that issue?</p> <p style="text-align: center;">Page 60</p>

<p>1 MR JUSTICE BLAKE: No, if you've made your submissions on 2 that issue I can go back to Mr Heppinstall. We've still 3 got to deal with some points. 4 DR BUSBY: I have no more to say. 5 MR CHARLTON: So where we are, we hear what your Lordship 6 says, we hear the hurdles we're going to have to come up 7 with, but I think your Lordship has not closed the door 8 completely and as and when the problem arises we'll 9 apply to alter the direction. Is that, I think, the 10 process? And your Lordship has indicated the sort of 11 line the Tribunal is likely to take as to whether or not 12 they are going to rely -- I would very much invite 13 your Lordship to make the distinction between weight and 14 admissibility, particularly bearing in mind that we are 15 in the Tribunal, my Lord. So that's what I say. 16 I think -- 17 MR JUSTICE BLAKE: Well, I'm not going to over-complicate 18 the proceedings in these cases but I'm having this 19 debate now at the outset of the case because I think it 20 might be helpful to inform the way I, we, with my 21 colleagues, how we are going to evaluate this. 22 MR CHARLTON: Certainly we are now on notice. 23 MR JUSTICE BLAKE: There has to be some discipline now 24 because we've got a lot in and we want to see what we're 25 focusing on.</p> <p style="text-align: center;">Page 61</p>	<p>1 Et cetera, et cetera. 2 In fact, looking at this text it was lifted into the 3 e-mail that was then sent to this Tribunal. 4 So the challenges to Mr Williams' documents were 5 made, particularly that diagram, before the 6 First Tier Tribunal. 7 Then the First Tier Tribunal, that was in closing 8 submissions, didn't make a ruling, the evidence just 9 isn't relied on -- 10 MR JUSTICE BLAKE: Somehow the diagram was there but it was 11 never adjudicated upon. 12 MR HEPPINSTALL: It never featured. I should also just add 13 that in the footnote previous -- I've repeated this in 14 the submission -- that Mr Johnston before, when he was 15 cross-examined on this document, pointed out that in 16 fact Mr Williams had got things wrong on that document, 17 there were errors in it. 18 MR JUSTICE BLAKE: Is it the diagram? 19 MR HEPPINSTALL: The diagram, simply, yes. 20 MR JUSTICE BLAKE: If we take out the diagram, it seems to 21 me the rest is a library compilation of weather reports? 22 MR HEPPINSTALL: That's disavowed anyway. We're now just 23 talking about the diagram. 24 MR JUSTICE BLAKE: I thought we were looking at other 25 things.</p> <p style="text-align: center;">Page 63</p>
<p>1 MR CHARLTON: I do say, my Lord -- 2 MR JUSTICE BLAKE: Is there something else you want to say? 3 MR CHARLTON: My Lord, I just think in the interests of 4 justice, and also in the light of my learned friend 5 Mr Heppinstall's concession, as it were, on this, that 6 bearing in mind that Dr Busby's evidence was actually 7 one of the grounds for appeal from the First Tier in any 8 event, it is a bit unfortunate and embarrassing if 9 suddenly a whole lot of stuff is suddenly knocked out at 10 the early stage. 11 MR JUSTICE BLAKE: Use your language: Dr Busby's evidence. 12 That was precisely -- anyway, I think enough. 13 MR CHARLTON: I am grateful, my Lord, yes. 14 MR JUSTICE BLAKE: Mr Williams' report, when did you get it? 15 MR HEPPINSTALL: As I was leaving chambers this morning 16 I grabbed my closing submissions made before the last 17 First Tier Tribunal, not expecting to use them but I can 18 recall that a submission was made as to Dr Busby's 19 written evidence. At the end of that submission under 20 a heading "Mr Williams" it says: 21 "See the submission made at footnote 10 at C1." 22 If I turn to the submission I made then at that 23 footnote it says: 24 "Mr Williams' CV is at supplementary 2, tab T. He 25 is chartered occupational psychologist ..."</p> <p style="text-align: center;">Page 62</p>	<p>1 MR HEPPINSTALL: No, the Noaa high split stuff has 2 thankfully been removed because that really is beyond 3 the pale. In fact, this diagram itself, if one looks at 4 the sources, not only is it the various raw evidence, if 5 you like, it includes meteorological data, but it also 6 includes the effects of nuclear weapons, which is this 7 thing that is the bible that the nuclear physicists have 8 been using that you certainly need the relevant 9 qualifications to have before you even attempt to start 10 manipulating data within it. 11 MR JUSTICE BLAKE: Well, in this difficulty I've abstracted 12 what I thought was the tab you were objecting to. Can 13 you go back to -- is it SB8? 14 MR HEPPINSTALL: The other one is -- 15 MR JUSTICE BLAKE: SB10 we've taken out, yes? 16 MR HEPPINSTALL: Yes, that's right. Then the diagram is at 17 tab 134. 18 MR JUSTICE BLAKE: Of SB8. 19 MR HEPPINSTALL: SB8. 20 MR JUSTICE BLAKE: Right. That is the only thing there. 21 MR HEPPINSTALL: That's the only thing left. 22 MR JUSTICE BLAKE: I wasn't sure whether it was, because 23 I've had it loose. But I've got it. 24 MR HEPPINSTALL: That was the the only thing left. It was 25 objected to the first time round both in terms of</p> <p style="text-align: center;">Page 64</p>



<p>1 Ikarian Reefer grounds and in terms of actually it was 2 just inaccurate in material respects. 3 MR JUSTICE BLAKE: Righty ho. 4 MR HEPPINSTALL: So we maintain our position on that. 5 On the Dr Busby issue -- 6 MR JUSTICE BLAKE: It's the co-authored reports which 7 someone else is going to refer to. 8 MR HEPPINSTALL: Well, if the expert can say "Had Dr Busby 9 never said what he has said in a report, I would have 10 said it or I agree with it or I've observed it myself," 11 if there's a happy coincidence of opinion then I don't 12 think any restraint can be put on that expert as to 13 giving evidence as to their own opinion. 14 MR JUSTICE BLAKE: Then we've achieved the independent -- 15 MR HEPPINSTALL: Indeed, yes. 16 MR JUSTICE BLAKE: -- the test. But if not -- I am trying 17 to put two hypotheses. Whether any of these hypotheses 18 will emerge -- 19 MR HEPPINSTALL: If in respect of the one we were just 20 looking at in SB6, the Schmitz Feuerhake, Busby and 21 Pflugbeil, I mean you have taken the wind out of my 22 cross-examination under conflicts of interest on that 23 document, because there seems to be one great 24 interest -- 25 MR JUSTICE BLAKE: Well, I'm not wishing to go too far</p> <p style="text-align: center;">Page 65</p>	<p>1 the Tribunal, not me. 2 MR HEPPINSTALL: Yes. 3 MR JUSTICE BLAKE: Can we just retire. 4 (12.10 pm) 5 (A short break) 6 (12.20 pm) 7 Provisional Ruling 8 MR JUSTICE BLAKE: We have heard argument on a preliminary 9 issue which was directed to whether a piece of evidence 10 that was in the bundle at SB8, which takes the form of 11 a chart devised by Mr Williams, should be received into 12 evidence at this hearing. We have concluded that it 13 should not, applying the principles of requirement of 14 expertise set out in common law and reflected in CPR 35. 15 Our reasons for that decision will be given in 16 writing to be handed down in due course as soon as is 17 reasonably practicable. 18 The hearing of that argument also engaged the 19 question of the meaning of the directions given by 20 Mr Justice Charles with respect to the evidence of 21 Dr Busby, where he said that expert evidence from him 22 should not be admitted, whether orally, in writing or 23 otherwise. 24 An issue has arisen as to what is the status of 25 academic articles co-authored or solely authored by</p> <p style="text-align: center;">Page 67</p>
<p>1 ahead. I am just trying to set some ground work. 2 MR HEPPINSTALL: My Lord is right to do so. 3 MR JUSTICE BLAKE: Just remind me which tab it is. 4 MR HEPPINSTALL: SB6/89. 5 MR JUSTICE BLAKE: Yes, I have flagged it up. 6 MR HEPPINSTALL: Yes. 7 There's lots of cross-referencing to Dr Busby, many 8 of his references are in the list. The conflicts of 9 interest paragraph is somewhat extraordinary in the 10 circumstances and given the date. 11 All of these were points of cross-examination which 12 would be put and it's for Dr Schmitz Feuerhake to 13 explain and explain how much of this is her and how much 14 of it isn't. 15 MR JUSTICE BLAKE: That's ahead. I just want to identify 16 the principles which -- we'll retire now and I'll give 17 a decision but not an explanation for it now. But 18 I want just to set the principles on which we are going 19 to agree the position. 20 MR HEPPINSTALL: On the explanation, we would encourage 21 a written decision, maybe not to hold up today's 22 proceedings, obviously, but in due course. 23 MR JUSTICE BLAKE: No, that's what I'm thinking of doing. 24 MR HEPPINSTALL: I'm grateful. 25 MR JUSTICE BLAKE: I just want to see. I've had a lot of --</p> <p style="text-align: center;">Page 66</p>	<p>1 Dr Busby. 2 In our view, they fall within that direction, 3 excluding the opinion evidence of Dr Busby from forming 4 a part of this appeal, but we recognise that there may 5 need to be some pragmatic opportunity for other experts 6 to explain why they reach the views which they do and we 7 do not exclude the possibility that particular articles 8 written perhaps at some distance from the litigation 9 with which various witnesses have been concerned might 10 be demonstrated to have been peer reviewed at such 11 a high and independent level that there is a relaxation 12 of that direction as we find it to be. 13 Again, our reasons for that construction of the 14 direction will be given in due course but we thought it 15 appropriate to raise it now, so if there is foreseen in 16 the course of the next fortnight some particular 17 importance given to an article the relevant researches 18 as to the status of it in terms of who published it, the 19 editorial board and the peer reviewers can be made 20 available if need be. 21 That's all I say. Written reasons will be given in 22 due course. 23 I think that means we've now dealt with the 24 preliminary issues and you want to open your case, 25 Dr Busby.</p> <p style="text-align: center;">Page 68</p>

<p>1 DR BUSBY: Thank you, my Lord.  2 MR JUSTICE BLAKE: Can I just put a couple of things away so  3 I won't be distracted.  4 MR HEPPINSTALL: I also in the adjournment made an inquiry  5 of the shorthand writers as to when they would like  6 their breaks because obviously we can certainly go on  7 longer than they can. I think a mid-morning and  8 a mid-afternoon break would be convenient.  9 MR JUSTICE BLAKE: Are we going to be able to continue  10 between now and one o'clock?  11 MR HEPPINSTALL: They are nodding.  12 MR JUSTICE BLAKE: Yes, I should just say that we will sit  13 at 10.30 this week, save I think on Friday if it's  14 convenient for you all could we sit at 10 o'clock, with  15 the hope that we can complete the witness on that date  16 in good time?  17 MR HEPPINSTALL: Yes, my Lord.  18 MR JUSTICE BLAKE: But whatever time it takes we'll need to  19 finish with her evidence. But 10 o'clock.  20 MR HEPPINSTALL: Yes.  21 MR JUSTICE BLAKE: Once we see where we've got to on this  22 Friday we can perhaps keep an open mind.  23 MR CHARLTON: My Lord, just before my learned friend and my  24 non-learned friend opens, a housekeeping matter: as  25 your Lordship knows I was meant to be on the substitutes</p> <p style="text-align: center;">Page 69</p>	<p>1 Opening submissions by DR BUSBY  2 DR BUSBY: Thank you, my Lord.  3 I propose to open by just giving a brief account of  4 what our case is and a short history of how we came  5 here. I will try not to be very long.  6 There is going to be some record of this so I would  7 like to see this in the record. That's why I'm doing  8 this.  9 I've been an expert in these cases since 2004 in the  10 UK and more recently in Australia. All the appeals  11 I was expert witness in were successful. Then I was  12 locked out following the Upper Tier hearing and the  13 representations of the Ministry of Defence and the  14 Secretary of State and the cases in which I was not  15 an expert witness mostly failed. But one thing the  16 Upper Tier judge did was allow the appeal and remit the  17 cases to this Tribunal and here I'm the representative  18 of two of the veterans, one each from Australia and from  19 Christmas Island.  20 Now all of my expert evidence when I was an expert  21 was based on the proofs that were successfully argued in  22 six cases plus two in Australia that the current  23 radiation risk model of the International Commission on  24 Radiological Protection is unsafe when applied to the  25 kind of exposures that occurred at the nuclear test</p> <p style="text-align: center;">Page 71</p>
<p>1 bench until Captain Ades was unfortunately taken ill.  2 I have been thrust more into the limelight than  3 I anticipated. I may have other professional  4 engagements, in which case I would apologise to the  5 court. Of course Dr Busby himself is here but also, as  6 it were, to substitute to be my understudy now that  7 I have been thrust into the limelight, Dr Celia Busby  8 sitting to my left --  9 MR JUSTICE BLAKE: I noticed the name on the slip.  10 MR CHARLTON: Exactly, my Lord.  11 MR JUSTICE BLAKE: Is Celia Busby a relative?  12 MR CHARLTON: Yes, I'm afraid so.  13 MR JUSTICE BLAKE: You don't need to be afraid.  14 MR CHARLTON: The advantage, my Lord, is that she is  15 familiar -- well, has recently become familiar with the  16 case and has participated. In the event that I can't be  17 here I hope your Lordship and the Tribunal would be  18 sympathetic.  19 MR JUSTICE BLAKE: Please, so long as teams have  20 representation as we hear the evidence and so there's no  21 one who is unrepresented, we will accommodate anyone.  22 MR CHARLTON: I'm grateful, my Lord. I just thought I would  23 deal with that point.  24 MR JUSTICE BLAKE: Right. With that, I think finally it's  25 the time.</p> <p style="text-align: center;">Page 70</p>	<p>1 sites, principally internal exposures to elements  2 uranium and tritium, neither of which we're told by the  3 Ministry of Defence they measured and indeed probably  4 quite difficult to measure them for various technical  5 reasons.  6 But throughout the current appeal, and also up until  7 the current appeal, the Ministry of Defence has  8 continually and consistently withheld evidence, denied  9 its existence and when it was demonstrated to exist  10 outlawed it with spurious claims about secrecy.  11 Myself and my colleagues have been threatened with  12 the Official Secrets Act and it has been extremely  13 difficult to conduct and very stressful to continue with  14 these appeals over such a long period of time, and  15 indeed the stresses are so great that I think probably  16 they did contribute to my friend Andrew Ades' heart  17 attack.  18 And I myself have recently developed diabetes and so  19 I have an apple here, and so if it does come to it you  20 may see me grab an apple and start to eat it in some  21 sort of desperate way.  22 MR JUSTICE BLAKE: I hope not desperate.  23 DR BUSBY: Yes.  24 The appeal to the Upper Tier succeeded but I was  25 excluded as an expert and now I'm back here as</p> <p style="text-align: center;">Page 72</p>

<p>1 a representative. It seems to me that as a result of                  2 that, and particularly the recent ruling which                  3 your Lordship has made, certain facts are going to have                  4 to be excluded from -- what I would call facts and what                  5 are facts are going to be excluded from consideration by                  6 this Tribunal.                  7 Now, our appellants, Mr Battersby and Mr Smith, are                  8 dead. They both died from a rare cancer, pancreatic                  9 cancer, which two other veterans, Mr Williams and                  10 recently Mr Butler both died from. The Tribunal may ask                  11 whether this extraordinarily improbable event, four vets                  12 dying from the same cancer, itself may prove that they                  13 shared a common event, a common cause, and there's only                  14 one thing that they shared and that was the exposure to                  15 radioactive particulates at the test site.                  16 Now they were young men. They were not asked to go,                  17 they were sent; they could not refuse. But when they                  18 fell ill, the Ministry of Defence abandoned them.                  19 Worse, it denied what science has now shown clearly to                  20 be the case, that these low doses of internal particles                  21 of uranium and other radioactive substances caused                  22 massive genetic damage which shows itself as congenital                  23 malformations in their children and cancer and other                  24 diseases in them. Our experts have shown this and will                  25 present this evidence in the witness box.</p> <p style="text-align: center;">Page 73</p>	<p>1 in the court, that people might be biased, scientists                  2 might be biased, he accepted that scientists were                  3 biased, that all scientists are biased, all experts are                  4 biased by their interpretation of the facts, and also                  5 I have to say by their employment or by their culture.                  6 And in America, where I do a lot of expert witness                  7 work, or have done in the past, it's generally accepted                  8 that each side in any case brings their own expert                  9 witnesses and those expert witnesses interpret the facts                  10 differently and the whole thing is argued out in a sort                  11 of oppositional sense.                  12 Mr Meacher recognised this and he set up the                  13 committee examining radiation risk from internal                  14 emitters as an oppositional committee. The intention                  15 was to provide, if you like, grounds where everybody                  16 agreed on issues that were agreed but also then wrote                  17 separate reports or discussed the issues that were not                  18 agreed so that some research effort might be aimed at                  19 determining who was right.                  20 Unfortunately that committee failed, and Mr Meacher                  21 is not here to tell us about how it failed but we do                  22 have a member of the committee, Mr Bramhall, that I have                  23 asked to give evidence and will be giving evidence next                  24 to discuss this issue.                  25 So we will be basing our case on the following</p> <p style="text-align: center;">Page 75</p>
<p>1 You may ask why we four old men, and one of us now                  2 in hospital, are bothering to engage in this                  3 extraordinarily stressful and unpaid process, and the                  4 answer is because the case goes beyond the appellants                  5 Battersby and Smith, it goes to an extraordinarily                  6 important issue relating to public health. This is why,                  7 I guess, it will be argued that the experts that we have                  8 called may be considered to be part of some sort of                  9 crazy cabal of individuals who are drawing attention to                  10 this public health issue, a public health issue which                  11 goes far beyond the test veterans themselves and the                  12 appellants in this case.                  13 It goes to the fact that we are all of us test                  14 veterans, all of us. These tests caused atmospheric                  15 contamination in the northern hemisphere and led to                  16 increases in cancer and congenital malformation in                  17 global populations and this is evidence that will be                  18 given by the witnesses which we have called.                  19 We were going to call the ex-Minister of the                  20 Environment, Mr Michael Meacher, who unfortunately died                  21 before we could arrange to call him. Mr Meacher was                  22 made aware of this problem in 2001, and he brought into                  23 existence a committee to examine this issue,                  24 an oppositional committee. That is to say rather than                  25 considering, like in the case of the Ikarian Reefer and</p> <p style="text-align: center;">Page 74</p>	<p>1 points and then I will leave it at that.                  2 The radiation risk model of the ICRP, as I have                  3 said, the current radiation risk model on which all the                  4 pension appeals refusals have been based is unsafe for                  5 the purposes of assessing harm from internal exposure to                  6 certain fission products and residual radioactive                  7 products during the weapons tests. And of course                  8 Mr Hallard and Mr Haylock, who are giving evidence for                  9 the Secretary of State, have not addressed this issue at                  10 all, and indeed the Secretary of State has not addressed                  11 our arguments in our statement of case despite having                  12 been directed by your Lordship so to do.                  13 So we have no response from the Secretary of State                  14 on these extraordinarily important and key issues.                  15 We have said that this risk model is unsafe. The                  16 Secretary of State has called Mr Hallard to just account                  17 for the doses on the basis of the conventional risk                  18 model and so he has come up with some numbers which                  19 following some questions he had to change into different                  20 numbers, but at no point did any question get responded                  21 to regarding whether or not those numbers were                  22 meaningful at all in terms of the health effects of the                  23 radiation of the exposures that these servicemen had                  24 suffered.                  25 In particular, these problems applied to the element</p> <p style="text-align: center;">Page 76</p>

<p>1 uranium which was main component of all the tests in                  2 terms of mass. The Grapple Y bomb dispersed 3 tonnes of                  3 uranium nanoparticles over Christmas Island and the sea                  4 nearby which of course brought the particles on shore as                  5 one of our experts will say.                  6 The residual radioactive material, tritium, which is                  7 another element which was not apparently measured, or at                  8 least the Secretary of State tells us there is no                  9 documentary evidence that they measured it, nevertheless                  10 it was in the drinking water at Christmas Island. This                  11 exposure cannot be quantified.                  12 New scientific research has shown that uranium has                  13 an unusual and serious capacity for genetic damage                  14 because it binds chemically to DNA and it amplifies                  15 natural background radiation effects as our witnesses                  16 Professor Howard and Professor Hooper will say.                  17 Now, the effects of these genetic damages to the DNA                  18 would be to cause increases in cancer, and this is of                  19 course what these appeals are about, but also in the                  20 genetic effects in the offspring, and your Lordship did                  21 make a disclosure order to obtain data from the British                  22 nuclear test veterans' questionnaires from the                  23 University of Dundee, and although there wasn't a lot of                  24 time to do it we have analysed, or our experts have                  25 analysed these data and shown a tenfold excess of</p> <p style="text-align: center;">Page 77</p>	<p>1 medical epidemiology to decide whether or not there is                  2 a case to answer with regard to the particular question                  3 that is being asked.                  4 So anyway basically that is an outline of where we                  5 are now. As I said before, and finally, this is a very                  6 important case because since we are all exposed to these                  7 weapon fallouts in the '60s and in the milk we are all                  8 of us test veterans, everyone here.                  9 Thank you for your patience, my Lord.                  10 MR JUSTICE BLAKE: Thank you very much.                  11 Opening submissions by MR CHARLTON                  12 MR CHARLTON: My Lord, I also have a very short statement                  13 that was originally written by Group Captain Ades before                  14 he was taken ill. It won't take very long. Out of                  15 respect for the fact that he troubled to make it, and it                  16 has been served, it's a very short opening on behalf of                  17 Battersby.                  18 MR JUSTICE BLAKE: Well, we'll hear it. However, it's not                  19 usually the case that we hear leading and junior counsel                  20 opening appeals if you are both representing the same                  21 team rather than one representing one and one the other,                  22 and for the interests of economy I think you are going                  23 to have to dovetail your function so we hear from one                  24 and it needs to be explained who is dealing with what so                  25 I can follow it.</p> <p style="text-align: center;">Page 79</p>
<p>1 genetic damage in the offspring --                  2 MR JUSTICE BLAKE: That's the Rabbett Roth questionnaires?                  3 DR BUSBY: The Rabbett Roth questionnaires. That's right,                  4 my Lord.                  5 And high levels of congenital malformations in                  6 children and grandchildren. Also in other scientific                  7 papers in the peer review literature which may or may                  8 not be in journals which your Lordship considers to be                  9 sufficiently important to believe.                  10 Now in addition we see genetic damage in a sample of                  11 New Zealand veterans who have shown a significant excess                  12 of chromosome aberration damage which is an indicator of                  13 prior exposure of radiation.                  14 So finally let me just conclude by returning to what                  15 I consider to be the most persuasive evidence and we                  16 will put this to Mr Haylock -- Dr Haylock, I'm afraid,                  17 I'm sorry -- Dr Haylock, who is a statistician and                  18 a mathematician, as I understand, and we will ask him                  19 what the probability is of four of the veterans, four of                  20 the appellants in this case all dying of pancreatic                  21 cancer given that the background rate of pancreatic                  22 cancer as a proportion of all cancers is about                  23 2 per cent. I could anticipate his answer at least by                  24 saying that it's extremely small and it's certainly much                  25 smaller than the normal key value which is used in</p> <p style="text-align: center;">Page 78</p>	<p>1 MR CHARLTON: My Lord, yes.                  2 MR JUSTICE BLAKE: With that caveat, bearing in mind the                  3 time if you would like --                  4 MR CHARLTON: I will crack on. He says:                  5 "My Lord, with your permission I shall open briefly                  6 for the Battersby and Smith appellants before Dr Busby                  7 takes you through the essence of our case."                  8 Well, that's the other way round.                  9 "I am delighted to note that in his submitted                  10 skeleton my learned colleague for the Secretary of State                  11 has touched upon the history of the Service Pension                  12 Order and explained the crucial role of medical advisers                  13 in assessing claims for war pensions. I hope the                  14 Tribunal will forgive me for observing that such                  15 an explanation [in the skeleton] is incomplete without                  16 reference to the status of servicemen and women who,                  17 being mere servants of the Crown, lack the great                  18 majority of what today we call employment rights,                  19 including pay, remuneration being Crown bounty and as                  20 such not an entitlement. That might go some way to                  21 explaining why Parliament decreed a unique entitlement                  22 under the SPO and a unique standard of proof as                  23 recently reaffirmed by Charles CP in the Upper Tribunal.                  24 "I shall, my Lord, cover that standard of proof in                  25 more detail at the appropriate time. I seek permission</p> <p style="text-align: center;">Page 80</p>

<p>1 to provide a written submission at the close of this 2 hearing covering that and key evidential points we shall 3 put before you." 4 I think that has already been prepared actually, 5 my Lord. Then he goes on: 6 "Here, my Lord, I respectfully remind the Tribunal 7 that our appellants were servicemen of low rank who were 8 sent into, we claim, harm's way and had no alternative, 9 save only a court martial, other than to go and have, we 10 shall show, suffered severe illnesses and chromosome 11 damage caused by exposure. 12 "I briefly submit here and will develop in more 13 detail later that the Secretary of State for Defence has 14 not taken any notice of either the full paragraph of 15 article 41(5) or of Charles CP's ruling concerning the 16 standard of proof in the Upper Tribunal. Neither, and 17 arguably even more importantly, has my learned friend 18 thought it fit to mention in his skeleton the concluding 19 clause of article 41(5) 'the benefit of that reasonable 20 doubt shall be given to the claimant'. 21 "The resultant colour, to put it more strongly, on 22 the decisions to reject war pensions because of failing 23 to consider the final clause of 41(5), that's to say the 24 benefit of that reasonable doubt should be given to the 25 claimant, and the judgment of the Upper Tier per</p> <p style="text-align: center;">Page 81</p>	<p>1 MR JUSTICE BLAKE: It's not for karaoke. 2 Yes, you've made a witness statement, we know, and 3 that is at tab 213, isn't it. Just let me get that. Do 4 you want to ask any supplementaries? 5 Examination-in-chief by DR BUSBY 6 DR BUSBY: Mr Bramhall, could you just briefly outline the 7 dialogues and the history of the disputes -- 8 MR JUSTICE BLAKE: Well, he has done that in the statement. 9 So that's the point. Do you want to clarify, to correct 10 or amend anything in this statement? Because we have it 11 there. It's taken as evidence-in-chief. 12 DR BUSBY: Can I not take him through each point, my Lord? 13 MR JUSTICE BLAKE: No, that's the whole point of the 14 dialogue, because otherwise that's going to duplicate, 15 you see? 16 DR BUSBY: I can't put to him anything that isn't in the 17 witness statement? 18 MR JUSTICE BLAKE: Not by way of further evidence, because 19 then that would be going beyond his statement. I'm 20 sorry, that's the whole point of the directions. 21 DR BUSBY: I'm sorry, my Lord, you know I'm not a -- 22 MR JUSTICE BLAKE: Let me try a couple of questions to give 23 you the flavour of this. 24 You've made a witness statement. Do you have it in 25 front of you?</p> <p style="text-align: center;">Page 83</p>
<p>1 Charles CP does a great disservice to claimants and the 2 appellants we represent. This can perhaps be seen at 3 the simplest level in the refusal to accept CLL and PC 4 as radiogenic when there is considerable evidence as to 5 the contrary and at a far more profound level in the 6 presumably deliberate determination of the SSD to 7 prevent his expert from even considering, let alone 8 commenting on, the possibility of an alternative 9 protocol for assessing radiation risk to that of the 10 ICRP which also flies in the case of evidence and the 11 opinion of many experts." 12 I am grateful for that opportunity, my Lord. If 13 there was a little bit of duplication on the points that 14 Dr Busby raised I apologise. Thank you. 15 MR JUSTICE BLAKE: Right. Are we going to start with 16 Dr Bramhall? 17 DR BUSBY: We will start with Mr Bramhall, yes. 18 MR RICHARD BRAMHALL (sworn) 19 MR JUSTICE BLAKE: You probably need to keep your voice up 20 a little bit louder than that, if you can. 21 THE WITNESS: If I sit down nearer to the mike. 22 MR JUSTICE BLAKE: Bring it forward, if necessary. That's 23 going to be for the benefit of those taking 24 a transcript, who also have to hear. 25 THE WITNESS: Okay.</p> <p style="text-align: center;">Page 82</p>	<p>1 <b>A. No, my Lord.</b> 2 MR JUSTICE BLAKE: Well, that's a bad start. Let's get it 3 in front of you. (Handed) If you take out SB1. If you 4 go to the very last tab, it should be 213. 5 MR TER HAAR: The way my bundle has been put together, the 6 witness statements can be found in volume 2 of 2, 7 therefore it would be SB2. (Pause) 8 MR JUSTICE BLAKE: It's part 2 of 1. 9 MR TER HAAR: Yes, it is. 10 MR HEPPINSTALL: It's relabelled "SB1". 11 MR JUSTICE BLAKE: If I write down another reference it is 12 going to get lost. 13 MR TER HAAR: We are going to have to deal with this very 14 rapidly. 15 MR JUSTICE BLAKE: Yes. Do you have the master bundle? 16 MR TER HAAR: I have an index, yes. 17 MR JUSTICE BLAKE: I called for that just so I could put 18 this in ... I am just going to take over for a little 19 bit just to give you a flavour. 20 You now have your witness statement. 21 <b>A. Yes.</b> 22 MR JUSTICE BLAKE: Yes? That's the witness statement made 23 by you apparently on 2 October 2015. 24 <b>A. Yes, my Lord.</b> 25 MR JUSTICE BLAKE: All right? Is it true to the best of</p> <p style="text-align: center;">Page 84</p>

<p>1 your knowledge and belief?</p> <p>2 <b>A. Yes.</b></p> <p>3 MR JUSTICE BLAKE: Is there anything that you need to</p> <p>4 correct in the light of anything that you've come to</p> <p>5 learn about since 2 October 2015?</p> <p>6 <b>A. I think at some point I said I held -- I had recorded</b></p> <p>7 <b>tapes of all the CERRIE meetings, but I since found that</b></p> <p>8 <b>I don't have the tapes of the first two. I think that's</b></p> <p>9 <b>a relatively minor manner.</b></p> <p>10 MR JUSTICE BLAKE: So there are tapes if anyone -- of other</p> <p>11 meetings, if anyone wants to go into that topic.</p> <p>12 <b>A. There are tapes from 3 to 16 inclusive, and all the</b></p> <p>13 <b>epidemiological sub-group meetings.</b></p> <p>14 <b>Am I speaking clearly enough?</b></p> <p>15 MR JUSTICE BLAKE: Yes, I have that, thank you very much.</p> <p>16 You have told us about that meeting.</p> <p>17 Apart from that, there's nothing else you wish to</p> <p>18 amend?</p> <p>19 <b>A. No, my Lord.</b></p> <p>20 MR JUSTICE BLAKE: Or correct or amplify?</p> <p>21 <b>A. No corrections. Well, amplification might be another</b></p> <p>22 <b>matter.</b></p> <p>23 MR JUSTICE BLAKE: What is it that you -- you think you</p> <p>24 might want to add to something that you told us about?</p> <p>25 <b>A. Well, it's quite a long time since I wrote this.</b></p> <p style="text-align: center;">Page 85</p>	<p>1 out -- was there any other question that you wanted to</p> <p>2 pose to Mr Bramhall before you tender him for</p> <p>3 cross-examination?</p> <p>4 DR BUSBY: Well, my Lord, there were quite a few questions,</p> <p>5 but it seems that I'm not really permitted to ask them.</p> <p>6 MR JUSTICE BLAKE: Well, if you are going to ask him about</p> <p>7 things that are in the witness statement it's just</p> <p>8 a waste of time. So I'm cutting that out. That's not</p> <p>9 the way we do it in these proceedings. That's what I</p> <p>10 said to you last time and I said on Friday and I have</p> <p>11 tried to spell it out. I appreciate you may not be</p> <p>12 familiar with this kind of case management but that's</p> <p>13 the idea.</p> <p>14 But is there anything additional to the statement</p> <p>15 that is important to the issues in this case that</p> <p>16 somehow, for some reason or other, because it was</p> <p>17 prepared in October, has not gone into the statement?</p> <p>18 DR BUSBY: No, my Lord.</p> <p>19 MR JUSTICE BLAKE: Thank you very much.</p> <p>20 MR CHARLTON: I'm sorry, my Lord, the reason I am popping</p> <p>21 up, just a technical point, my Lord. In the criminal</p> <p>22 court you can only, by way of re -- I presume he will be</p> <p>23 permitted to re-examine after --</p> <p>24 MR JUSTICE BLAKE: Of course. We'll get on to that.</p> <p>25 MR CHARLTON: Could I just --</p> <p style="text-align: center;">Page 87</p>
<p>1 MR JUSTICE BLAKE: Well, have you read it? Have you</p> <p>2 refreshed your memory from it?</p> <p>3 <b>A. No, my Lord, except that I -- well, the point I just</b></p> <p>4 <b>made about the tapes I observed from counting the tapes,</b></p> <p>5 <b>not by examining the record. It's my memory that I said</b></p> <p>6 <b>I had all of them.</b></p> <p>7 MR JUSTICE BLAKE: Do you want to refresh your memory from</p> <p>8 this statement now?</p> <p>9 I think you might shortly be asked questions about</p> <p>10 it, so if you haven't had the chance to do so -- do you</p> <p>11 want to read it now?</p> <p>12 <b>A. No, my Lord, I think I will rely on cross-examination.</b></p> <p>13 MR JUSTICE BLAKE: Can I say, Dr Busby, that it is generally</p> <p>14 is helpful, any of your witnesses should be invited to</p> <p>15 refresh their memory, before they come into the court,</p> <p>16 to re-read their witness statements so it's fresh in</p> <p>17 their minds. Yes?</p> <p>18 DR BUSBY: Yes, I misunderstood the nature of the process,</p> <p>19 my Lord.</p> <p>20 MR JUSTICE BLAKE: That's what I am trying to help you with.</p> <p>21 DR BUSBY: Yes.</p> <p>22 MR JUSTICE BLAKE: So do that and then they can focus</p> <p>23 accordingly.</p> <p>24 Now, was there any other question that -- one at</p> <p>25 a time, please, I am really going to have to sort it</p> <p style="text-align: center;">Page 86</p>	<p>1 MR JUSTICE BLAKE: No, please sit down.</p> <p>2 MR CHARLTON: As long as the re-examination isn't</p> <p>3 necessarily restricted to that which was raised in</p> <p>4 cross. That was my only point, my Lord.</p> <p>5 MR JUSTICE BLAKE: Well, I have indicated that you can</p> <p>6 amplify by amendment, clarification, I tried to get that</p> <p>7 out. There will then be cross-examination.</p> <p>8 Re-examination is indeed focusing upon what has been</p> <p>9 raised in cross-examination, otherwise the witness</p> <p>10 statement will stand.</p> <p>11 MR CHARLTON: All right. Well, your Lordship is against me.</p> <p>12 I am just saying it may be that in the process of</p> <p>13 re-examination it may go a little bit further than that</p> <p>14 which was raised in cross-examination. But if</p> <p>15 your Lordship is against me you are against me.</p> <p>16 MR JUSTICE BLAKE: That's the object of the proceedings. We</p> <p>17 will try to see what is said. Let's hear what is</p> <p>18 challenged now, because now we have this</p> <p>19 evidence-in-chief and that's the technique that we will</p> <p>20 use throughout these proceedings.</p> <p>21 Cross-examined by MR HEPPINSTALL</p> <p>22 MR HEPPINSTALL: Mr Bramhall, can you just put your witness</p> <p>23 statement to one side and open bundle SB6. It may be</p> <p>24 that someone may assist you.</p> <p>25 Do you have SB6?</p> <p style="text-align: center;">Page 88</p>

<p>1 <b>A. Yes.</b></p> <p>2 Q. Could you turn to -- you will find with all these</p> <p>3 bundles there are cardboard tabs with numbers on them</p> <p>4 and we need number 60.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. I am sure this is a document you are familiar with, this</p> <p>7 is the CERRIE report, the report of the committee report</p> <p>8 examining radiation risks of internal emitters.</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. If you turn to page 3, please.</p> <p>11 MR JUSTICE BLAKE: Substantive 3.</p> <p>12 MR HEPPINSTALL: Substantive 3.</p> <p>13 <b>A. I'm with you.</b></p> <p>14 MR HEPPINSTALL: Paragraph 8 at the top of that page. It's</p> <p>15 right, isn't it, that CERRIE was set up by COMARE, which</p> <p>16 is a standing Government committee looking at the risks</p> <p>17 of ionising radiation?</p> <p>18 <b>A. It was set up -- the organisation of it I always assumed</b></p> <p>19 <b>was handled by COMARE, yes, although the sponsoring</b></p> <p>20 <b>departments were DEFRA, where Michael Meacher was</b></p> <p>21 <b>a minister, and by the Department of Health, where</b></p> <p>22 <b>somebody whose name at the moment eludes me.</b></p> <p>23 Q. And you see there that it says --</p> <p>24 <b>A. Cooper.</b></p> <p>25 Q. -- in the second sentence:</p> <p style="text-align: center;">Page 89</p>	<p>1 <b>neutral in their search, their professional search for</b></p> <p>2 <b>truth. And Peter Roche -- well, what we suggested, or</b></p> <p>3 <b>what actually I suggested to Michael Meacher was that</b></p> <p>4 <b>a nominee from Greenpeace should be sought. I didn't</b></p> <p>5 <b>know who it was. When I've learned that it was</b></p> <p>6 <b>Peter Roche I realised that -- well, I knew that I had</b></p> <p>7 <b>never discussed these matters with him. I didn't know</b></p> <p>8 <b>which side of the pro and anti ICRP risk model he would</b></p> <p>9 <b>jump.</b></p> <p>10 Q. We see at footnote 5, just for clarity, you agree he was</p> <p>11 employed with Greenpeace, although I think at the time</p> <p>12 of writing the report he was not employed by Greenpeace.</p> <p>13 <b>A. That I believe is true, yes.</b></p> <p>14 Q. So we see from the members it was you represented the</p> <p>15 Low Level Radiation Campaign and Dr Busby representing</p> <p>16 Green Audit. That's right, isn't it?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. It's true, isn't it, that there is considerable overlap</p> <p>19 in fact between the LLRC, the Low Level Radiation</p> <p>20 Campaign, and Green Audit?</p> <p>21 <b>A. Overlap in what sense?</b></p> <p>22 Q. In terms of membership and organisation.</p> <p>23 <b>A. Well, certainly Dr Busby is and always was the Director</b></p> <p>24 <b>of Green Audit, and he is a Director of the Low Level</b></p> <p>25 <b>Radiation Campaign, which is established and constituted</b></p> <p style="text-align: center;">Page 91</p>
<p>1 "Although established under the auspices of COMARE,</p> <p>2 CERRIE was independent of COMARE and its funding</p> <p>3 departments, DEFRA and the Department of Health."</p> <p>4 Do you agree with that?</p> <p>5 <b>A. Yes, as far as I know.</b></p> <p>6 Q. And then at paragraph 9 the membership of CERRIE is set</p> <p>7 out. It's right, isn't it -- do you agree with -- you</p> <p>8 were in court, I think, when Dr Busby mentioned it</p> <p>9 earlier that this was an oppositional committee, there</p> <p>10 were people from both sides of the debate appointed to</p> <p>11 the committee?</p> <p>12 <b>A. It was thought of as having three sides, but yes, it was</b></p> <p>13 <b>oppositional.</b></p> <p>14 Q. What were the three?</p> <p>15 <b>A. Those who felt that radiation risk had been</b></p> <p>16 <b>significantly underestimated, those who -- which was me</b></p> <p>17 <b>and Dr Busby -- those who felt that it was -- that the</b></p> <p>18 <b>ICRP risk model was secure, which would be the three</b></p> <p>19 <b>members of staff at the National Radiological Protection</b></p> <p>20 <b>Board and Dr Wakeford who represented then and was paid</b></p> <p>21 <b>for, as far as I know, by British Nuclear Fuels Plc.</b></p> <p>22 <b>And the third wing were academics, such as Dr Day,</b></p> <p>23 <b>professor Jack Simmons, conceivably Mr Roche, who was</b></p> <p>24 <b>nominated by Greenpeace.</b></p> <p>25 <b>The academics, I think we assumed would be broadly</b></p> <p style="text-align: center;">Page 90</p>	<p>1 <b>as a company limited by guarantee which has directors.</b></p> <p>2 <b>Dr Busby has always been one of those directors.</b></p> <p>3 Q. Are you, Mr Bramhall, a director or officer or in any</p> <p>4 other way involved with Green Audit?</p> <p>5 <b>A. No, never have been.</b></p> <p>6 Q. At paragraph 10 it's recorded that the secretariat</p> <p>7 consisted of various people, including</p> <p>8 a Mr Paul Dorfman. Did you and/or Dr Busby procure his</p> <p>9 appointment to the secretariat?</p> <p>10 <b>A. We suggested that he should be appointed to the</b></p> <p>11 <b>committee.</b></p> <p>12 Q. And, to your knowledge, does Mr Paul Dorfman have any</p> <p>13 links with the LLRC or Green Audit?</p> <p>14 <b>A. I don't know that he has any links with Green Audit;</b></p> <p>15 <b>I rather doubt it. He has no links with the Low Level</b></p> <p>16 <b>Radiation Campaign in any sense, apart from the fact</b></p> <p>17 <b>that we have often sat on committees, notably the</b></p> <p>18 <b>Safegrounds dialogue where we were sitting together,</b></p> <p>19 <b>I mean sitting at one table, over a period of some</b></p> <p>20 <b>13 years.</b></p> <p>21 Q. Just turn now to page 25, if you would, of this</p> <p>22 document.</p> <p>23 <b>A. 25?</b></p> <p>24 Q. 25. Just start with 23, actually.</p> <p>25 MR JUSTICE BLAKE: 23?</p> <p style="text-align: center;">Page 92</p>

<p>1 MR HEPPINSTALL: 23. 2 It's right, isn't it, that you and Dr Busby put to 3 the committee for their consideration certain arguments 4 or theories in which you both believed? 5 <b>A. Dr Busby put forward lists of concerns which included 6 the second event theory, for example. Perhaps you could 7 give me the guidance as to what else you might be 8 thinking of.</b> 9 Q. Certainly. Here we are looking at section 2.6 which is 10 about the ICRP dose co-efficients. Do you see that is 11 the main heading? 12 <b>A. Yes, I do.</b> 13 Q. Here there is a discussion about the validity of those 14 ICRP dose co-efficients, just to give you your 15 orientation. 16 Then if we look at paragraph 50 on page 25 we see 17 that the committee records: 18 "The two committee members who had been involved in 19 formulating the alternative methodology given in the 20 2003 recommendations [I'll shorten it ECRR] ... outlined 21 their approach." 22 We see the two are named as Dr Busby and 23 Mr R Bramhall. So it's right that you outlined to the 24 committee your belief and support and involvement with 25 the ECRR 2003 recommendation?</p> <p style="text-align: center;">Page 93</p>	<p>1 as ourselves that there was a debate between ICRP 2 methodology for equivalent dose and criticisms of that 3 approach and the 2003 recommendations of the ECRR 4 suggesting a different approach. Does that ring a bell? 5 <b>A. Not as far as the drafting of 2.6 goes. I have --</b> 6 MR JUSTICE BLAKE: Well, was that what was happening as part 7 of the work of this committee? 8 <b>A. No, my Lord.</b> 9 MR JUSTICE BLAKE: So there wasn't a debate between the two 10 methodologies. 11 <b>A. The whole process of the 16 meetings was in effect 12 a debate -- an approach on the two methodologies, but it 13 was not conducted by a comparison of the texts of ICRP 14 recommendations and those of the ECRR. It was conducted 15 by examining various health phenomena and theoretical -- 16 considerations of biological mechanisms, and 17 epidemiological studies, which would, in effect, 18 depending on how you arrive at an evaluation of those 19 things, would provide support for ICRP's risk modelling, 20 or possibly for something that was more conservative, 21 more protective, like the ECRR.</b> 22 So if, for example, it turned that there was 23 a substantial excess of breast cancer around the 24 Blackwater Estuary, which is known to be contaminated 25 with radioactive substances pumped out by the Bradwell</p> <p style="text-align: center;">Page 95</p>
<p>1 <b>A. No, it is not right. This is one of myriad respects in 2 which this report is a pack of lies. I'm not disavowing 3 my support for the general approach advised by the ECRR, 4 but it is not true that I had formulated that in any 5 sense at all. I am -- I am not and never have been 6 a member of the ECRR.</b> 7 Q. Is it right that somebody outlined the ECRR approach to 8 the committee? 9 <b>A. I have no memory of any meeting at which it was 10 outlined. Just glancing through this paragraph, which 11 is a little dense, it's too dense for me.</b> 12 MR JUSTICE BLAKE: Do you want to read the paragraph? 13 <b>A. To myself, my Lord?</b> 14 MR JUSTICE BLAKE: Yes, if it would help you read the 15 question. 16 <b>A. Fine. (Pause). Yes, I have read it. Can you repeat the 17 question?</b> 18 MR HEPPINSTALL: It's someone outlining to the committee the 19 2003 recommendations of the ECRR? 20 <b>A. I've no memory of that happening. It would be very easy 21 to produce this paragraph just from a reading of the 22 2003 recommendations themselves, which are an open 23 document freely available.</b> 24 MR JUSTICE BLAKE: Read as a whole, part 2.6, which 25 encompasses paragraphs 43 to 50, tells the reader such</p> <p style="text-align: center;">Page 94</p>	<p>1 <b>Nuclear Power Station, that would tend to be support for 2 the ECRR risk model because --</b> 3 MR JUSTICE BLAKE: I am asking a very general question to 4 help me focus upon the question -- 5 <b>A. My Lord, I was attempting to give you a helpful reply.</b> 6 MR JUSTICE BLAKE: I think that was slightly going off the 7 topic, but I'll hand you back to Mr Heppinstall who can 8 ask any questions he wants. But I see what the time is. 9 MR HEPPINSTALL: As you go on in this text there is 10 discussion of the ECRR model, isn't there? 11 <b>A. Are we going back to --?</b> 12 Q. Paragraph 50. 13 <b>A. Paragraph 50. Yes, sir.</b> 14 Q. Furthermore there is a comment: 15 "However, other members pointed to a lack of 16 evidence for risks from 90Sr that were orders of 17 magnitude greater than expected." 18 So it's clear, isn't it, Mr Bramhall, that the 19 members of the committee considered the text of ECR? 20 <b>A. I have no memory of it and I was at the entirety of 21 every meeting on that committee. I don't believe that 22 ECRR recommendations were ever an agenda item.</b> 23 Q. But just looking at this text, somebody read it, thought 24 about it, provided this comment, so it was considered by 25 the committee?</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)



<p>1 <b>A. I think I've --</b>  2 Q. Or at least some members of the committee?  3 <b>A. Well, if they considered it -- if other members of the</b>  4 <b>committee considered it, it was outside my purview and,</b>  5 <b>as I said, I don't believe it was ever on the agenda.</b>  6 <b>I would have to go back to all the agenda papers and</b>  7 <b>check them through in order to put my hand on my heart</b>  8 <b>and swear that that were totally true, but it is my</b>  9 <b>belief and my impression from my memory.</b>  10 <b>Do bear in mind, please, that this committee ended</b>  11 <b>12 years ago.</b>  12 Q. The final sentence records, does it not, the conclusion  13 of the majority of the members who were not persuaded by  14 the scientific merit or validity of the ECRR approach.  15 That was the proper and true conclusion of the  16 majority of the members, wasn't it?  17 <b>A. I think really I have answered that question. It can't</b>  18 <b>have been a true and proper conclusion of such</b>  19 <b>discussions if those discussions never took place. The</b>  20 <b>manner in which this report purports to tell you how</b>  21 <b>people thought and how people voted is a travesty.</b>  22 <b>These decisions were kind of -- but I believe that these</b>  23 <b>decisions were conjured up in the minds of whoever wrote</b>  24 <b>this report, and it is true (and this is provable too)</b>  25 <b>that there were -- pretty well every meeting there were</b></p> <p style="text-align: center;">Page 97</p>	<p>1 <b>what I had said.</b>  2 MR HEPPINSTALL: My Lord, I am going to move on to a operate  3 topic.  4 MR JUSTICE BLAKE: That is probably an appropriate time.  5 We'll break now because we've just hit one o'clock. We  6 will return at two o'clock, please.  7 Now, you are in the middle of giving your evidence.  8 The general rules in the civil courts which we can adopt  9 for this Tribunal is that you don't discuss your  10 evidence with anybody else.  11 THE WITNESS: By all means.  12 MR JUSTICE BLAKE: You can say hello and where am I and  13 where is the building, but do not talk about this case.  14 Thank you, two o'clock, please.  15 THE WITNESS: Can I leave all this paperwork?  16 MR JUSTICE BLAKE: Yes, you can leave all that there.  17 (1.05 pm)  18 (The short adjournment)  19 (2.00 pm)  20 MR JUSTICE BLAKE: Do we need the screen up? I think it's  21 just testing, is it?  22 Right, yes, we'll carry on with your questions.  23 MR HEPPINSTALL: We are in volume SB6, Mr Bramhall. Could  24 you turn to page 50 in the tab we are already in, the  25 CERRIE report at tab 60?</p> <p style="text-align: center;">Page 99</p>
<p>1 <b>huge discrepancies in the minutes between what actually</b>  2 <b>was said and what was then recorded. And, in</b>  3 <b>particular, the minutes are shot through right from</b>  4 <b>number -- well, right from the beginning, where this</b>  5 <b>kind of voting was suggested with such formulations of</b>  6 <b>two thought this, the others thought that.</b>  7 <b>If there is any validity in those conclusions they</b>  8 <b>are done on the basis of how the report writer or</b>  9 <b>the minutes writer perceived the balance of the debate</b>  10 <b>to be going in the relevant meetings. There was no</b>  11 <b>formal vote-taking, nothing was written down by us or</b>  12 <b>agreed by committee members during the meetings or at</b>  13 <b>the subsequent minutes.</b>  14 <b>I have to tell you that the actual process of</b>  15 <b>approving the minutes was extremely fraught,</b>  16 <b>extremely-time consuming.</b>  17 <b>Since I had the digital audio tapes I spent, every</b>  18 <b>time there was a CERRIE meeting, I think at the minimum</b>  19 <b>of three, perhaps four days, going through the tapes and</b>  20 <b>checking the accuracy of what was said in the minutes,</b>  21 <b>correcting the minutes by means of tracked changes in</b>  22 <b>the Word file and submitting them back to the</b>  23 <b>secretariat. Sometimes, eventually, to see that my</b>  24 <b>amendments had been incorporated, sometimes they had not</b>  25 <b>and in some cases there were quite gross distortions of</b></p> <p style="text-align: center;">Page 98</p>	<p>1 <b>A. Before we go on, I reflected over lunch that there is</b>  2 <b>something I may wish to re-visit about the ECRR.</b>  3 Q. The ECRR?  4 <b>A. Yes.</b>  5 Q. Yes.  6 <b>A. I recall there was an earlier document issued by the</b>  7 <b>ECRR which did have my name in the back of it, along</b>  8 <b>with a great many others, largely environmental</b>  9 <b>organisations.</b>  10 Q. Right.  11 <b>A. I'm not quite sure what status those people were</b>  12 <b>recorded in that list. The point I was making was that</b>  13 <b>by no means am I a scientific member of the ECRR and</b>  14 <b>I know that more recent publications of the ECRR don't</b>  15 <b>contain any such lists. They are composed -- insofar as</b>  16 <b>they list anybody, they have the list of the scientific</b>  17 <b>members.</b>  18 Q. You say you are not a scientific member, but do you hold  19 any sort of membership or association or otherwise with  20 the ECRR?  21 <b>A. None.</b>  22 Q. None.  23 <b>A. It's not really a membership organisation, and in that</b>  24 <b>respect it's very similar to the ICRP where people get</b>  25 <b>listed on publications just because they exchanged</b></p> <p style="text-align: center;">Page 100</p>

<p>1 <b>a couple of letters and some people I've heard express</b></p> <p>2 <b>considerable -- well, some sort of reluctance to be so</b></p> <p>3 <b>identified by ICRP.</b></p> <p>4 MR JUSTICE BLAKE: Let's just focus on you and the ECRR.</p> <p>5 You are not a scientist, you are not a scientific member</p> <p>6 and not a member of it?</p> <p>7 <b>A. No, it has no members, not in a formal sense, my Lord.</b></p> <p>8 MR HEPPINSTALL: Is there -- Mr Bramhall, is there</p> <p>9 any sense --</p> <p>10 MR JUSTICE BLAKE: Is there an informal sense?</p> <p>11 MR HEPPINSTALL: -- any sense in which you've been</p> <p>12 associated with or related to the ECRR?</p> <p>13 <b>A. I've given them money. The Low Level Radiation Campaign</b></p> <p>14 <b>has given them money in the same way that the nuclear</b></p> <p>15 <b>industry helps to support the ICRP --</b></p> <p>16 MR JUSTICE BLAKE: Let's just deal with you.</p> <p>17 MR HEPPINSTALL: So you have given them money, you have said</p> <p>18 that your name came to be on one of their early</p> <p>19 publications.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Anything else?</p> <p>22 <b>A. No.</b></p> <p>23 Q. So we are looking at page 50. You mentioned earlier in</p> <p>24 answer to another of my questions, the second event</p> <p>25 theory and here we have just to orientate yourself on</p> <p style="text-align: center;">Page 101</p>	<p>1 animal experiments in the past that may have</p> <p>2 inadvertently fulfilled second event criteria."</p> <p>3 So you agree, do you, that the committee went so far</p> <p>4 as to actually commission a review by an independent</p> <p>5 consultant?</p> <p>6 <b>A. That is certainly true. It begs the question of whether</b></p> <p>7 <b>he was looking at the right sort of information, or</b></p> <p>8 <b>whether the studies that he did look at actually did</b></p> <p>9 <b>reproduce the second event criteria.</b></p> <p>10 Q. And in the next sentence it said:</p> <p>11 "The author of the review concluded that the</p> <p>12 overwhelming majority of the evidence indicated no such</p> <p>13 enhancement."</p> <p>14 That was the result of the review?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Paragraph 33:</p> <p>17 "Two members objected to the content of the review</p> <p>18 and disagreed with its conclusions."</p> <p>19 The two members were you and Dr Busby?</p> <p>20 <b>A. It's one of those instances where the secretariat has</b></p> <p>21 <b>inferred the amount of support that there was for any</b></p> <p>22 <b>particular contention. I don't remember making any</b></p> <p>23 <b>comment on the matter of the review. I know perfectly</b></p> <p>24 <b>well that Dr Busby had some severe reservations about</b></p> <p>25 <b>the way it had been carried out and the criteria that</b></p> <p style="text-align: center;">Page 103</p>
<p>1 these two pages here, pages 50 and 51, CERRIE</p> <p>2 considering the second event theory. It's right what</p> <p>3 the committee record at paragraph 27, isn't it, that</p> <p>4 that theory was proposed by Dr Busby and we can see as</p> <p>5 the brackets open at the end of that sentence, supported</p> <p>6 by him in several publications, 1995, 1998, Busby and</p> <p>7 Scott(?) 2000?</p> <p>8 <b>A. Yes, I can see that.</b></p> <p>9 Q. You agree, do you, that the committee considered in</p> <p>10 detail the second event theory?</p> <p>11 <b>A. Yes. Not necessarily in the right detail, but in</b></p> <p>12 <b>detail.</b></p> <p>13 MR JUSTICE BLAKE: You may not agree with what conclusions</p> <p>14 they reached upon it, but they considered it.</p> <p>15 <b>A. Yes -- well, I was making the point, my Lord, that some</b></p> <p>16 <b>of the detailed considerations were somewhat off the</b></p> <p>17 <b>point.</b></p> <p>18 MR JUSTICE BLAKE: Perhaps you had better answer the</p> <p>19 question to Mr Heppinstall.</p> <p>20 MR HEPPINSTALL: Well, we can see, can't we, at paragraph 32</p> <p>21 that:</p> <p>22 "The committee went so far as to commission</p> <p>23 a literature review by an independent consultant to</p> <p>24 establish whether experimental support or otherwise</p> <p>25 existed for ...(Reading to the words)... especially from</p> <p style="text-align: center;">Page 102</p>	<p>1 <b>had been applied.</b></p> <p>2 <b>I neither associated myself nor disassociated myself</b></p> <p>3 <b>with his observations. I felt that I had no significant</b></p> <p>4 <b>contribution to make in the committee meeting that that</b></p> <p>5 <b>was considered at, and, as I just said, my support for</b></p> <p>6 <b>his views was inferred and that is why that is what you</b></p> <p>7 <b>see at the commencement of paragraph 33.</b></p> <p>8 MR JUSTICE BLAKE: Can I just clarify your answer so</p> <p>9 I record it.</p> <p>10 Two members have objected. Do you agree at least</p> <p>11 that the two members whoever wrote this was referring to</p> <p>12 was you and Busby or is there someone else --</p> <p>13 <b>A. That has to be inferred. Nobody else was piping up</b></p> <p>14 <b>about the second event theory. It's a highly</b></p> <p>15 <b>specialised topic on which nobody else was really</b></p> <p>16 <b>qualified to comment.</b></p> <p>17 MR JUSTICE BLAKE: So the answer is "Yes, I agree that by</p> <p>18 inference I was being included as the two who objected"?</p> <p>19 <b>A. Yes.</b></p> <p>20 MR JUSTICE BLAKE: Yes? What you are telling me or us today</p> <p>21 and this afternoon is that you weren't really qualified</p> <p>22 to comment upon that?</p> <p>23 <b>A. Yes.</b></p> <p>24 MR HEPPINSTALL: We can sort of see the split because the</p> <p>25 next bit is:</p> <p style="text-align: center;">Page 104</p>

<p>1 "On the other hand, the other members of the 2 committee were supportive of the conclusions of the 3 commission ..."</p> <p>4 So all the other members apart from you and Dr Busby 5 supported the conclusions of the literature review?</p> <p>6 <b>A. By inference, I think, the same way as the reportage has 7 treated Dr Busby and me they've treated the others. 8 Some would have been quite vocal. Others would have 9 stayed completely schtum.</b></p> <p>10 Q. As I understand it this is the report of the committee. 11 Bar you and Dr Busby, and we'll look at your minority 12 report in a moment, the rest of the members of the 13 committee have signed up and agreed this text. So they 14 are composed of the other members. So it's not just 15 an inference, is it? This report is published by people 16 who are saying that they were supportive of the 17 conclusions of the commission review. It's positive 18 support for that review from the other members of the 19 committee, isn't it, it's not just an inference?</p> <p>20 <b>A. Your assertion depends upon the expression "signed up 21 to" and I'm aware of no signing up process.</b></p> <p>22 Q. Well, we'll look at the first bit of the report in 23 a moment and we'll come back to that. 24 At paragraph 34 we have it again: 25 "The view of the committee apart from two members</p> <p style="text-align: center;">Page 105</p>	<p>1 <b>A. By inference, yes. I would sign up to that if we're 2 talking about signatures.</b></p> <p>3 Q. Well, did you or did you not put forward those theories, 4 matters, items, before the committee for consideration?</p> <p>5 <b>A. I did not. Dr Busby did. I would -- I would consider 6 that there is a great deal in -- I don't know exactly 7 what is referred to by the hot -- we've dealt with the 8 second event theory. I'm not exactly sure what is meant 9 here by the hot particle theory.</b></p> <p>10 MR JUSTICE BLAKE: Yes, well, that's an issue. What you are 11 being asked for, or about, is whether you thought that 12 ICRP risk models were very inaccurate by reason of other 13 scientific theories.</p> <p>14 <b>A. Thank you, my Lord. I think the answer, just to cut 15 this short, is yes.</b></p> <p>16 MR JUSTICE BLAKE: Yes.</p> <p>17 MR HEPPINSTALL: Mr Bramhall, to be clear, I accept what you 18 say in your witness statements that you are a layperson, 19 not a scientist. But I am just asking about your lay 20 involvement on this committee, about whether you did X 21 or Y. I am not trying to trip you up by getting you to 22 say something which would imply that you are a scientist 23 or an expert. So it's just your lay involvement in this 24 committee, whether you supported something or agreed 25 with something. Do you understand?</p> <p style="text-align: center;">Page 107</p>
<p>1 was that the available studies to date offered little or 2 no support to the second event theory as propounded by 3 Dr Busby. Instead the available evidence substantially 4 contradicted it."</p> <p>5 So not only did the committee -- let's call them the 6 majority of the committee, all of them apart from you 7 and Dr Busby -- didn't find support, they actually 8 thought there was evidence going the other way 9 contradicting the second event theory, didn't they?</p> <p>10 <b>A. That's what this report, says. My memory of that part 11 of the discussion is not really sufficiently reliable to 12 allow me to comment.</b></p> <p>13 Q. If we just turn to page 53, and perhaps to shorten 14 matters without going through each and every topic that 15 was raised by you and Dr Busby, we can see at 16 paragraph 40 that it says: 17 "On the second event theory, hot particle theory, 18 biphasic response and artificial versus natural 19 radionuclides, two members considered that together 20 these theories meant that current ICRP risk models were 21 very inaccurate and could underestimate the true level 22 of radiation risk by 2 to 3 orders of magnitude or 23 more." 24 Now, those two members were you and Dr Busby, 25 weren't they?</p> <p style="text-align: center;">Page 106</p>	<p>1 <b>A. Yes, I understand, but what I am asking you, if you can 2 understand that my lay involvement just could not amount 3 to a valid scientific opinion on the issue, on these 4 highly specific issues.</b></p> <p>5 Q. We can just finish off that paragraph for balance 6 because you can see that about a third of the committee 7 disagreed with these theories, with the view that the 8 ICRP risk estimates were greatly inaccurate. Do you 9 agree with that?</p> <p>10 <b>A. It's interesting to read but in the absence of any 11 really thoroughgoing discussion on the committee about 12 topic by topic by topic, who agreed with this, who 13 agreed with that, it remains just interesting and I'm 14 not too sure who might have signed up to this, that or 15 the other thing. The point which I've made several 16 times is that the secretariat made up the minutes as 17 they went along and that fed through into the 18 composition of this final report.</b></p> <p>19 Q. About another third also disagreed with the above 20 theories but considered the current radiation risk might 21 still be seriously underestimated in some cases though 22 for different reasons. 23 Do you recall that?</p> <p>24 <b>A. Well, it goes into the same basket as my previous 25 answers.</b></p> <p style="text-align: center;">Page 108</p>

<p>1 Q. Let's just look at the treatment of epidemiology, 74 to 2 75. 3 Paragraph 51: 4 "Cancer rates in coastal and estuarine areas in 5 Great Britain. 6 "Two members requested the committee consider 7 whether there were increased rates of cancer near the 8 Bradwell power station." 9 Now were you party to that request? 10 <b>A. Definitely, and the point is, if I might expand on that,</b> 11 <b>that epidemiology is a simpler matter for a person like</b> 12 <b>me to get his head round than the detail of things like</b> 13 <b>the second event theory and whatever is meant by the hot</b> 14 <b>particle theory.</b> 15 <b>I was associated with several papers on epidemiology</b> 16 <b>together with Dr Busby over the years and one of these</b> 17 <b>was a study of cancer around the Blackwater estuary</b> 18 <b>which is contaminated by radioactive substances pumped</b> 19 <b>out by the Bradwell power station.</b> 20 <b>So it is quite clear to me, looking at the data and</b> 21 <b>looking at the way that the cancer rates vary from</b> 22 <b>inland wards to wards which border the Blackwater</b> 23 <b>estuary that there is an effect. And I also was</b> 24 <b>interested to see the correlation between the</b> 25 <b>concentrations of radioactivity in the mud right up at</b></p> <p style="text-align: center;">Page 109</p>	<p>1 <b>Small Area Health Statistics Unit. They had looked --</b> 2 <b>after we had published our first paper they came along</b> 3 <b>and looked at the same phenomenon and found that there</b> 4 <b>was no effect, no excess of cancer around the estuary,</b> 5 <b>but it turned out that they had made a mistake and once</b> 6 <b>the mistake was corrected the wards that the -- the</b> 7 <b>Local Authority wards that they had missed, once those</b> 8 <b>were reinserted then they came to the same conclusion as</b> 9 <b>we had.</b> 10 <b>So --</b> 11 MR JUSTICE BLAKE: Reading para 52 it appears there was an 12 epidemiology subcommittee. 13 <b>A. That's correct, my Lord.</b> 14 MR JUSTICE BLAKE: Do we know who the members of the 15 subcommittee were? Is it elsewhere in the report? 16 <b>A. I think it might be but I can tell you.</b> 17 MR JUSTICE BLAKE: If you can tell us, that will save 18 checking. 19 <b>A. The chairman was the main man, the self-appointed main</b> 20 <b>man on the secretariat, Ian Failie, Richard Wakeford,</b> 21 <b>Colin Muirhead, myself and Dr Busby.</b> 22 MR JUSTICE BLAKE: Right. Thank you very much. 23 MR HEPPINSTALL: I think it's fair to say, and I think you 24 can find this in the final sentence of paragraph 53, 25 there was disappointment amongst committee members that</p> <p style="text-align: center;">Page 111</p>
<p>1 <b>the inland end of the Blackwater estuary, which is</b> 2 <b>actually 15 miles distant from the outfall from the</b> 3 <b>power station where the highest female breast cancer</b> 4 <b>risks are to be found.</b> 5 Q. And we see halfway through paragraph 51: 6 "The two members themselves have carried out for 7 green audit a preliminary analysis of mortality data in 8 the area for the period 95 to 99." 9 So you and Dr Busby had carried out for green audit 10 some epidemiological work? 11 <b>A. Yes, that's what -- that's the work I was just</b> 12 <b>describing.</b> 13 Q. We see at paragraph 52 that the committee proposed to 14 undertake its own wider study. That was right, wasn't 15 it? 16 <b>A. Yes.</b> 17 Q. But that didn't take place because of some disagreement 18 about the methodology? 19 <b>A. There was a lot of argument about the wards to be</b> 20 <b>included. And without -- before agreement had been</b> 21 <b>reached, the chairman just cancelled the study,</b> 22 <b>certainly without asking me whether he should or could.</b> 23 <b>And as far as I know he didn't consult anybody else.</b> 24 <b>It was quite a fraught business because mistakes had</b> 25 <b>been made both on our side and on the side of SAHSU, the</b></p> <p style="text-align: center;">Page 110</p>	<p>1 this initiative had failed as it had represented 2 an attempt to show that opposing groups could work 3 together to achieve an agreed protocol and joint 4 analyses of epidemiological data. 5 By opposing groups I'm assuming that 6 Professor Wakeford and Professor Muirhead were on one 7 side and you and Dr Busby were on the other? 8 <b>A. Yes, that's fair enough. That's fair enough to say but</b> 9 <b>I've already told you that it wasn't because we couldn't</b> 10 <b>work together. I was quite surprised that we could --</b> 11 <b>well, to find that we could.</b> 12 <b>The failure of that enterprise was not down to the</b> 13 <b>members of the committee; it was a fiat of the chairman.</b> 14 Q. Paragraph 55 on that page: 15 "Some members of the committee strongly criticised 16 the methodology and data used by green audit, members of 17 which had produced many of the unpublished reports and 18 did not accept the validity of the findings of those 19 studies. The methodology of the green audit studies was 20 highly suspect and the results unreliable." 21 The studies have also been heavily criticised by 22 COMARE. 23 So it's right that serious criticisms of the green 24 audit work, including your own work, were made, weren't 25 they?</p> <p style="text-align: center;">Page 112</p>

<p>1 <b>A. Since these criticisms are not specified or even</b>  2 <b>outlined in this report it's impossible to say what</b>  3 <b>might have been wrong. When you get a body like SAHSU</b>  4 <b>actually finding in agreement with what we had found</b>  5 <b>I don't think we can say that they were too unreliable.</b></p> <p>6 Q. Well, in the middle of paragraph 55 we get the main  7 criticism which was that green audit did accept that the  8 cancer mortality data used in early studies of the  9 Bradwell area were in error and these were corrected.  10 That's correct, isn't it?</p> <p>11 <b>A. It is correct but I've already told you that SAHSU had</b>  12 <b>made a similar error and once that was corrected we were</b>  13 <b>in agreement and there was an excess.</b></p> <p>14 Q. It's right, isn't it, at the bottom of that paragraph,  15 a second data set within the original data discrepancy,  16 once that was removed it did not show a significantly  17 raised risk in the group of Welsh coastal communities?  18 So once the erroneous ones were removed --</p> <p>19 <b>A. Hang on a minute. I'm having trouble finding --</b></p> <p>20 Q. Sorry, the final page 75, if you go two sentences up  21 from the bottom of the page.</p> <p>22 <b>A. "A second data set with the original ..."</b>  23 <b>I've got to go back a further sentence.</b></p> <p>24 Q. Take your time.</p> <p>25 MR JUSTICE BLAKE: Where should the witness begin? COMARE?</p> <p style="text-align: center;">Page 113</p>	<p>1 <b>childhood leukaemia -- the excess of childhood leukaemia</b>  2 <b>would have been contributory evidence, contributing to</b>  3 <b>an assertion and eventually people might think a belief</b>  4 <b>that the ICRP risk model has been seriously</b>  5 <b>underestimated, the risk of leukaemia in children who</b>  6 <b>were subjected to the amount of radioactive pollution of</b>  7 <b>the Welsh countryside.</b></p> <p>8 MR JUSTICE BLAKE: But you were one of the two committee  9 members; whether "rely" is the right word or something  10 else, it was you that there was being a reference to?</p> <p>11 <b>A. I would share the concern that that is good evidence for</b>  12 <b>the invalidity of the ICRP.</b></p> <p>13 MR JUSTICE BLAKE: I think you are just being asked  14 a question about the conclusions.</p> <p>15 MR HEPPINSTALL: Let's carry on with that sentence. So it's  16 saying that you and Dr Busby agreed that the first Welsh  17 childhood leukaemia dataset should be set aside for the  18 purpose of CERRIE although they did not accept that  19 these data are necessarily in error, is that right?</p> <p>20 <b>A. I have a vague memory that Dr Busby agreed to set it</b>  21 <b>aside without admitting that it was in error. There</b>  22 <b>were an awful lot of arguments about the reliability of</b>  23 <b>those data.</b></p> <p>24 MR JUSTICE BLAKE: You were neutral on that or you just -</p> <p>25 <b>A. I would not have contributed an opinion.</b></p> <p style="text-align: center;">Page 115</p>
<p>1 MR HEPPINSTALL: "COMARE also concluded that these Welsh  2 data were clearly in error."  3 Then the next sentence.</p> <p>4 <b>A. Yes. I've never really clearly understood from the</b>  5 <b>outset where the discrepancy -- where the alleged</b>  6 <b>discrepancies were alleged to have been. This was not</b>  7 <b>a study on which I collaborated.</b></p> <p>8 Q. Right. So you didn't collaborate on the Welsh coastal  9 study; is that right?</p> <p>10 <b>A. I didn't collaborate in the study. I didn't -- Busby</b>  11 <b>never asked me to collaborate in that. It was quite</b>  12 <b>heavy duty statistics. I did collaborate in obtaining</b>  13 <b>the original data which was released to us by the Welsh</b>  14 <b>Cancer Registry. But I never had it under my control.</b></p> <p>15 Q. That last sentence at the end of page 75 says:  16 "The two committee members who relied upon the green  17 audit studies ..."  18 Pausing there, that was you and Mr Bramhall, wasn't  19 it?</p> <p>20 <b>A. Well, I'm Mr Bramhall.</b></p> <p>21 Q. Sorry, that was Dr Busby and you, Mr Bramhall?</p> <p>22 <b>A. Erm --</b></p> <p>23 Q. Did you rely on them or not?</p> <p>24 <b>A. I quibble with the word "rely" in that context. The</b>  25 <b>contention would have been that the excess of -- this is</b></p> <p style="text-align: center;">Page 114</p>	<p>1 MR JUSTICE BLAKE: Right.</p> <p>2 Can I just clarify, in order just to follow your  3 evidence as we get through it, you've already told us  4 that you, like me, are not a scientist on radiological  5 issues but do you have expertise on epidemiology and  6 statistics and that kind of material?</p> <p>7 <b>A. No, sir.</b></p> <p>8 MR JUSTICE BLAKE: So we are probably both in the same boat.  9 Yes, sorry, I interrupted.</p> <p>10 MR HEPPINSTALL: But without such expertise what were you  11 doing when you were collaborating with Dr Busby?</p> <p>12 <b>A. Tidying up his English quite a lot.</b></p> <p>13 Q. Anything else?</p> <p>14 <b>A. Proof reading, checking that the argument made sense to</b>  15 <b>a layperson.</b></p> <p>16 Q. Did you allow yourself to be named as author of any of  17 these reviews?</p> <p>18 <b>A. Yes, I believe so.</b></p> <p>19 Q. Did you make it clear when you were allowing yourself to  20 be named as author that you didn't have epidemiological  21 or any relevant expertise?</p> <p>22 <b>A. No, why would I?</b></p> <p>23 Q. Did you not think it was important that the reader  24 understands the expertise and skills of the author?</p> <p>25 <b>A. No. It's not as far as I can understand it a convention</b></p> <p style="text-align: center;">Page 116</p>

<p>1 <b>in scientific publications that authors make such</b> 2 <b>disclaimers.</b> 3 Q. One might infer it, might one not, that a person being 4 the author of a publication from, say, an academic 5 institution with a professorial chair had expertise? 6 But you don't think it's important if you know you don't 7 have that expertise you make that clear when you are 8 authoring a publication? 9 <b>A. No.</b> 10 Q. Then just turning over the page to page 76, we see the 11 final sentence of paragraph 55: 12 "On the basis of the second agreed Welsh datasets 13 [this is after the erroneous data is removed] there is 14 little evidence of ...(Reading to the words)... a raised 15 risk of childhood leukaemia near the coast of Wales." 16 So once the error is corrected the conclusion falls 17 away, Mr Bramhall? 18 <b>A. Yes, I'm -- the reason for the long pause is that I'm</b> 19 <b>having trouble disaggregating in my mind the memory of</b> 20 <b>this particular study and the dataset on which it is</b> 21 <b>based and later -- later studies of information from the</b> 22 <b>Welsh Cancer Intelligence and Surveillance Unit which</b> 23 <b>does show very clearly a 12 or more fold risk of</b> 24 <b>childhood leukaemia near the Welsh coast. So I'm going</b> 25 <b>to have to plead the fifth on this one. I can't really</b></p> <p style="text-align: center;">Page 117</p>	<p>1 <b>A. Yes. I have to remind you I have already talked</b> 2 <b>about -- about this, the SAHSU study.</b> 3 Q. And did you accept that there were also errors in this 4 report? 5 <b>A. I already have, yes.</b> 6 Q. Very well. Okay. 7 <b>A. And also errors in the SAHSU report.</b> 8 MR JUSTICE BLAKE: I think Wales, which you were referring 9 to, might be dealt with at points 6 and 7 at 101. 10 MR HEPPINSTALL: Wales follows although I wasn't going to go 11 back through those. 12 MR JUSTICE BLAKE: I was only reading ahead. 13 MR HEPPINSTALL: I wondered if you were recollecting 14 Bradwell. But there we are. 15 <b>A. Well, I clearly do.</b> 16 Q. Can we just turn back to page 78. Just look at 17 paragraph 65. Again, do you recall -- sorry, were you 18 one of the two committee members who considered that 19 epidemiological evidence exists for a materially 20 increased risk of non-cancer effects? 21 <b>A. Yes.</b> 22 Q. Yes. And you pointed to the Sternglass study and the 23 White study, is that right? 24 <b>A. I don't recall mentioning Sternglass, but I certainly am</b> 25 <b>familiar with Robin White's work on mortality.</b></p> <p style="text-align: center;">Page 119</p>
<p>1 <b>remember whether this one did show that. Sorry, is that</b> 2 <b>what you are asking me? Did I agree?</b> 3 Q. Perhaps I can try to assist you because if you turn to 4 page 100 I think what you might be doing is confusing 5 the Welsh coast studies with the Bradwell study. If you 6 turn to page 1 -- 7 <b>A. Can I stop you there. I'm not confused about the</b> 8 <b>right-hand side of the country and the left-hand side.</b> 9 Q. It's right the committee were so concerned to get to the 10 bottom of this issue that they in fact produced 11 an annex, annex 4C, which starts at page 100? 12 <b>A. Yes.</b> 13 Q. We've actually been looking at the conclusions which 14 summarise this annex but we can look at the detail if 15 you wish. At page 100 it records in fact you were 16 author of one green audit study about Bradwell, we can 17 see at the bottom of page 100? 18 <b>A. Yes.</b> 19 Q. And that SAHSU, who we see defined there, have produced 20 reports drawing conflicting conclusions about death and 21 cancer, particularly breast and prostate cancer, around 22 Bradwell nuclear power station in Essex. 23 Do you remember that? 24 <b>A. Yes.</b> 25 Q. Both groups had used ONS mortality data?</p> <p style="text-align: center;">Page 118</p>	<p>1 Q. You also, if we follow through the words, about halfway 2 down it also records that: 3 "Two committee members also referred to other 4 studies of the non-cancer effects of fallout from 5 weapons testing in Chernobyl which they believe 6 supported the existence of such effects following low 7 level internal exposure." 8 Do you remember that? 9 <b>A. Not in detail.</b> 10 Q. It records that: 11 "Insufficient time was available to the committee to 12 examine fully these studies ... one study conducted in 13 the vicinity of the ...(Reading to the words)... 14 considered in detail." 15 <b>A. I am sorry, you are reading a little bit too fast.</b> 16 Q. I apologise, Mr Bramhall. 17 MR JUSTICE BLAKE: Do you want to read that passage, "The 18 two committee members" to the end? (Pause) 19 <b>A. Right, I have read it, so what's the question again,</b> 20 <b>please?</b> 21 MR HEPPINSTALL: Well, do you remember putting forward the 22 reports about non-cancer effects of fallout from weapons 23 testing in Chernobyl? 24 <b>A. I do not, I did not. Dr Busby would certainly have</b> 25 <b>included these -- these effects in the substantial</b></p> <p style="text-align: center;">Page 120</p>

<p>1 <b>amount of paperwork which he submitted to the committee</b></p> <p>2 <b>and I would have -- I would have and probably did</b></p> <p>3 <b>support him on putting that forward because I'm aware of</b></p> <p>4 <b>an enormous number of studies from Russia and the former</b></p> <p>5 <b>Soviet Union states which do show such effects.</b></p> <p>6 Q. Is it right that notwithstanding that it's recorded that</p> <p>7 there was insufficient time, when one study was examined</p> <p>8 -- this was the Petrosinka(?) study -- it was found to</p> <p>9 provide only weak support for the views that you and</p> <p>10 Dr Busby had expressed?</p> <p>11 <b>A. And the question is?</b></p> <p>12 Q. Was that right?</p> <p>13 <b>A. Was what right?</b></p> <p>14 Q. That in fact the committee found that one of the reports</p> <p>15 only provided weak support for your views?</p> <p>16 <b>A. Yes, quite likely.</b></p> <p>17 Q. Do you accept --</p> <p>18 <b>A. I would point out that, you know, quite a number of</b></p> <p>19 <b>these statements do include little caveats like "provide</b></p> <p>20 <b>only weak support". I would like to point out that the</b></p> <p>21 <b>ICRP risk model predicts no effects at the kind of doses</b></p> <p>22 <b>we are dealing with. If there is any kind of evidence</b></p> <p>23 <b>that there was a significant, even though only weak, you</b></p> <p>24 <b>can have the two things together. Something can be</b></p> <p>25 <b>a small effect but it can be significant. It depends</b></p> <p style="text-align: center;">Page 121</p>	<p>1 the matter."</p> <p>2 We have seen, haven't we, Mr Bramhall, that where</p> <p>3 there was disagreement, particularly with you and</p> <p>4 Dr Busby, it is described, as are the reasons for it,</p> <p>5 and it's all set out in the report?</p> <p>6 <b>A. The remit as you've just read it, "where consensus not</b></p> <p>7 <b>possible, describe, give the reasons and identify", that</b></p> <p>8 <b>remit was also part of what Michael Meacher specified</b></p> <p>9 <b>when he set up the committee.</b></p> <p>10 <b>I would agree that the committee aimed to reach</b></p> <p>11 <b>consensus but I would not agree that the committee</b></p> <p>12 <b>described the disagreement -- well, they may have</b></p> <p>13 <b>described the disagreement. They don't really go into</b></p> <p>14 <b>the details of why there is disagreement and they</b></p> <p>15 <b>signally fail to identify research to clarify and</b></p> <p>16 <b>resolve. There's a very massive failure there.</b></p> <p>17 Q. And we --</p> <p>18 <b>A. I think I want to continue this reply.</b></p> <p>19 Q. Please do.</p> <p>20 <b>A. The reason I'm replying in this way is because when you</b></p> <p>21 <b>read the report you can see that the scientific</b></p> <p>22 <b>arguments adduced are of the nature, some said this and</b></p> <p>23 <b>some said that. Some put some forward some argument and</b></p> <p>24 <b>some found evidence, some found -- yes, some found</b></p> <p>25 <b>evidence to negate it. But there was very, very little</b></p> <p style="text-align: center;">Page 123</p>
<p>1 <b>upon the statistical strength of the study. Any such</b></p> <p>2 <b>evidence supports our contention that there is a problem</b></p> <p>3 <b>with the ICRP way of estimating risk.</b></p> <p>4 Q. Don't you have to take it a step further like the</p> <p>5 committee did? But you have to take it a little step</p> <p>6 further, don't you, Mr Bramhall like the committee did</p> <p>7 and you can see that in the final sentence:</p> <p>8 "Therefore [so because of the weak support] the rest</p> <p>9 of the committee does not accept that there is</p> <p>10 sufficient evidence to support this interpretation of</p> <p>11 the infant mortality data."</p> <p>12 <b>A. I would say it was an illogical conclusion, for the</b></p> <p>13 <b>reasons that I've just given you.</b></p> <p>14 Q. From the parts of the report that we have examined it's</p> <p>15 correct, isn't it, that the committee gave consideration</p> <p>16 to the views of you and Dr Busby?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Can we turn to page 4, please, of the report. We see at</p> <p>19 the bottom there that the committee had an aim of</p> <p>20 achieving consensus, didn't it?</p> <p>21 <b>A. That was the remit laid upon it by Michael Meacher.</b></p> <p>22 Q. In the next sentence it says:</p> <p>23 "Where consensus was not possible the committee</p> <p>24 aimed to describe the disagreement, the reasons for it</p> <p>25 and to identify research to clarify and possibly resolve</p> <p style="text-align: center;">Page 122</p>	<p>1 <b>drilling into the reasons why one study might find</b></p> <p>2 <b>a positive effect and another study might not. They</b></p> <p>3 <b>seem to have accepted that the existence of the study</b></p> <p>4 <b>which negated our hypothesis was enough to destroy it.</b></p> <p>5 <b>But you have to look a bit harder at the nature of the</b></p> <p>6 <b>disagreements. The reason -- you see a large amount of</b></p> <p>7 <b>this argument was about whether biological mechanisms</b></p> <p>8 <b>exist that could possibly account for why cancer around</b></p> <p>9 <b>Bradwell could be double the rate of a neighbouring</b></p> <p>10 <b>estuary with a very similar town, where the only</b></p> <p>11 <b>difference was one was exposed to radioactivity and the</b></p> <p>12 <b>other was not.</b></p> <p>13 Q. You see the outcome of this failure to achieve consensus</p> <p>14 at page 5, part 1.4 of the report, where we see that the</p> <p>15 report was drafted by all members with assistance from</p> <p>16 the secretariat.</p> <p>17 <b>A. Yes, that's not true.</b></p> <p>18 Q. And then we see that it records that:</p> <p>19 "Two members argued that the dissonance between the</p> <p>20 committee's views and their own was so great that</p> <p>21 attempting to express all views within a unified</p> <p>22 narrative would misrepresent their views."</p> <p>23 Again, to be clear, those two members were you and</p> <p>24 Dr Busby?</p> <p>25 <b>A. Too right.</b></p> <p style="text-align: center;">Page 124</p>

1 Q. And cutting through it we can see that there was  
 2 an attempt to agree that a dissenting statement could be  
 3 issued, but we see halfway down paragraph 18:  
 4 "Members were concerned that they contained  
 5 factually incorrect statements and assertions of  
 6 a personal nature about the parties."  
 7 Therefore it's right, isn't it, that the committee  
 8 decided not to issue a dissenting view?  
 9 **A. It's right to say that they decided not to issue the  
 10 dissenting review but everything preceding that is very,  
 11 very questionable. The drafting of this report did not  
 12 include any input from me and Busby, although we did  
 13 submit voluminous amendments, for the reasons that I've  
 14 already referred to where it's just not enough  
 15 scientific literature to say, well (a) found nothing and  
 16 we found something without drilling into the reasons and  
 17 the dissonances of the incomparability in many cases of  
 18 the two types of report that were being adduced in  
 19 evidence.**  
 20 **When somebody is producing a narrative which does  
 21 not capture the nuances of the scientific complexity of  
 22 the arguments it's very difficult to supply amendments  
 23 which correct that failure, and eventually it became  
 24 impossible to do, to get the two -- our report, or what  
 25 you might call our strand of the report and the**

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1 secretariat's strand of the report, it was impossible to  
 2 get them to map to each other.  
 3 So we began to produce material which we'd thought  
 4 would fit somehow into the final report, and two  
 5 separate meetings of the full meetings, I think  
 6 everybody was present -- this would have been either the  
 7 13th and 14th meeting or the 14th and the 15th -- voted  
 8 with all the members present bar one voting to include  
 9 the material which we had by those times submitted. The  
 10 one dissenting vote was that of Dr Wakeford, the BNFL  
 11 nominee in both cases. But in both cases it was all  
 12 those present against one.  
 13 At the final meeting the chair tabled the -- let me  
 14 see what this says. The committee sought legal advice.  
 15 This came along, it was practically the last item of  
 16 business in the last meeting. He provided two pieces of  
 17 paper from unnamed individuals, he described them as  
 18 departmental legal advisers or some such expression, and  
 19 they made quite threatening noises which are reasonably  
 20 well captured here: "responsible for negligent  
 21 misstatements of fact or potentially libellous  
 22 statements". The word --  
 23 MR JUSTICE BLAKE: Can I just interrupt you? This is not  
 24 a paper that is published by the House of Commons, is  
 25 it?

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1 **A. I would doubt it. I'm not aware of it being published  
 2 anywhere.**  
 3 MR JUSTICE BLAKE: No, I've looked at the front. It's just  
 4 that you are free from libel if it is by the House of  
 5 Commons. I happen to know having once drafted a report  
 6 and --  
 7 MR HEPPINSTALL: It wouldn't have Article 9 bill of rights  
 8 protection on it.  
 9 **A. I'm sorry, the substance of that part passed me by  
 10 altogether.**  
 11 MR JUSTICE BLAKE: Don't worry. Basically I think if it's  
 12 not published by Parliament these reports are not  
 13 covered by absolute privilege and so defamation is  
 14 a potential threat for anyone writing these reports.  
 15 **A. I'm grateful for that clarification, my Lord, but the  
 16 point is that noises had been made previously to  
 17 potentially libellous statements and we had asked "What  
 18 exactly is it you are objecting to?" and we never had  
 19 a reply. At the last meeting all this came up again  
 20 because these legal opinions were specifying libellous  
 21 or potentially libellous statements and negligent  
 22 statements of fact. I asked again what was meant, was  
 23 there anything that we could change or remove that would  
 24 satisfy the committee? And there was no reply. The  
 25 chairman said, "Well, let's move on." I can remember**

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1 **this quite clearly. I said to him, "No Dudley, let's  
 2 not move on because we've been here so many times and  
 3 you've never given us anything in detail. Please can  
 4 you tell me what you are objecting to?" He attempted  
 5 three or four extracts and in every case there was  
 6 nothing that was untrue.**  
 7 **So the fact is that there never was any libel and  
 8 there were no potentially misleading statements of fact.  
 9 Nothing -- nothing that they could put their finger on.  
 10 And I have taken legal advice on this and that legal  
 11 advice was that there was no libel, there could be no  
 12 libel.**  
 13 MR JUSTICE BLAKE: You can make a comment which is  
 14 potentially libellous and then you can justify its truth  
 15 but that may only result after quite extensive  
 16 proceedings. Anyway, we'd better not get distracted.  
 17 MR HEPPINSTALL: Can we look at paragraph 20 where it says  
 18 in the middle:  
 19 "In addition, the committee's members and scientists  
 20 had a professional duty not to be party to the  
 21 publication of incorrect statements of fact."  
 22 Now presumably you agree with that, Mr Bramhall?  
 23 **A. Yes, I would agree with it but there weren't any.**  
 24 Q. Well, let's just look back at an example. Page 25,  
 25 paragraph 50, we looked at it earlier, the ECCR

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<p>1 recommendations, and we remind ourselves of that last 2 sentence: 3 "The majority of members were not persuaded of the 4 scientific merit or validity of the ECRR approach on 5 this matter." 6 So, for example, it would be unsurprising, wouldn't 7 it, that the majority of the committee would not wish to 8 give any credence to ECRR in their report because they 9 didn't think it had any scientific merit or validity, so 10 consistent with that duty not to be party to the 11 publication of incorrect statements you can understand 12 why they wouldn't want a report that gave any credence 13 to ECRR, would they? 14 <b>A. If they had considered it, but as we discussed before 15 lunch I am not aware that it ever came onto the agenda. 16 I'm pretty sure -- I don't see how it could have. 17 I mean, it is such -- such heavy duty brain cell 18 shifting stuff to get your head around exactly how these 19 weighting factors were. I would have remembered such 20 a discussion; there wasn't any.</b> 21 Q. Can we -- 22 <b>A. In fact the IRSM which has reviewed the ECRR 23 recommendations has given a considerable amount of 24 support to that approach. So you would have a job to 25 persuade any court that there was misstatement of fact.</b></p> <p style="text-align: center;">Page 129</p>	<p>1 MR JUSTICE BLAKE: Well, adding to my reading list is 2 probably not what I set out to do but if I needed to 3 would I find COMARE in the material? Perhaps you can 4 think about that and just let me know. 5 MR HEPPINSTALL: We can let you know what we have. 6 MR JUSTICE BLAKE: And you can give me the references. 7 MR HEPPINSTALL: You will see that what happened was that 8 green audit and Dr Busby would produce a report about 9 Bradwell or the Welsh coast and COMARE would respond and 10 it's those responses that are referred to. 11 MR JUSTICE BLAKE: They seem to get picked up in this 12 report, so to make sense of the report one might need 13 to -- depending on one's enthusiasm for the topic. 14 I don't want to introduce more material in if it's 15 controversial but it's there in the bundle. 16 Right, where are we going now? 17 MR HEPPINSTALL: SB10, tab 162. 18 MR JUSTICE BLAKE: Yes. 19 MR HEPPINSTALL: Now, I think this is a partial set of 20 extracts from what is entitled the CERRIE minority 21 report. Is that right, Mr Bramhall? 22 <b>A. I don't know if it's partial but I've got the full monty 23 here.</b> 24 Q. I have the full one too somewhere but we have what we 25 need in here, so that is fine.</p> <p style="text-align: center;">Page 131</p>
<p>1 Q. You agree that in the end the committee refused to 2 authorise the issuing of a minority report or 3 a dissenting statement? 4 <b>A. Yes, and I can even tell you who voted and how.</b> 5 Q. Can you now turn to bundle SB10. I think it's the other 6 one out there. 7 <b>A. Are we finished with this?</b> 8 Q. You can put that one away. 9 MR JUSTICE BLAKE: Just before we do that, clearly this is 10 a report we'll need to re-read to ourselves or some of 11 us will. I notice that in some of the questions you've 12 asked there are references to COMARE documentation. 13 Does the keen student learn from the index whether those 14 reports are available in the other materials that we 15 have? 16 MR HEPPINSTALL: I think in the SB bundles we've spared you. 17 MR JUSTICE BLAKE: Yes. 18 MR HEPPINSTALL: But there are some COMARE documents in the 19 FTT bundles. I'm not sure all of them are there. 20 MR JUSTICE BLAKE: I'm not necessarily saying that every 21 keen student will want to pursue it -- 22 MR HEPPINSTALL: The reason we can provide quite a lot of 23 them is they were put to Dr Busby before the 24 Upper Tribunal and therefore we have a library of COMARE 25 documents if you wish to see them.</p> <p style="text-align: center;">Page 130</p>	<p>1 <b>A. Which would be easier for me to use, this or --</b> 2 Q. It doesn't matter, the page numbers will be the same. 3 The first question, Mr Bramhall, is that this title, 4 "Minority report of the UK's Department of Health, 5 Department of Environment committee examining radiation 6 risks or internal emitters" is inaccurate, isn't it, 7 because as we've just seen the committee did not release 8 or authorise a minority report, did it? 9 <b>A. But it is a minority report.</b> 10 MR JUSTICE BLAKE: It may be a report by members who are in 11 a minority of the committee but it wasn't a minority 12 report of the committee as a whole, is that right? 13 MR HEPPINSTALL: Yes. 14 <b>A. Are you asking me, my Lord?</b> 15 MR HEPPINSTALL: That's right, isn't it, Mr Bramhall? 16 <b>A. What is?</b> 17 Q. That the committee did not issue or authorise to be 18 issued in its name a minority report? 19 <b>A. It voted twice to include it and then --</b> 20 MR JUSTICE BLAKE: We've just read it. They didn't issue 21 it. I am anxious that we are now running out of nearly 22 the time we've given for your evidence and we haven't 23 really looked at the issues. That's right, isn't it, 24 the committee, for good reason or bad, didn't approve to 25 issue minority reports and yet this document has the</p> <p style="text-align: center;">Page 132</p>

<p>1 title we have? That's the point you are being asked to 2 comment on.</p> <p>3 <b>A. That is literally true.</b></p> <p>4 MR JUSTICE BLAKE: Yes, right.</p> <p>5 MR HEPPINSTALL: Do you think you should have told the 6 audience reading this report what the position was by 7 properly describing it?</p> <p>8 <b>A. It didn't occur to me. You are saying, do I, with 9 hindsight. I -- no, I don't think anybody is materially 10 going to be misled by this form of words, or would have 11 taken any different impression if we had made it reflect 12 what you are wanting it to say.</b></p> <p>13 MR JUSTICE BLAKE: Let just get this straight. Do you agree 14 that there is a difference between a minority report of 15 the committee of the Department of Health or Environment 16 and a report by members of a committee that were in the 17 minority? You agree there's a difference?</p> <p>18 <b>A. There is a difference, my Lord.</b></p> <p>19 MR JUSTICE BLAKE: Yes, right. As I understand it, although 20 I am absorbing this information as we go along, what 21 we're about to be looking into is a report from minority 22 members but it's described as a report of the minority 23 of the committee. It's said it's the minority report of 24 the UK Department of Health, Department of environment, 25 DEFRA, et cetera, yes?</p> <p style="text-align: center;">Page 133</p>	<p>1 Q. Do you think it would have been important to have made 2 that clear in the report that it was self-published?</p> <p>3 <b>A. I don't think anyone would have materially been misled 4 by its omission, so --</b></p> <p>5 Q. Was that press just set up for the purposes of 6 publishing this report?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Mr Bramhall, we can leave the minority report. I am 9 going to ask you some questions about one final 10 document.</p> <p>11 There's a loose document, which we can also hand up 12 to the Tribunal and to the parties, although for 13 everybody's reference this is taken from B8/38. These 14 are one of the things we've reproduced to save you 15 reaching for the bundle (Handed). Hopefully you'll 16 find it loose on your desk.</p> <p>17 <b>A. Yes, this thing from Wakeford.</b></p> <p>18 Q. Yes.</p> <p>19 MR JUSTICE BLAKE: Yes. Is there a good place for us to 20 slot this in?</p> <p>21 MR HEPPINSTALL: I was wondering if I could put it in 22 cross-examination material and maybe we should make you 23 a new bundle.</p> <p>24 MR JUSTICE BLAKE: Should we put it behind this witness's 25 witness statement? Is it directed to this witness or is</p> <p style="text-align: center;">Page 135</p>
<p>1 <b>A. What exactly is the question, my Lord?</b></p> <p>2 MR JUSTICE BLAKE: Well, is that an inaccurate statement?</p> <p>3 <b>A. Not materially.</b></p> <p>4 MR JUSTICE BLAKE: Inaccurate but not materially, yes?</p> <p>5 <b>A. Yes.</b></p> <p>6 MR JUSTICE BLAKE: Right.</p> <p>7 MR HEPPINSTALL: Can you just turn forward say four pages. 8 They are not numbered, unfortunately, but we get to 9 a page entitled "Copyright". Now, at the bottom of that 10 page it says: 11 "Further copies of this report and details of 12 exemptions from the copyright may be obtained from the 13 administrator LLRC ..." 14 Then we have an address which is also your address 15 at the top of the witness statement.</p> <p>16 <b>A. That is true.</b></p> <p>17 Q. Was the administrator you?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Is it right to describe this report as self-published?</p> <p>20 <b>A. I wouldn't disagree with such an assertion.</b></p> <p>21 Q. The Sosiumi press, if that's the right pronunciation?</p> <p>22 <b>A. It should be pronounced more "Sosiumi".</b></p> <p>23 Q. But that press in Aberystwyth is that owned or 24 controlled by any of the authors?</p> <p>25 <b>A. It's controlled by me.</b></p> <p style="text-align: center;">Page 134</p>	<p>1 it a more general --</p> <p>2 MR HEPPINSTALL: It would be just this witness. As long as 3 we all remember where we put it.</p> <p>4 MR JUSTICE BLAKE: That's the point. If we agree the ground 5 rules when we start so we all know where to find it.</p> <p>6 MR HEPPINSTALL: Dr Raynor is indicating that she would like 7 a new file. No. If we put this behind the witness' 8 statement at 2.13 in SB1. So if we put it behind there.</p> <p>9 MR JUSTICE BLAKE: Yes, it would be helpful, can I say at 10 the outset, that if anyone in the course of the next 11 three weeks wants to put up additional documents if they 12 can be hole-punched so they can be slotted in -- it 13 wasn't a criticism. It was simply to commend your 14 team's foresight so others can follow your example.</p> <p>15 MR HEPPINSTALL: I am obviously far too sensitive.</p> <p>16 MR JUSTICE BLAKE: I appreciate there may be some sensitive 17 issues but this is helpful because otherwise when you 18 have this material things can get lost so we need to 19 know where to put it.</p> <p>20 MR HEPPINSTALL: I've marked mine B8/38, just so you know 21 its origin.</p> <p>22 MR JUSTICE BLAKE: Yes, thank you.</p> <p>23 MR HEPPINSTALL: Mr Bramhall, this is an editorial piece 24 from the Journal of Radiological Protection, authored by 25 Professor Wakeford who was then the editor of that</p> <p style="text-align: center;">Page 136</p>

1 journal; is that right?  
 2 **A. Well, it's certainly authored by Richard Wakeford in his**  
 3 **distinctive rebarbative style. I don't know what his**  
 4 **current status vis a vis the JRP is.**  
 5 Q. He has authored it editorially. He was editor at the  
 6 time, do you accept that?  
 7 **A. Yes, but you also asked me about at that time. I don't**  
 8 **know quite what the implication is. Excuse me, I am**  
 9 **being nit-picky.**  
 10 Q. Not at all.  
 11 MR JUSTICE BLAKE: Do we have the date of this? No, we have  
 12 the date it was downloaded.  
 13 MR HEPPINSTALL: Frontispiece is 2004, Journal of  
 14 Radiological Protection 24/337. He has entitled it  
 15 "Reflections on CERRIE" and we know he was a member of  
 16 CERRIE, don't we?  
 17 **A. Yes.**  
 18 Q. What I would like to ask you some questions about, and  
 19 you may want to read the paragraph, if you turn to  
 20 page 339 there's a paragraph that starts "It became  
 21 clear to me" and ends "All this, however, has very  
 22 little to do with the review of the scientific  
 23 evidence". Perhaps you would like to refresh your  
 24 memory by reading that paragraph to yourself.  
 25 (Pause)

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1 **A. I have read it.**  
 2 Q. Have you finished?  
 3 It's right, isn't it, Mr Bramhall, that you were  
 4 always going to publish a minority report, weren't you?  
 5 **A. No. It was a -- it was very disappointing to me. No,**  
 6 **I'll go back. It's actually quite encouraging to both**  
 7 **of us that we had been supported by almost the entire**  
 8 **committee at two separate meetings voting in favour of**  
 9 **the inclusion of the dissenting material. It's what we**  
 10 **wanted from the outset and that's what we wanted all**  
 11 **along. We wanted, where you couldn't -- where it wasn't**  
 12 **possible to make a single unified text we were prepared**  
 13 **to have a two column text in which you would address the**  
 14 **same issues side-by-side, so that we weren't constrained**  
 15 **by the sort of grammatical drafting constraints of**  
 16 **having to include two points of view in one sentence or**  
 17 **one paragraph. You have two parallel columns where you**  
 18 **express two views and then people can read one and then**  
 19 **read the other.**  
 20 That was the ideal and it would have been included  
 21 in the majority report and it would have had  
 22 considerable additional weight.  
 23 I mean, having to publish a self-published minority  
 24 report is a matter of last resort. It's not what one  
 25 wants to do. The whole point of Meacher setting up a

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1 **scientific advisory committee -- which is actually what**  
 2 **he wanted I might add in parentheses. He set it up as**  
 3 **a scientific advisory committee and the first thing the**  
 4 **secretariat did was to downgrade it to a consultative**  
 5 **exercise and it took Meacher -- it took him so much time**  
 6 **that three meetings elapsed before we were finally**  
 7 **recognised and announced ourselves as a committee, as**  
 8 **the committee on radiation risk of internal emitters**  
 9 **rather than a consultative exercise. Sorry for that**  
 10 **long digression.**  
 11 **This assertion of Wakeford that we planned to be**  
 12 **forced into writing a minority report is absolutely**  
 13 **ridiculous. Absolutely ridiculous. We wanted the kudos**  
 14 **of being in the majority report.**  
 15 Q. Even if the majority report described things like the  
 16 ECRR as lacking scientific merit and validity?  
 17 **A. If we had been in the majority report our column could**  
 18 **have given the other side of that view and we could have**  
 19 **quoted and cited the IRSN report which says that the**  
 20 **concerns of the ECRR are entirely justifiable.**  
 21 Q. It's true we've looked at examples of where the  
 22 committee fairly sets out your views, the evidence that  
 23 you put forward for it, analyses it, even pays for  
 24 reviews and separate annexes, but then concludes that it  
 25 can't be put forward as scientifically valid?

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1 **A. I take issue with your use of the word "fairly". The**  
 2 **majority report very slightly treats the scientific**  
 3 **issues, quite unfairly, and the conclusions that are**  
 4 **drawn are either more equivocal than you suggest, or are**  
 5 **not supportable by the evidence that we discussed --**  
 6 **evidence that was not reported.**  
 7 Q. At the beginning you mentioned that the committee was  
 8 made up of three strands, if you like: the NRPB, the  
 9 Government body, the National Radiological Protection  
 10 Board, now Public Health England; the representative of  
 11 the nuclear industry, Professor Wakeford; then  
 12 yourselves and maybe with the Green Party; and then the  
 13 third strand were the sort of independent scientists --  
 14 **A. There was no Green Party representation, Greenpeace.**  
 15 Q. Greenpeace, sorry. And then the third strand,  
 16 importantly, were the independent scientists that you  
 17 mention?  
 18 **A. Yes. Maybe I'd better just take you back to that**  
 19 **response of mine. That was what I understood by**  
 20 **an oppositional committee with the three corners, the**  
 21 **three sides. I think maybe that that model only ever**  
 22 **existed in my head but that was what we were aiming for.**  
 23 Q. So the Minister's aim of having theories such as  
 24 Dr Busby's examined by such a committee, was that not  
 25 achieved by those independent members being amongst the

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1 people who reviewed the theories and concluded that they  
 2 were not scientifically valid?  
 3 **A. Manifestly not.**  
 4 Q. Well, why not, Mr Bramhall? They reviewed them, they  
 5 analysed them, they found to be to be without scientific  
 6 validity. Do you say "manifestly not" because you just  
 7 wanted it to be the other way around?  
 8 **A. It was manifestly not achieved. I would say the most**  
 9 **that we could have hoped to have achieved in that whole**  
 10 **process was that we would get the two columns that I've**  
 11 **outlined, get the some thought this and some thought**  
 12 **that into one column, with the minority side -- I am**  
 13 **saying according to a minority site because that's what**  
 14 **it turned out to be, but with the two dissenting sides**  
 15 **explaining their scientific reasons clearly, which does**  
 16 **not happen in the majority report. It would have been**  
 17 **an agreed report. We were aiming that from the**  
 18 **beginning, that it would be agreed. But the nature of**  
 19 **the control of the reporting process and the**  
 20 **minute-taking process was so great and so tendentious**  
 21 **that it became unachievable.**  
 22 Q. Isn't the truth that you published the minority report  
 23 because you could not accept the scientific criticisms  
 24 made of Dr Busby's theories by the majority of the  
 25 committee?

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1 **A. If there had been scientific criticisms and if they were**  
 2 **properly scientific and explained the reasons for the**  
 3 **dissonance then I could have accepted that. Honestly**  
 4 **I have been doing this role, this unpaid job for**  
 5 **a quarter of a century and I really would rather be**  
 6 **doing something else. If somebody could persuade me**  
 7 **that there was not a case to answer I would happily**  
 8 **retire and sort out my garden but I get stuck into this**  
 9 **because there is such a manifest injustice going on**  
 10 **where the ICRP risk model, which is founded on an**  
 11 **absorbed dose which is plainly an invalid quantity for**  
 12 **certain types of exposure --**  
 13 MR JUSTICE BLAKE: I've got that but I will stop you there  
 14 as you are not a scientist. I am afraid we are going to  
 15 have to hear from scientists upon that proposition.  
 16 Let's focus upon what you can help us with, which is the  
 17 history of the report rather than something else.  
 18 **A. I apologise for the digression, my Lord.**  
 19 MR HEPPINSTALL: Isn't the appropriate thing to do,  
 20 Mr Bramhall, to avoid misleading the public not to  
 21 accept the criticisms made by true experts and walk away  
 22 from the process and not publish a misleading minority  
 23 report?  
 24 **A. In what sense is it misleading? Oh, you mean about this**  
 25 **publication status?**

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1 Q. Not just that. It is putting into the public domain  
 2 theories that the majority of the committee found were  
 3 not scientifically valid, were riddled with  
 4 epidemiological error, were things that would be  
 5 misleading and inaccurate if they were given any  
 6 credence in the majority report?  
 7 **A. Exactly the same criticisms can be levelled at the**  
 8 **majority report.**  
 9 MR HEPPINSTALL: I have no further questions, my Lord.  
 10 MR JUSTICE BLAKE: Thank you. Yes?  
 11 Re-examination by DR BUSBY  
 12 DR BUSBY: If I may I'd like to start at the end and work  
 13 backwards --  
 14 MR JUSTICE BLAKE: Can I just ask, before we get underway  
 15 with this, roughly how long do you think you will be  
 16 with this witness?  
 17 DR BUSBY: 15 minutes.  
 18 MR JUSTICE BLAKE: If we stick to that then we won't be  
 19 injuring the health of others.  
 20 DR BUSBY: It may be less it depends on the elaboration of  
 21 Mr Bramhall's answers.  
 22 Just now Mr Heppinstall has been raising this issue  
 23 of the exclusion of the minority report and can I ask  
 24 you -- I hope I'm allowed to ask you -- how you think  
 25 issues can be raised that oppose the mainstream if

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1 a committee comprising the current model has a veto on  
 2 the inclusion of evidence, if that makes sense to you?  
 3 **A. It makes sense but I think the answer is implicit in the**  
 4 **question. You have to do what we did.**  
 5 Q. I think that's my point. I was just asking you if you  
 6 might agree with that.  
 7 **A. I just wanted to be clear.**  
 8 Q. And you do.  
 9 Let's now go to the Wakeford article which is the  
 10 one that has just recently been produced from the  
 11 Institute of Science where Professor Wakeford --  
 12 Dr Wakeford as he was then -- goes on about the  
 13 proceedings of the committee.  
 14 Now, much has been said about bias in expert reports  
 15 in these hearings and earlier ones. So do you believe  
 16 from your experience of Richard Wakeford and the  
 17 committee that he was unbiased given that his lifetime  
 18 work was for British Nuclear Fuels?  
 19 **A. No, I think he was very clearly biased. He was on the**  
 20 **committee in order to be biased.**  
 21 Q. And so therefore what weight can we put on this  
 22 editorial that Mr Heppinstall has taken you to by what  
 23 we might call the main defendant of the nuclear  
 24 industry?  
 25 **A. You have to put the weight on it that it is written by**

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<p>1 <b>a proponent of the nuclear industry and published in</b>  2 <b>a journal which routinely publishes papers favourable to</b>  3 <b>the nuclear industry.</b>  4 Q. We've heard from you earlier about how you said that the  5 IRSN report, which was written following ECRR 2003, you  6 said that it entirely justified the concerns that ECRR  7 raised over the problems associated with the ICRP risk  8 model with regard to internal radionuclides. I just  9 wondered if you could say who the IRSN is and why  10 anybody should listen to what they say?  11 <b>A. Because they are the French equivalent of the National</b>  12 <b>Radiological Protection Board.</b>  13 MR JUSTICE BLAKE: Do we have that report in the materials?  14 DR BUSBY: I'm not sure. I think we may have it in the  15 Upper Tier. I think it was produced in the Upper Tier.  16 MR JUSTICE BLAKE: The same question as to Mr Heppinstall,  17 if you can -- if it's somewhere in there, if you can  18 cross-refer, then if we need to look it up we know where  19 to go.  20 DR BUSBY: If we can't, can we dig it out and provide it?  21 MR JUSTICE BLAKE: If you two agree it. I am loath -- I am  22 loath to add to the materials, but if these are  23 important issues --  24 DR BUSBY: This thing appeared --  25 MR JUSTICE BLAKE: Yes, yes, but that's cross-examination.</p> <p style="text-align: center;">Page 145</p>	<p>1 <b>"minority report". He only wanted one report.</b>  2 Q. Sorry. What I meant by saying that was to ask you if he  3 meant that both sides of the issue, or if there were  4 some oppositional evidence or some evidence which showed  5 that the ICRP system might be incorrect, he wanted that  6 in that the report that was produced by CERRIE.  7 <b>A. Yes, he certainly, did and it's in the preface of both</b>  8 <b>the majority and the minority reports.</b>  9 Q. Right.  10 Now, on another matter here -- can I take you to --  11 and this goes to the ICRP model again -- can I take you  12 to page 13 of the CERRIE report, part 2, section 21,  13 introduction, paragraph 11.  14 MR JUSTICE BLAKE: Yes, the CERRIE main report.  15 DR BUSBY: The CERRIE main report. Yes.  16 MR JUSTICE BLAKE: Yes. Do you have that?  17 <b>A. Yes, sir.</b>  18 MR JUSTICE BLAKE: Yes.  19 DR BUSBY: Okay. If I might just read to you the sentence  20 at the bottom of paragraph 11. It says this, it says:  21 "There are" -- it starts off by talking about the  22 ICRP has not published information on uncertainties in  23 dose co-efficients. At the bottom of this paragraph it  24 says the following:  25 "There are important concerns with respect to the</p> <p style="text-align: center;">Page 147</p>
<p>1 DR BUSBY: Yes, well, thank you, my Lord. Yes. Right.  2 MR JUSTICE BLAKE: Anyway, French equivalent of the  3 National --  4 DR BUSBY: Yes, it's the French equivalent of the National  5 Radiological Protection Board and it did write quite  6 a long piece --  7 MR JUSTICE BLAKE: I think I have seen reference to it.  8 What's the question?  9 DR BUSBY: Yes. Mr Heppinstall has explored this question  10 of whether the committee should have given credence,  11 I think, as he said, you know, to arguments which were  12 manifestly wrong. But my question to you is this, is  13 that you did say earlier -- I thought I heard you say or  14 you've written in your report -- that Mr Meacher wanted  15 both sides of the argument to be considered. Now, this  16 is not a question of whether or not the evidence was  17 wrong or right, if he just wanted the two sides -- is it  18 true that -- so, whatever the evidence was, and whether  19 it was considered to be wrong or worthless or whatever,  20 it should be there in a minority report or in some sort  21 of alternative statement so that research -- so that it  22 could provide some sort of direction for research which  23 could resolve the issue. Is that true, would you say?  24 <b>A. He wanted it all in a consensual report. I think you</b>  25 <b>may have slipped your tongue, you referred to a</b></p> <p style="text-align: center;">Page 146</p>	<p>1 heterogeneity of dose delivery within tissues and cells  2 from short range charged particle emissions. The extent  3 to which current models adequately represent such  4 interactions with biological targets and the  5 specification of target cells at risk."  6 (quote unchecked)  7 It goes on:  8 "Indeed, the actual concepts of absorbed dose become  9 questionable and sometimes meaningless when considering  10 interactions at the cellular and molecular level."  11 Now, you don't need to be a scientist to understand  12 what's being said there, when it's basically, you know,  13 the essential point here is that "actual concepts of  14 absorbed dose become questionable and sometimes  15 meaningless when considering interactions at the  16 cellular and molecular level" --  17 MR JUSTICE BLAKE: We have the preface to the question.  18 Time for the question?  19 DR BUSBY: The question is do you agree that that was  20 a reasonable exposition of the results of the CERRIE  21 deliberations? Is it really what was agreed?  22 <b>A. Well, the minutes, I don't think I've ever seen them</b>  23 <b>show such a statement. So it was -- when I saw this</b>  24 <b>report and found that sentence in there I was a little</b>  25 <b>bit surprised. But for me it's kind of the most</b></p> <p style="text-align: center;">Page 148</p>

<p>1 <b>important thing in the whole majority report. It does</b>  2 <b>express significant -- in quite an approachable way --</b>  3 <b>significant parts of what the evidence that we did</b>  4 <b>discuss shows, that there are types of exposure,</b>  5 <b>particularly from uranium and strontium-90, which tend</b>  6 <b>to become bound to DNA and to undergo radioactive decay</b>  7 <b>right there on the DNA doing immense damage within</b>  8 <b>a very, very short distance, but leaving the rest of the</b>  9 <b>cell, even, untouched, let alone the whole of the rest</b>  10 <b>of the body untouched.</b></p> <p>11 <b>The question -- the concept of absorbed dose, which</b>  12 <b>is an average of the energy released by that radioactive</b>  13 <b>decay into the whole body, is completely nonsense. You</b>  14 <b>put a nuclear bomb on the DNA --</b></p> <p>15 MR JUSTICE BLAKE: You are being asked to comment upon  16 a piece of scientific evidence in the report and I think  17 you say you agree with it.</p> <p>18 <b>A. Yes.</b></p> <p>19 MR JUSTICE BLAKE: I'm afraid we're not going to be able to  20 hear from you on scientific matters itself given your  21 status as a scientist. Yes?</p> <p>22 <b>A. Well --</b></p> <p>23 MR JUSTICE BLAKE: I am going to ensure that that is the  24 case.</p> <p>25 <b>A. Can I --?</b></p> <p style="text-align: center;">Page 149</p>	<p>1 was certainly not clear to me whether or not the  2 Bradwell study, the final figures in the Bradwell study,  3 as far as it went, showed that there was -- the errors  4 that had been made by the small area health statistics  5 unit and the separate errors that had been made by you  6 and me, when those had all been ironed out by COMARE and  7 by re-analysis, I think you said that it did show that  8 there was a twofold -- a significant excess of breast  9 cancer in the wards that were contaminated by Bradwell.  10 Can we just get that right?</p> <p>11 <b>A. Yes, it's up to twofold in the most contaminated part of</b>  12 <b>the estuary and between -- between parity and twofold</b>  13 <b>for the rest of the ward --</b></p> <p>14 Q. So that resolves -- I hope that resolves the issue of  15 whether the Bradwell study did or didn't show, although  16 if in fact, as you say, and am I right there to say that  17 it wasn't concluded because the chairman cancelled it at  18 some point?</p> <p>19 MR JUSTICE BLAKE: Sorry, where are we going?</p> <p>20 DR BUSBY: The Bradwell study, my Lord.</p> <p>21 MR JUSTICE BLAKE: I have that. We have some details of  22 that at tab 60/100, and I haven't read the minority  23 report, but I don't know whether that is contained  24 there.</p> <p>25 He can comment upon what is in the report, but what</p> <p style="text-align: center;">Page 151</p>
<p>1 MR JUSTICE BLAKE: For everybody else throughout these  2 proceedings, and you, so please back off what is outside  3 your expertise.</p> <p>4 <b>A. But I would submit, my Lord, that, having gone through</b>  5 <b>the whole CERRIE process, I did learn a fair amount.</b></p> <p>6 MR JUSTICE BLAKE: I am sure you have a lot of background  7 facts, that does not make you an expert, and therefore  8 I am not going to be able to receive expert -- we are  9 going to hear others, I believe, who have the relevant  10 qualifications to assist us.</p> <p>11 <b>A. Thank you.</b></p> <p>12 MR JUSTICE BLAKE: That's the object of the exercise.</p> <p>13 DR BUSBY: Thank you, my Lord.</p> <p>14 MR JUSTICE BLAKE: Now, anything else?</p> <p>15 DR BUSBY: Oh, certainly there is.</p> <p>16 MR JUSTICE BLAKE: You have another ten minutes.</p> <p>17 DR BUSBY: Well, yes, I don't think I'll need that. But  18 I just want to be absolutely certain about that point  19 because that is absolutely a key point that --</p> <p>20 MR JUSTICE BLAKE: You have the answer "yes". "Do you agree  21 that it's Reasonable?" "Yes." You have that.</p> <p>22 DR BUSBY: Now, there has been some talk about errors  23 associated with the Bradwell study. I think at some  24 point -- I got the impression, anyway, from the  25 cross-examination and the answers that it was not -- it</p> <p style="text-align: center;">Page 150</p>	<p>1 are you asking him about?</p> <p>2 DR BUSBY: I am asking him to elaborate -- or at least not  3 to elaborate -- but just confirm his response to  4 Mr Heppinstall. That's all. His response to  5 Mr Heppinstall that, when he was talking to  6 Mr Heppinstall about the result of the Bradwell study,  7 he did say that it showed there was a doubling in risk  8 when all of the two organisations --</p> <p>9 MR JUSTICE BLAKE: Which study are you referring to?  10 Because it's the study that has to carry the burden of  11 that answer rather than this witness.</p> <p>12 DR BUSBY: Sorry, my Lord?</p> <p>13 MR JUSTICE BLAKE: I'll try again. Let's assume that's  14 right. It's the study which gives the answer rather  15 than the witness's comment upon it. He's not  16 an epidemiologist.</p> <p>17 DR BUSBY: No, my Lord, I am asking him to tell us what the  18 study --</p> <p>19 MR JUSTICE BLAKE: Well, where is the study?</p> <p>20 DR BUSBY: The study is -- I don't know. I mean, it's  21 wherever Mr Heppinstall found it when he was asking the  22 question.</p> <p>23 MR JUSTICE BLAKE: He was asking about the report, about the  24 contents of the majority report, not the Sosiumi report,  25 which I think is being referred to. If you are going to</p> <p style="text-align: center;">Page 152</p>

<p>1 put quotations from other reports, whether it's the 2 French or the others, it's useful to know where they are 3 so we can track them all down. Yes? Then it's 4 an evidence-based examination rather than simply 5 a hearsay by a non-expert on a scientific issue. Do you 6 follow the point? 7 DR BUSBY: I see, my Lord, yes okay. Well, I'll leave that 8 point then, in that case, because it's just going to 9 take time. 10 MR JUSTICE BLAKE: Yes. We have his answer. 11 DR BUSBY: Yes, yes. 12 Well, I think there's a limit to what I can say 13 given -- hang on, wait a minute, no, there's other stuff 14 here, sorry. This was about the Bradwell report. Yes, 15 well, I have one other question and then I'll leave it, 16 and I think my colleague Mr Charlton wants to ask one 17 question. 18 MR JUSTICE BLAKE: Well, I am not going to ask you to do 19 double cross-examination otherwise we will be too long. 20 He passes you a note; you can ask the question. 21 DR BUSBY: My question is this. That, as a result of your 22 25 years in this area and your membership of the CERRIE 23 committee and also your membership for 13 years of the 24 Government Safegrounds Committee that is essentially 25 discussing all the same issues, would you say that there</p> <p style="text-align: center;">Page 153</p>	<p>1 Sorry about this, you may get a question. I am just 2 sort of umpiring. 3 DR BUSBY: Am I allowed to say this? Mr Charlton has 4 suggested a form of words. Do you have a comment on the 5 sort of group approach, that sort of groupthink approach 6 to this issue of radiation risk on the basis of your 7 experience in this area? Is that sufficient? 8 MR JUSTICE BLAKE: Right, you can ask that question. Do you 9 have a comment upon that? 10 <b>A. Yes, my Lord.</b> 11 MR JUSTICE BLAKE: What is your comment? 12 <b>A. The nuclear industry, like many industries, is kind of</b> 13 <b>required to consult stakeholders, and stakeholder</b> 14 <b>engagement always comes at a price. The price, in my</b> 15 <b>case, has always been that they have to think about</b> 16 <b>these radiation risk issues. They will listen for</b> 17 <b>a certain length of time and they will use your</b> 18 <b>participation to validate their own undertakings, but</b> 19 <b>when it gets too near the bone they will, as the</b> 20 <b>Safeguards project did, close down the dialogue.</b> 21 <b>That's what happened in CERRIE, it's what happened</b> 22 <b>in Safegrounds, it also happened in the European</b> 23 <b>Parliament, in the STOA process which I mentioned in my</b> 24 <b>statement.</b> 25 <b>But sometimes you can force them to utter</b></p> <p style="text-align: center;">Page 155</p>
<p>1 is some kind of conspiracy or groupthink that might be 2 considered to be a conspiracy in this area for the 3 authorities and the nuclear industry, or whoever it is 4 who are involved in these committees, to cover up this 5 evidence of the -- 6 MR JUSTICE BLAKE: Well, that's a leading question. 7 DR BUSBY: Can I ask him another question, my Lord? 8 I will ask him to comment generally on his 9 experience regarding these issues in the 25 years that 10 he has been involved in the CERRIE committee -- 11 MR JUSTICE BLAKE: Isn't that what he's doing in his witness 12 statement? 13 DR BUSBY: Sorry? 14 MR JUSTICE BLAKE: Isn't that what he was doing in his 15 witness statement? 16 DR BUSBY: Can I not ask him to amplify his response there? 17 Anyway, if I can't, I'll leave it at that. I'll leave 18 it to your Lordship. 19 MR JUSTICE BLAKE: The question that you were about to ask 20 and just about qualified as the most loaded question 21 that I've heard -- and you will probably get used to 22 it -- in re-examination you are not meant to be leading 23 your witness to the conclusions you want, you have to 24 ask open questions which you might or might not get the 25 answer you are looking for. That's the way it goes.</p> <p style="text-align: center;">Page 154</p>	<p>1 <b>unacceptable truths such as the fact that, as it says in</b> 2 <b>the CERRIE majority report, that the uncertainties</b> 3 <b>associated with internal radiation are up to ten fold.</b> 4 MR JUSTICE BLAKE: That is the paragraph you already had 5 your attention drawn to? Or are you referring to just 6 another paragraph? 7 <b>A. I can find it for you fairly quickly. (Pause)</b> 8 MR JUSTICE BLAKE: The witness is about to give us an answer 9 and we are going to close this. Look, if you can't find 10 it now -- 11 <b>A. I will find it in a very few moments.</b> 12 MR JUSTICE BLAKE: I'm quite prepared to have it given to me 13 by Mr Busby later on. 14 <b>A. It's page 10.</b> 15 MR JUSTICE BLAKE: Page 10. 16 <b>A. "Although the committee did not attempt to quantify</b> 17 <b>uncertainty" --</b> 18 MR JUSTICE BLAKE: Just let me get there. Page 10, para 19 19 of the summary; right? 20 <b>A. That's right. Two-thirds of the way down the box:</b> 21 <b>"Although the committee did not attempt to quantify</b> 22 <b>uncertainties in dose co-efficients, it was noted that</b> 23 <b>ranges for equivalent doses to organs and tissues may</b> 24 <b>vary from factors of 2 to 3 above and below the central</b> 25 <b>estimate for radionuclides for which good data were</b></p> <p style="text-align: center;">Page 156</p>

1 **available, to well over a factor of 10 for other**  
 2 **radionuclides. These uncertainties are additional to**  
 3 **those applying to risk estimates."**  
 4 **(quote unchecked)**  
 5 **That is a three-fold, according to the same report.**  
 6 MR JUSTICE BLAKE: Okay.  
 7 DR BUSBY: Thank you my Lord, that's all.  
 8 MR JUSTICE BLAKE: Thank you very much. That completes your  
 9 evidence. We will now take a break, a ten-minute break.  
 10 (3.30 pm)  
 11 (A short break)  
 12 (3.45 pm)  
 13 PROFESSOR SHOJI SAWADA (sworn)  
 14 Examination-in-chief by DR BUSBY  
 15 MR JUSTICE BLAKE: Thank you. Now, would you prefer to give  
 16 your evidence sitting down. Make yourself comfortable.  
 17 Right. Two things, please. We'll be keeping a note of  
 18 what you tell us, so keep it slow but sufficiently loud  
 19 so we can hear. Thank you very much.  
 20 Mr Busby, you are on. You have the point, the  
 21 reports will stand as the evidence-in-chief. Updating,  
 22 if there has been developments since the statement was  
 23 written. Clarification or correction, if there are any  
 24 things which need to be amended.  
 25 DR BUSBY: Thank you, my Lord.

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1 Your Lordship has Professor Sawada's report?  
 2 MR JUSTICE BLAKE: Yes. We have it at tab 2.6 of SB1.  
 3 DR BUSBY: Well, I won't make any questions at this point  
 4 and --  
 5 MR JUSTICE BLAKE: What you should do is establish that it  
 6 is his report, that it's accurate and that he doesn't  
 7 want to make any amendments to it.  
 8 DR BUSBY: Professor Sawada, the report which you have,  
 9 which is the one that is at the tab which has just been  
 10 referred to, this is your report, you wrote this report.  
 11 You stand by what you said in this report. That is what  
 12 you believe. This is your evidence.  
 13 **A. (Nodded assent)**  
 14 Q. Is there anything that you want to add to it? Or is  
 15 that -- no.  
 16 MR JUSTICE BLAKE: Okay. Thank you very much.  
 17 Cross-examination by MR HEPPINSTALL  
 18 MR HEPPINSTALL: Professor Sawada, could we just turn to  
 19 page 17 of your report, please.  
 20 **A. 17.**  
 21 Q. 17. It's the conclusion paragraph, and the final  
 22 sentence there, just above "witness statement" is:  
 23 "Therefore, in the case of test veterans, the  
 24 argument that their dose was low is not a valid argument  
 25 because their internal contamination from fallout and

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1 rainout would have caused the health effects just as it  
 2 did at Hiroshima and Nagasaki."  
 3 **A. Yes.**  
 4 Q. I am going to direct my questions, just so you  
 5 understand, at that conclusion.  
 6 **A. Okay. I studied the effect of mushroom cloud falling**  
 7 **down, but expanding the path of a mushroom cloud, the**  
 8 **raindrop is rather small. So the raindrop falling down**  
 9 **both are component evaporate and become fine particles.**  
 10 **Then this cannot be seen by survivor, so -- and the**  
 11 **United States Government -- or Government ignore these**  
 12 **effects and do not to study. But I study this one. And**  
 13 **the veterans look very similar for fallout of not rain**  
 14 **by -- but evaporated fine radio-particles. That is very**  
 15 **important.**  
 16 **So I said here. I wrote here.**  
 17 Q. Just to understand your answer and take it a little bit  
 18 more slowly. You are saying, are you, that Mr Battersby  
 19 and Mr Smith were exposed to rain or evaporating  
 20 particles from the cloud?  
 21 **A. Yes. Central part of mushroom cloud, the raindrop and**  
 22 **the dust, then when they drop to -- not completely**  
 23 **evaporated but many water component were detained, then**  
 24 **that is famous black rain. But expanded part of**  
 25 **mushroom cloud the raindrop is rather small. Then the**

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1 **water component evaporated before reaching as ground.**  
 2 **That's a very similar effect for the nuclear test**  
 3 **mushroom cloud. So most of mushroom cloud in that case**  
 4 **is evaporated before falling ground.**  
 5 **So the fine particles are very important to**  
 6 **exposure. That is mainly by taking inhalation by -- and**  
 7 **inside the body. Then the radioactive fine particles**  
 8 **make entire exposure, but this is very important.**  
 9 Q. So do you have to inhale the particles, the rain, as it  
 10 falls?  
 11 **A. (Nodded assent)**  
 12 Q. You have to physically inhale it?  
 13 **A. That is important. But (inaudible) cannot measure by**  
 14 **physical method, and so I study the effect of human body**  
 15 **by (inaudible) to diseases after that.**  
 16 MR JUSTICE BLAKE: Can I just pause you there. I would like  
 17 to get an answer to the question that has just been put  
 18 to you. I think the question was for this effect to  
 19 occur do you have to inhale the rain-affected  
 20 particles -- the particles in the rain?  
 21 **A. (Inaudible) it is qualified that the raindrop not so**  
 22 **important than the actual fine particles, because**  
 23 **inhalation inside the body is raindrop do not**  
 24 **inhalation, but --**  
 25 MR JUSTICE BLAKE: Yes, I think the question is are you

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<p>1 telling us that the way that the particle gets into the 2 human body is by inhaling? 3 <b>A. Yes.</b> 4 MR JUSTICE BLAKE: That's what you are saying? 5 <b>A. Yes.</b> 6 MR HEPPINSTALL: So presumably it's important that the 7 relevant person in this case, Mr Battersby and Mr Smith, 8 were underneath the cloud and either the rain or the 9 evaporated particles fell from the cloud and they -- 10 they inhaled them? 11 <b>A. These particle evaporated on the ground. So the 12 particles move by --</b> 13 Q. Re-suspend. 14 <b>A. Yes.</b> 15 Q. Can I ask you to look at SB2, tab 214, page 230. 16 MR JUSTICE BLAKE: 214. 17 MR HEPPINSTALL: Yes, Mr Hallard's first report. (Pause) 18 So you've been asked to give evidence on behalf of 19 two appellants, this one we are looking at now is 20 Mr B Smith. Presumably you are familiar with his case, 21 his essential facts are summarised in that table on 22 page 230. Do you see that? 23 <b>A. Okay. Yes.</b> 24 Q. So if you look at paragraph 2, just at the bottom of the 25 table -- and you can also see the dates against time on</p> <p style="text-align: center;">Page 161</p>	<p>1 those tests caused -- or to which test is this 2 phenomenon attached? 3 <b>A. Well, seeing this now, so I would consider tomorrow 4 morning the (inaudible).</b> 5 Q. Sorry? 6 <b>A. Tomorrow morning I review again. Because I read now, 7 just now, this part. Before I do not read(?) this one.</b> 8 Q. Let ask me you the question in a different way. 9 MR JUSTICE BLAKE: Mr ter Haar? 10 MR TER HAAR: In fact the witness has made the point I was 11 about to make. I was going to submit -- I stand because 12 I have more expertise in litigation than perhaps 13 Mr Busby -- 14 MR JUSTICE BLAKE: You don't need to call expert evidence on 15 that particular topic -- 16 MR TER HAAR: -- but this is an unfair line of questioning. 17 If one looks at the Professor's report he does not 18 purport to say that this is the conclusion you should 19 draw for this human being or that human being on 20 Christmas Island. The effect of this evidence is 21 general evidence as to whether the ICRP is correct or 22 not. 23 MR JUSTICE BLAKE: Well, that I understood to be the case, 24 but I have just -- the preface was something in para 25 3.3. But we'll have to tease it out and see whether he</p> <p style="text-align: center;">Page 163</p>
<p>1 Christmas Island -- he started work at -- 2 <b>A. In the case of discussion?</b> 3 Q. Yes, discussion, that's right. At paragraph 2 it says: 4 "Mr Smith started work on the island on 5 30 October 1959, approximately one year after the final 6 test Grapple Z4 on 23 September 1958." 7 Do you see that? 8 <b>A. (Nodded assent)</b> 9 Q. Have you taken that into account, the fact that he 10 didn't arrive on the island until approximately one year 11 after the final test? 12 <b>A. So in this case I think that the raindrop also very 13 important, because raindrop contain the radioactive 14 particle and the raindrop enter -- accumulated(?) to the 15 earth. So these raindrop radioactive matter detained 16 over the ground. So the radioactive particle can affect 17 Mr Smith.</b> 18 Q. Which one of the tests, Grapple tests, which had 19 occurred on Christmas Island prior to Mr Smith's arrival 20 involved this phenomenon? 21 <b>A. Pardon me?</b> 22 Q. So there were a series of tests, as you know, Grapple X, 23 Grapple Y, Grapple Z, 1, 2, 3 and 4 on Christmas Island. 24 You are referring to this phenomenon of evaporated 25 particulate or particles coming down on rain. Which of</p> <p style="text-align: center;">Page 162</p>	<p>1 can add any comment on this. If we'll go back to the -- 2 MR TER HAAR: The reason why I do raise a question is it 3 seems, particularly with a witness whose language -- 4 first language is not English -- 5 MR JUSTICE BLAKE: Well, I appreciate that's another 6 question. 7 MR TER HAAR: -- to ask a loaded question on a false premise 8 in my submission is unfair. 9 MR JUSTICE BLAKE: Well, I am not with you on all of that 10 but I can see the dangers. 11 I am not quite sure where we've got to. 12 MR HEPPINSTALL: Well, what I am trying to understand, which 13 is why I went first to that conclusion, is what is the 14 inference or evidence one can draw from whatever 15 happened at Hiroshima and Nagasaki with the events with 16 which we are concerned. 17 Let me try the question another way. What is -- how 18 do you know -- let's try it another way. 19 Do you know that there was evaporated particulate, 20 or let's call it rainout, if that's a term you 21 understand, at the Christmas Island test with which this 22 Tribunal is concerned? 23 <b>A. I mainly study A-bomb survivors who had effects, so for 24 veterans the similarity between A-bomb survivors of 25 distant part (?) and (inaudible words) veterans very</b></p> <p style="text-align: center;">Page 164</p>

1 **similar distant part (?) for survivor.**  
 2 Q. Why do you think it's similar? Have you seen or been  
 3 told -- have you seen evidence or been told that this  
 4 phenomenon occurred on Christmas Island?  
 5 **A. That main particles, the dust and fine particle**  
 6 **absorption, is very similar. And, furthermore, the**  
 7 **raindrop also detained in the ground, so these**  
 8 **radioactive particles move to something by air, wind.**  
 9 **And then -- then later enter the people. And that is**  
 10 **very similar to the atomic bomb survivors who enter**  
 11 **after atomic bomb been dropping days. I study these**  
 12 **effect after enter into the city. That is very similar.**  
 13 Q. So you studied the black rain effect, if I can call it  
 14 that, post Hiroshima and Nagasaki.  
 15 **A. Yes.**  
 16 Q. Have you looked at any evidence or information about  
 17 that same effect occurring at the Christmas Island  
 18 tests?  
 19 **A. I study the effect of -- not initially at that time --**  
 20 **and later they enter to -- inside the city, they, many**  
 21 **of them affected by radioactive effects.**  
 22 Q. I am just trying to explain and understand this  
 23 statement that internal -- contamination from fallout  
 24 and rainout will have caused the health effects just as  
 25 it did at Hiroshima and Nagasaki. You don't say what

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1 evidence that you have seen that there was internal --  
 2 that you saw in order to make the statement that there  
 3 was internal contamination from fallout and rainout at  
 4 the Christmas Island tests.  
 5 What information have you seen in order to make that  
 6 statement?  
 7 **A. Medical doctor Oho(?) study the effect of (inaudible)**  
 8 **people enter in the Hiroshima city after bombing, and**  
 9 **the Doctor Oho study the effect of these people after**  
 10 **this instance. So from this -- his data I could find**  
 11 **that the effect is continuing.**  
 12 MR JUSTICE BLAKE: Let me see where we've got to. If you  
 13 don't understand let me know and I will try and repeat  
 14 it.  
 15 You, of course, have studied the effect of black  
 16 rain on the survivors at Hiroshima and Nagasaki.  
 17 **A. Yes.**  
 18 MR JUSTICE BLAKE: And you have drawn some conclusions about  
 19 the risk of inhalation of those particles and the  
 20 contamination. That's your life study.  
 21 **A. Yes.**  
 22 MR JUSTICE BLAKE: Keep it there.  
 23 We are concerned about people who were not at  
 24 Hiroshima and Nagasaki but who worked in this case,  
 25 Mr Smith, who came to the island a year or so after the

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1 last of the tests, at Christmas Island.  
 2 Do you have any information that there was internal  
 3 contamination from fallout and rainout at Christmas  
 4 Island, or have you simply being told that and you are  
 5 applying your work to those situations?  
 6 I think that's is what you are being asked about.  
 7 Do you follow the question?  
 8 **A. Yes.**  
 9 MR JUSTICE BLAKE: Moving it from your area of study, can  
 10 you tell us anything about the contamination at  
 11 Christmas Island, is the question.  
 12 **A. Yes. I found that the effect of radiation is dependent**  
 13 **on the person, on the person. And very sensitive people**  
 14 **do this and are materially(?) radiation affected. But**  
 15 **where grade is half the radiation dose, and if higher**  
 16 **grade is received then about half people died within six**  
 17 **days. But I receive about three days(?), I calculated,**  
 18 **but have no effect of radiation. Very sensitive people,**  
 19 **have a point of higher grade then they get some**  
 20 **diseases. So the effect of the radiation is very**  
 21 **dependent on people.**  
 22 **So Mr Smith may be very sensitive and belonged to**  
 23 **certain people.**  
 24 **So the effect of radiation is dependent on people to**  
 25 **people to consider this effect why the disease spread.**

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1 MR HEPPINSTALL: I'm not sure I understood that.  
 2 MR JUSTICE BLAKE: I'm not sure I understood the answer.  
 3 **A. I show my paper, the graph.**  
 4 MR JUSTICE BLAKE: This is going to be a little tricky. Do  
 5 you want to explore the earlier part of those  
 6 conclusions which are based upon this witness's analysis  
 7 of the survivors in Hiroshima and Nagasaki.  
 8 MR HEPPINSTALL: Well, I don't propose to do that, no. The  
 9 case is not about Hiroshima and Nagasaki. I'm calling  
 10 no evidence.  
 11 MR JUSTICE BLAKE: I appreciate that. Our ambitions as the  
 12 tribunal will not extend so far in history to deal with  
 13 those issues. Put that down a second (to the witness).  
 14 MR HEPPINSTALL: Cross-examination falls into two parts.  
 15 The first is to establish what this witness -- whether  
 16 this witness is making an assumption or has been told  
 17 about internal contamination and is --  
 18 MR JUSTICE BLAKE: I appreciate that, but we are not getting  
 19 terribly far on that topic. But Mr ter Haar points out,  
 20 as I read his report -- and Mr Busby will tell me if I  
 21 have this wrong -- a building block of these appellants'  
 22 cases is you can't use the limits of safety that the  
 23 ICRP have used because they are based very much upon the  
 24 lifetime survivor studies of the victims, this witness's  
 25 own work upon the different ways in which victims came

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<p>1 into contact with ionising radiation, including 2 ingestion, therefore suggests that the external dose 3 model is insufficient. I am simply trying to do the 4 building blocks and I hope I am not doing violence to 5 it. 6 Therefore, since we have the benefit of his presence 7 all the way from Japan today, if anyone is going to ask 8 him about any other flaws in that model, I don't 9 imagine -- well, Mr ter Haar, I don't think, is playing 10 in this part -- 11 MR TER HAAR: Well, actually, I am sorry to disappoint. 12 This evidence, particularly in light of the questions 13 asked on behalf of the Secretary of State, plays very 14 directly into some of the evidence given by experts at 15 the previous FTT, which we would otherwise be drawing 16 attention to by cross-examination of other witnesses. 17 It may well be, seeing how things go, that I may ask for 18 permission to actually ask a few questions of this 19 Professor -- 20 MR JUSTICE BLAKE: In cross-examination or 21 examination-in-chief? 22 MR TER HAAR: I think probably I will have to do it as 23 carefully as possible, given that I have an interest, 24 not to ask leading questions. But nevertheless I think 25 that, on behalf of my appellants, there are areas which</p> <p style="text-align: center;">Page 169</p>	<p>1 second half of my cross-examination, which is the bulk 2 of it, will be on the ICRP model and the way it gathers 3 its support from other sources. So I'm fully alive as 4 to what the witness says. I was just starting in 5 a slightly different position. 6 MR JUSTICE BLAKE: Quite. But that position seems to have 7 yielded singularly little fruit. 8 MR HEPPINSTALL: It may be we put a red line through that 9 paragraph in his report and concentrate on the rest on. 10 MR JUSTICE BLAKE: I question mark the red line, and nothing 11 is decided until we come to the end of the process. If, 12 Mr ter Haar, you were, as it were, to take over the 13 process of supplementary examination from Dr Busby, how 14 long do you think you would want to lead any further 15 answers in evidence on the ICRP matter. 16 MR TER HAAR: Allowing for the language problems, I will try 17 to do it in half an hour. 18 MR JUSTICE BLAKE: Let us just run through that. If we 19 start at 10.30 and you manage in half an hour to adduce 20 some further evidence, and then that could set the scene 21 possibly for what Mr Heppinstall wants to say. 22 I appreciate we are going to have language problems and 23 we have to give a break for the shorthand writers. How 24 long do you think you might be? 25 MR HEPPINSTALL: I would hope by lunch I would easily be</p> <p style="text-align: center;">Page 171</p>
<p>1 I would like to explore with this witness, having regard 2 to what the Secretary of State are saying. 3 MR JUSTICE BLAKE: Do you want to explore with them before 4 Mr Heppinstall cross-examines, therefore? 5 MR TER HAAR: It might be better to do it that way because 6 it might clear some of the ground in that way. 7 MR JUSTICE BLAKE: Well -- 8 MR TER HAAR: I am happy to start that now or whenever -- 9 MR JUSTICE BLAKE: Well, it's quarter past four, if that 10 clock is accurate. I can see -- I mean -- I was taking 11 my cue from you, you thought this week was a passive 12 week and you were going to be doing other things. 13 MR TER HAAR: It has become apparent, as we dip our toe into 14 this evidence, I think some questions from me, as 15 non-leading as I can possibly make them, might help the 16 Tribunal to see where we are going. 17 MR JUSTICE BLAKE: As you may have gathered from my attempt 18 to put the case, I recognise that there is something 19 here that we are going to have to grapple with, but it's 20 quite difficult on what we have. I think it might be 21 an idea, therefore, if we pull stumps for tonight. If 22 we come back tomorrow at 10 o'clock or 10.30, and we 23 need to finish -- the programme is that we finish this 24 witness by one o'clock tomorrow, isn't it? 25 MR HEPPINSTALL: Yes, my Lord, and I can indicate that the</p> <p style="text-align: center;">Page 170</p>	<p>1 done, if not before. 2 MR JUSTICE BLAKE: We'll break at 11.30 for ten minutes and 3 then we'll complete the process. But then one of you 4 may want to re-examine. 5 MR TER HAAR: I don't think -- that probably wouldn't be 6 appropriate for me to do so, but let's cross that bridge 7 as we get to it. I have a feeling a few questions, not 8 only to assist with this witness, but may also set the 9 scene for some of the other questions I am going to ask 10 during the case. 11 MR JUSTICE BLAKE: Yes. Well, I am prepared to give it 12 a go. 13 MR TER HAAR: Right. 14 MR JUSTICE BLAKE: Professor Sawada, it's now 4.15. We are 15 going to stop this session this evening. We will come 16 back here tomorrow and we will start again at 10.30. 17 This gentleman, Mr ter Haar, who represents other 18 appellants, is going to ask you a few questions. Do you 19 need to speak to him overnight? 20 MR TER HAAR: I might make just make sure he understands the 21 process, but not about the content. 22 MR JUSTICE BLAKE: About the process. Unless Mr Heppinstall 23 has any objection I'm content for Mr Ter Haar to do 24 that. 25 MR HEPPINSTALL: As am I, although prior warning of this</p> <p style="text-align: center;">Page 172</p>

1 turn of events, it would be appreciated if there are any  
 2 other BS appellants that are going to be examined in  
 3 chief by anyone other than --  
 4 MR JUSTICE BLAKE: Now, I think my generosity may be limited  
 5 to this witness. If it's generosity or --  
 6 MR HEPPINSTALL: I am grateful to hear it.  
 7 MR TER HAAR: I am happy to talk to Professor Sawada, with  
 8 obviously Dr Busby present, to make sure everybody  
 9 understands what is happening.  
 10 MR JUSTICE BLAKE: But you know what the sensitivities and  
 11 the rules are, and we must rely upon your good judgment  
 12 about that.  
 13 THE WITNESS: Excuse me. I misunderstand. My duty here.  
 14 I want to explain.  
 15 MR JUSTICE BLAKE: Well, what will happen, we are going to  
 16 rise now. I think this gentleman will talk to you about  
 17 procedures and he may ask you some further questions  
 18 tomorrow. Then we will continue with the questions  
 19 being put to you by the Secretary of State's advocate.  
 20 Then, before one o'clock tomorrow, someone will be  
 21 asking you -- or have the opportunity to ask you any  
 22 other clarification questions. I think that probably is  
 23 the more effective way of getting through this because  
 24 it's obviously going to be quite difficult for you, but  
 25 thank you for coming all the way you have to help us

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1 with this difficult problem.  
 2 THE WITNESS: I understand.  
 3 MR JUSTICE BLAKE: So we'll retire now and we'll continue at  
 4 10.30. There is nothing else I can do tonight, I don't  
 5 think, to facilitate that process.  
 6 MR TER HAAR: I don't think so.  
 7 MR JUSTICE BLAKE: Right, thank you very much.  
 8 (4.20 pm)  
 9 (The court adjourned until  
 10 Tuesday, 14 June 2016 at 10.30 am)  
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