



Neutral Citation Number: [2020] EWHC 2484 (TCC)

Case No: HT-2019-000286

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Heard remotely as at The Rolls Building,
7 Rolls Building, Fetter Lane,
London EC4A 1NL

Date: 18/09/2020

Before :

THE HON. MR JUSTICE STUART-SMITH

Between :

Premier Engineering (Lincoln) Limited

Claimant

- and -

MW High Tech Projects UK Limited

Defendant

Justin Mort QC (instructed by **Mills & Co**) for the **Claimant**
Tom Owen (instructed by **Devonshires Solicitors LLP**) for the **Defendant**

Hearing dates: 23-26 June, 15 July 2020

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 3:00pm on Friday 18th September 2020

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Mr Justice Stuart-Smith :

Introduction

1. The Defendant [“MW”] engaged the Claimant [“Premier”] to provide labour, plant and materials to a large construction project in Hull known as the Energy Works Hull Project [“the Project”]. Premier started on site in a small way in late 2017 but was required to increase its involvement substantially in the course of early to mid-2018. Premier ramped up its involvement as requested by MW and soon became key to MW’s efforts to get the Project over the line. MW described Premier’s role as “essentially brokering labor to [the Project] and providing supervision to go with the labor.”. This does not fully describe the arrangement, but is a reasonable general description: it captures the essential quality that Premier did not bid for a set of sub-contract works which it was then responsible for carrying out. Instead, MW would decide (usually on a weekly basis) how many men (including trades and supervisors) it required to be supplied to carry out the work it wanted done on site, Premier would supply them, and the men would be employees of and paid by Premier at hourly rates. Overall design and programming responsibility rested with MW, though on-site decisions (such as, for example, workarounds made necessary by site conditions) might be made by Premier’s men in conjunction with MW. In addition, MW would require Premier to provide materials that were required for the works, though there is a dispute about whether some of the materials so provided should be treated simply as Premier’s overhead costs or are otherwise irrecoverable.
2. The parties are unable to agree Premier’s final account. Premier asserts that it has been under-paid by about £1.3 million. MW says that it has already substantially overpaid Premier and counter-claims substantial sums based on various alternative calculations. The sums counterclaimed reduced significantly before, during and after trial as errors were identified or points conceded from the original calculations.
3. The major issue of fact is about the number of hours worked by non-supervisory operatives supplied by Premier for which Premier is entitled to charge MW. This in turn involves detailed consideration of the terms on which Premier was engaged to act. There are also various contractual disputes that are largely due to an absence of formality in making contractual arrangements. That lack of formality is at least partly attributable to the fact that, when in 2018 Premier was asked to step up its operations, the Project was in delay and in trouble. MW had fallen out with and lost a previous sub-contractor, Engie Fabricom UK Limited [“Fabricom”] and had an urgent and compelling need for Premier’s subcontract services to assist it in accelerating progress. In MW’s words, by early 2018 it had a failing project on its hands.
4. The parties have compiled a list of issues for determination by the court. I address the list of issues after setting out the factual background.

The Relevant Factual Background

5. The Project had a value of over £150 million. MW was contracted pursuant to a design and build EPC contract which carried heavy penalties for delay. Premier’s initial involvement with the Project was pursuant to a small sub-contract for the supply of support steelwork having a value of £2,445 commencing on 4 September 2017. By then, for reasons that do not matter, MW was falling out with Fabricom and

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the Project was in delay. It was therefore financially imperative for MW to accelerate its works at or about the time that it was to lose one of its major subcontractors.

6. It is common ground that Premier's initial works were satisfactory to MW and that MW began to look to Premier to fill some of the gap left by Fabricom. Premier was described in one internal MW email sent on 9 January 2018 as "an Excellent Piping Company" who were able and willing to do whatever MW required in the light of Fabricom's departure. I accept the evidence of Mr Warren (the company's owner) that Premier was a small company with a good reputation which had supplied labour and management on similar projects, albeit on a much smaller scale than ultimately developed at the Project.
7. The parties did not enter into a sub-contract for all or part of the outstanding works (or additional works that might be required). Instead, MW engaged Premier from time to time to provide manpower and materials, usually specifying their requirements on a weekly basis for the week ahead. One consequence of this arrangement was that Premier was not committed to a contract period or periods for the carrying out of works. Another was that it was for MW to allocate work for Premier's men to do from time to time. I accept the evidence of Mr Rumsey, who was employed by MW from March 2018, initially as a Construction Superintendent with responsibility for subcontractors doing mechanical works, that at daily personnel meetings he would tell Premier's Site Manager, Mr Chestney, what was needed and he would tell the Premier foremen and so on. Mr Rumsey would tell Mr Chestney of new line items that could be allocated to Premier's men as they came to the end of their current jobs. MW also operated a permit to work system which would identify what work was to be carried out, by whom, when and where. The effect of this system was also to enable MW to identify and control the work that the men supplied by Premier were required to carry out.
8. A third consequence was that Premier neither had nor could have responsibility for the overall design of the works they were asked to carry out from time to time. There was a dispute about the allocation of responsibility for design. I find that the design of the Project works was incomplete in early 2018 and that primary responsibility for design rested with MW although some decisions at the workface might have to be and were from time to time taken by Premier's trades and supervisors in conjunction with MW. MW retained overall control of the works, their design and who they should be done by. This finding disposes of another minor factual dispute, namely who was responsible for supervision of the works carried out by Premier. There is no doubt that Premier were asked to supply supervisors and did so and that they will have supervised Premier's men. But at a higher level the responsibility for the overall carrying out of the Project works rested with MW who exercised effective control when required, whether by giving direct instructions (as Mr Rumsey accepted) or by their general oversight of the works that had been allocated to Premier's men. This reflected the fact that (as MW submit in their closing submissions) "this [was] a sophisticated workplace, involving hundreds of operatives across different subcontractors, in the construction of a complex plant." Mr Chestney gave a long answer in the course of his cross-examination about how MW interacted with different trades supplied by Premier and the extent of their and Premier's supervision of Premier's men. I accept that evidence as a general account of how things worked.

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9. Premier were not in any respect operating a conventional sub-contract package of works that defined the scope of their works and allocated all responsibility to them within the sphere of their sub-contract. They could not possibly integrate with the other trades and subcontractors without detailed supervision and direction from MW. Typically, Mr Rumsey would “spend a considerable amount of time walking across the whole [Project] and being available to assist with the works, for example by looking at drawings and providing solutions to issues being flagged by Premier operatives and Premier’s supervisors and foremen.” They would go to him with a clash on an issue where an aspect of the job would not work and he would discuss the issue with them until a suitable solution was found. That would then be implemented by Premier. An email from Mr Meakin, MW’s Director of Energy Projects, to Mr Chestney on 9 May 2018 provides some insight into how things worked. He stated as his requirement that “Premier must ensure that all staff fulfil their obligations, i.e. are in attendance for all shifts, and not two out of three” and that “I require [Premier’s] supervision to work alongside the [MW] supervision and proactively drive the completion of the works.” This does not provide a full account of how things were organised, but it includes the clear recognition of MW’s involvement in the day to day supervision of the works. It also provides a reasonable explanation why Premier did not maintain records of what activities its labour was carrying out on a day to day basis.

12 February 2018 Meeting

10. On 12 February 2018 there was a meeting between representatives of MW, including its Site Engineering Manager (Mr Lettice) and its Commercial Manager (Mr Goundry) and Mr Warren, all of whom gave evidence. The purpose of the meeting was to discuss Premier taking on further works. Mr Warren presented a document setting out the terms on which he was prepared to increase Premier’s site presence. It included rates for all site working hours and in addition provided that (a) all breaks were to be paid by MW at 1 hour per day, (b) all hours were to be recorded on signed timesheets for invoicing, (c) bonuses were to be site led (i.e. led and authorised by MW), (d) “MATERIALS + 15%”, (e) “Small tools and equipment +15%”, (f) “Hired plant + 15%”, (g) “Notice Minimum 1 week”, and (h) “Travel costs (blue book).
11. I accept the evidence of Mr Lettice that MW confirmed at the meeting that the rates being proposed by Mr Warren were broadly comparable with other mechanical trades on the Project. I also accept the evidence of Mr Warren that those in attendance for MW were “very happy” about the rates he was proposing and that they were keen to get Premier’s labour on site quickly. Mr Warren accepted that the MW representatives would have to go off and get things sorted and, in the same vein, that Mr Warren should leave it with them. MW did not, then or subsequently, propose any alterations to the rates and terms proposed by Mr Warren. Though they were not formally accepted during the meeting, MW accepted Premier’s terms by placing subsequent orders for labour, materials and plant. The contractual analysis is simple: Mr Warren made an offer to contract on the terms set out in his document which MW accepted either at the meeting or by placing the orders without anything that could be described as a contractual counter-offer.
12. After trial, on 24 July 2020, MW launched an attack based on data that Premier had disclosed late in response to increasingly pressing requests. The rights and wrongs of the lateness of the disclosure are irrelevant to the outcome of the case. The substance

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of MW's attack was an attempt to show that Premier did not in fact pay its men by reference to their timesheet hours. Premier responded on 31 July 2020 with detailed rebuttals. The end result of this supplementary skirmishing is that I am not persuaded that MW have identified any discrepancy which undermines the basic proposition that Premier paid its men based on their timesheet hours.

13. Certain things follow from this. First, MW and Premier knew and agreed that all hours were to be recorded on timesheets for invoicing and those timesheets were to be signed. The purpose of signature is obvious and is to vouch for the accuracy of the timesheets. The importance of the timesheets is equally obvious and is that the timesheets would be used not only as the basis for Premier invoicing MW but also as the basis for Premier to pay their men, who would themselves be on hourly rates – hence the timesheets. I reject any suggestion that MW did not know that Premier paid its men on the basis of their timesheets. Not only is it obvious, it was expressly recognised to be the case in the 12 February 2018 document and in an internal MW email on 14 April 2018. Second, the provisions in relation to materials, small tools and equipment and hired plant were comprehensive: they did not exclude any subcategories or make provision for different rates or no rate at all in particular circumstances.
14. Premier thereafter invoiced for both labour and materials in accordance with the 12 February 2018 document, thereby implementing the agreement from their side. The scale of the orders that started to come through in the wake of this agreement is shown by the escalation in Premier's invoicing. By the end of February 2018, Premier had invoiced a mere £41,810. By the end of March 2018 the figure had risen to £533,365. In terms of men required by MW, the increase was from about 12 men in late February 2018 to about 140 at one point in May 2018. On 20 March 2018 Mr Meakin described Premier as "key to our success". To similar effect, on 19 April 2018 Mr Meakin wrote to Mr Schoenhofer, MW's group commercial director, that MW was "entirely reliant on Premier for the next few weeks. We will not hit our dates without them." The evidence indicates, and I find, that this remained MW's view at all material times until the end of June or early July 2018, when Premier became dispensable with the approaching completion of the mechanical works with which they were involved.

Timesheets, checking and invoicing

15. The parties were in broad agreement about how the invoicing process was intended to work, but important differences remained about the significance of timesheets and the applicability of turnstile gate data. I deal with each in turn.
16. The system that was operated was that, normally at the end of each week, Premier presented timesheets to MW setting out the hours that their men had worked plus other items such as allowances for travel. Premier initially maintained a sheet for signing in and out to support the hours that would be entered on the timesheets, though this paper system was later superseded. Also included on the timesheets would be incentive hours where MW had offered an incentive in particular circumstances: a typical example would be that if a man worked a particular number of hours or shifts he would be paid an additional bonus. The timesheets would almost always be signed by a representative of Premier to vouch for their accuracy. On presentation of the timesheets to MW, a responsible person (for example, Mr

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Rumsey) would sign them off. They would then be used by Premier as the basis of their invoicing, as contemplated by the agreement between the parties.

17. Two points were raised. The first was the suggestion by Mr Rumsey that he would be presented with bundles of timesheets covering a number of weeks and that the dates he would put on them when he signed them off were sometimes unreliable. His evidence on the former point is not borne out by the documents, because the dates on the sheets are closely allied to the periods in respect of which they claim and invoices did not cover multiple weeks. This is because Premier was pushing for cash-flow and, in general, was billing promptly to achieve it as quickly as possible. It had to because it was expanding rapidly to meet MW's requirements and did not have the balance sheet to sustain payments to ever-increasing numbers of men without prompt payment from MW. Even when Premier bunched invoices on 1 June 2018, Mr Rumsey's annotations on the timesheets indicate that they had been presented to him shortly after each relevant period of work and not all in one go. Mr Rumsey's evidence on the second point was convoluted and confusing, particularly in his oral evidence where he oscillated between saying that the dates he had written on the timesheets were reliable and saying that they were not. The documents do throw up some quirks: for example, Premier's timesheets for the week commencing 30 March 2018 were signed off by Mr Rumsey and dated by him 24 March 2018. This seems doubly unlikely since (a) it precedes the date to which the worksheets relate and (b) according to Mr Rumsey he did not start working for MW until 26 March 2018. However, I am not satisfied that Mr Rumsey routinely applied false dates to timesheets when he signed them off and prefer the version of his evidence which supports a finding that he generally attempted to apply genuine dates.
18. Mr Rumsey asserted that he simply signed off Premier's timesheets without checking them in order "to keep the peace." To similar effect Mr Goundry, having told his superiors (Mr Schoenhofer, Mr Lakeman, its commercial manager, and Mr Meakin) at the time that checks of timesheets were being made and on another occasion (answering a question about gate records) having told Mr Schoenhofer that MW's site supervisors "had signed off against timesheets as accurate", said in evidence that those signing the timesheets were in fact pushing them down the line for checks to be made later and by others. This in due course opened up a more wide-ranging enquiry, to which I will return after introducing turnstile gate data.
19. For the moment it is sufficient to record that one of Mr Rumsey's responsibilities as MW's signing representative was to check and authorise incentive payments, and he did so. I do not accept that he merely waved incentive bonuses through without checking whether they were properly to be paid. Since the incentive bonuses were usually contingent upon completion of certain shifts or hours, it follows that Mr Rumsey could not properly authorise those bonus payments as he did without being satisfied that the qualifying shifts or hours had been worked. Viewed overall, I reject any suggestion that he simply rubber stamped those entries where he was required to endorse bonus payments; and I do not accept as a generality that he was simply rubber stamping, though sometimes he may not have been as rigorous as he should have been.
20. In closing submissions MW make the point that Mr Rumsey was not on site all the time and therefore could not personally verify the hours for the time that he was not around. That is true, but in a properly working system it was for MW's signing

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representatives to satisfy themselves that it was right to sign, which could and should be done by reference to supervisors or others who had been present. The fact that they might not have personal knowledge provides no justification for signing without making enquiry or in any way merely rubber stamping the timesheets.

21. The result of signing off of the timesheets would be that Premier raised an invoice based upon the hours they recorded. It is common ground that the invoices were checked by MW on receipt, as is shown by contemporaneous annotations writing down specific items to which it will be necessary to return later. The system operated by MW was that it would then raise an internal Sub Contract Payment Request which would specify the amount for payment to the subcontractor. That document was counter-signed by two senior employees and finally authorised for payment by another, yet more senior employee, typically Mr Tim Lakeman. There would be a supporting sheet which would show the extent of reductions that had been made to Premier's invoice and where the reduction had been made. In some (but by no means all) cases, MW would then issue a Payment Notice with the supporting sheet, which would state:

“We hereby give you notice of the sum that we consider to be, or to have been, due at the payment due date in respect of the above payment being £X and the basis on which that sum is calculated is attached. The payment will be made on account and subject to final checks.”

22. The Payment Notices sometimes carried a heading which stated that they were made under paragraph 9 of Part II of the Scheme under the 1996 Act as amended. However, neither party submitted that their dealings were in fact subject to the Scheme. In cases where no Payment Notice has been identified or disclosed, it is not clear why MW failed to generate one or, if they did, what has become of it. Premier say, and I accept, that MW did not issue all of the Payment Notices to it. It appears from Premier's final account, and I find, that MW did issue to Premier the Payment Notices covering invoices 959, 960, 961, 962, 964 and 965. When it did so, it provided a copy of the supporting document and the relevant invoice; but the invoice was not marked with the contemporaneous annotations that are to be found on MW's internal copies. Where MW produced Payment Notices covering other invoices but did not send them to Premier, it is not clear why MW produced them except as an internal record of its views on Premier's entitlement. As such they would retain some evidential interest. Although it would be possible to speculate about why MW did not issue them to Premier at the time, there is no valid basis for making a finding about their reasons. I therefore make no finding and do not speculate.
23. It is also convenient to record here that I accept without reservation Mr Meakin's evidence that, at least in a properly functioning signing-off process, a Payment Notice such as the one above is meant to be the signer's (and therefore MW's) honest belief as to the value of the work and the sum due to be paid for it. A system such as described above, from timesheets to payment, is universally intended to guard against corruption and to ensure that sub-contractors are paid those sums to which they are genuinely thought to be entitled. Both the signing off of timesheets and the checking of the submitted invoice are integral to that process. The purpose of having timesheets signed off by the employer's representative on site is clear: it is to signify knowing agreement and to prevent disputes later. Signed timesheets are therefore the

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primary (and should be the best) evidence for the parties and the Court. The idea that timesheets should be rubber-stamped without any meaningful check subverts the purpose of the system. Similarly, deliberate overpayment (i.e. payment of more than is believed to be justified) of a subcontractor's submitted invoice for ulterior reasons strikes at the basis of the system just as much as deliberate underpayment because, as MW expressly recognised, it stores up possibly existential trouble if attempts are made later to claw back the deliberate overpayment. But that is what happened in this case, as I shall explain.

24. Finally, a notice such as was included in MW's Payment Notices, cannot reasonably be interpreted as meaning or implying that the paying party is knowingly paying more than it believes to be the receiving party's genuine entitlement at that stage. The reference to the payment being made "on account and subject to final checks" is to provide protection for the paying party in case "final checks" reveal new material which casts doubt on the interim valuation. Where the paying party has carried out a full analysis of the receiving party's entitlement, "final checks" will reveal nothing new that justifies a change in its position. The statement in the Payment Notice represents that the normal system of checks and approvals has been carried out and that the paying party genuinely believes that the sum being paid on account is the sum to which the receiving party is properly entitled.

Turnstile data, working off site and excessive breaks/productivity

25. On many construction sites, entry to the site on arrival and exit on departure will be through turnstiles that record who has been on site for how long. Where a claim for payment is made on the basis of timesheets, turnstile data may be useful evidence against which to check a contractor's claimed hours. On the Project, Premier distrusted the turnstile data for two main reasons. First, they had reason to believe that the turnstiles did not always function and record workers' movements properly; and second, some part of their men's working days were spent outside the turnstiles for a number of reasons including that the office and facilities for food and relaxation were outside the perimeter controlled by the turnstiles. Thus, for example, there would be a safety briefing before the start of each shift which took place outside the turnstile perimeter, which was chargeable but would not be accounted for by turnstile data; and Premier carried out some work outside the perimeter including in an area called Rix's Yard.
26. There was a dispute about how much time Premier's men might reasonably spend during their working day outside the turnstile perimeter. Premier maintained that, as well as carrying out work outside the turnstile perimeter its men were often kept waiting there for permits to work or other instructions for which MW were responsible. MW responded that Premier's men spent too much time in the canteen for no good reason. By trial Mr Meakin tended to speak about this issue all in terms of productivity, meaning rate of progress per time spent on site, but the objective evidence does not support a finding that Premier's men were particularly unproductive or, if they were, that the reason for their lack of productivity was that they were not within the turnstile perimeter for excessive periods or were working within the turnstile perimeter but unproductively. The turnstile data, even if admitted, does not provide sufficient detail to support such findings because it provides no evidence about what was being done by men outside the turnstile perimeter and no measurement of their productivity either outside or inside it.

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27. I accept that at an early stage Mr Lakeman had a conversation with Mr Warren about productivity. But what is, to my mind, significant is that there is otherwise no substantial evidence of MW complaining during the key period from March to July 2018 either that Premier's men were absent when they should have been present, or that they were slacking on the job, or even that they were being unacceptably unproductive. The first real complaint about lack of productivity and excessive breaks that has been identified is an email on 5 July 2018, less than a week before Premier were asked to reduce their presence on site.
28. It is a commonplace that attempts to accelerate a very large project in its later stages may lead to inefficient allocation of work and working. No programming evidence was put forward that might have enabled firm conclusions to be drawn about the success or otherwise of MW's programming and planning or the effectiveness of Premier (or other subcontractors) in carrying out the works that were allocated to them. The absence of such evidence was proportionate and reasonable given the scale of the disputes in these proceedings. MW disclosed one or more documents recording Premier's progress (e.g. for week 11) and occasional other documents which set out targets and achievements for subcontractors. Where Premier featured on these other documents, the relevant line on the document would usually cover the work of more than one subcontractor. They are inadequate evidence on which to draw conclusions about Premier's productivity or the reasons why subcontractor's targets were not achieved where that was shown on the sheets. Neither those documents nor any other evidence that has been brought to the attention of the Court would enable a judgment to be made about the effectiveness of Premier's work that gave rise to that progress or whether there were reasons extrinsic to the quality of Premier's workforce and work which contributed to or determined the level of progress from time to time. MW also relies upon sporadic documents in support of a submission that Premier were "in delay" e.g. an email from MW to Mr Warren and others dated 12 March 2018. In my judgment, the documents do not enable any valid judgment about the scale of delay (if any) or the reasons for it.
29. More importantly, given the need for MW to try to accelerate and the substantial sums that they were incurring to Premier for its supply of labour, supervision and materials and the level of supervision and control being exercised by MW, I am confident that MW would have known if Premier's men were simply not working (or available to work) significant proportions of the times that they had been requisitioned by MW and should have been working and for which they were billing week by week. And, if they had known any such thing, MW would have been on Premier's back in no uncertain terms because of their financial need to accelerate. Similarly, if Premier's men had been unproductive because of incompetence or inadequate supervision by Premier, MW would have complained and there would be documentary references to such complaints: but there is not. Mr Cawkwell, who was MW's top scaffolding supervisor at the Project before becoming site manager in July 2018, said that he kept a close eye on all workers and took his responsibilities seriously. I accept that evidence. He described various supervisory activities, including daily site walks, one purpose of which was to observe Premier's workers to see, in general terms that they were doing what they were supposed to be doing. There is no evidence of complaints arising from this or other forms of supervision by MW, as there would have been if there had been serious problems of absenteeism or unproductive workmanship. The absence of evidence of this sort is therefore evidence in support of Premier's assertion

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that its men were present as required and worked reasonably productively within the constraints of a project on which MW was attempting to accelerate and to prevent it failing. Another pointer is the observation of Mr Schoenhofer in an email on 14 April 2018 where he said: “I also question the working hours we dictated (more or less 2 shifts, 12 hours each). Their people work 14 days in a row, 4 days free. Can anybody really work productive such long hours for consecutive 14 days. I dare to doubt... .” So do I.

Early invoices

30. Premier’s earliest invoices (917, 934, 942, 943, 947, 950) are not in dispute in the present proceedings and I need say no more about them.
31. The invoices that are in dispute commence with Premier’s invoice number 952, which was issued on 13 March 2018. It is convenient to summarise the first four disputed invoices here. They are invoices 952, 953, 954 and 956, which were issued between 13 and 21 March 2018.
32. Invoice 952 was dated 13 March 2018 and was in the sum of £46,335 for labour during the week ending 2 March 2018. It was supported by timesheets signed by Mr Chestney that were signed on behalf of MW on 5 March 2018. It appears from the invoicing and certifying documents (collected together in MW’s disclosure as Payment Certificate 5) that the invoice was checked at the time as there are contemporaneous annotations that would reduce the invoice total to £25,212.23. An initial Sub Contract Payment Request and summary document indicated a payment of £59,152 but not how this payment was calculated as it is greater than the sum claimed by invoice 952 and no other invoices are collected together under Certificate 5. The initial Sub Contract Payment Request was annotated with the words “Amended to £150k on account”. The payment of £150,000 was approved for payment by Mr Goundry and Mr Purcell, MW’s contract manager signing as Project Manager. It was authorised for payment by Mr Lakeman on 21 March 2018 with a final date for payment being stated to be 23 March 2018. £150,000 was in fact paid on 22 March 2018. The Court has seen no evidence to indicate how the payment of £150,000 was calculated, computed or made up other than the annotation within Certificate 5 that it was to be a payment on account.
33. Invoice 953 was dated 13 March 2018 and was for labour during the week ending 9 March 2018 in the sum of £72,367.50. It was supported by timesheets signed but not dated on behalf of Premier and signed but not dated on behalf of MW on 5 March 2018. This invoice appears in MW’s certifying documentation under Payment Certificate 6. It is subject to contemporaneous annotations which would reduce the invoice total to £45,136.88. It is apparent from its inclusion under Payment Certificate 6 that it contributed to the payment of £91,430 that was made on 5 April 2018. Certificate 6 also included invoices 954 and 956, as to which see below.
34. Invoice 954 was dated 14 March 2018 and was in the sum of £12,817.50 for labour during the weeks ending 16 February, 23 February and 2 March 2018. It was supported by timesheets that were signed on behalf of Premier and MW. The MW signatures were dated 7 March 2018. There are no contemporaneous annotations on the copy of the invoice disclosed by MW as part of its Payment Certificate 6 documentation.

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35. Invoice 956 was dated 21 March 2018 and was in the sum of £122,727.50 for labour during the weeks ending 9 and 16 March 2018. It was supported by timesheets that were signed on behalf of Premier and MW. The signatures are not dated. There is evidence of scrutiny of the timesheets because (a) hours are adjusted with the adjustment being initialled by “PG” and “ITC”, which is probably Mr Goundry and Mr Chestney while (b) other timesheet entries are ticked on the MW Payment Certificate 6 copy but not on the copy included by Premier with its final account, which leads to the inference (which I draw) that MW scrutinised and (in general) approved the timesheets. One Payment Certificate 6 copy of the invoice has contemporaneous annotations which would reduce it to £67,206.95.
36. On 21 March 2018 Mr Goundry had written to Mr Schoenhofer and Mr Lakeman asking whether MW was “able to either make payment of 5 & 6 today, or make a £200k on account payment today to Premier Engineering?” This fits with the amendment to the certification documentation and the payment of £150,000 on 22 March 2018. Mr Goundry’s reference to “payment of 5 & 6” is evidently a reference to the payments that were being processed under what are now called Payment Certificates 5 and 6.
37. I therefore summarise the position with these invoices as follows:
- i) The aggregate sum claimed by invoices 952, 953, 954 and 956 was £254,247.50;
 - ii) If the reductions shown by the contemporaneous annotations had been made, the reduced aggregate total of the invoices would have been £150,373.56;
 - iii) The combined total of the payments under Payment Certificates 5 and 6 was £241,430, some 95% of the aggregate sums claimed for the four invoices;
 - iv) The internal evidence to which I have referred leads to the inference that the timesheets were scrutinised by MW before the payments were approved.

Turnstile difficulties and the introduction of Biometric data

38. Mr Schoenhofer was wedded to turnstile data. On 21 March 2018, when Mr Goundry had emailed him and Mr Lakeman requesting either a payment of two Premier invoices or £200k on account, he had added “We are going to have weekly issues with keeping cash flow into them based on their increase labour to meet our demands. I would suggest the only way to move away from last minute urgent requests is going to be a £200k on account.” Mr Schoenhofer replied: “have you checked against gate records?” On 4 April 2018 when given the heads up about invoices 959 and 960, which had a combined value of £366,218.58, his immediate reaction was to ask for checks to be made against the gate records, with the added instruction “Do the same on all of their applications.”
39. Premier’s distrust of the turnstile data for the Project dated back to Mr Warren’s experience in 2017 when carrying out work for Siemens. It came to a head when MW challenged some of Premier’s timesheets for the period covering the Easter weekend 2018. Premier then tried to pass on the reduction to an unspecified number of its workers who protested that they had been working despite the apparent evidence to

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the contrary from the turnstile data. One particular employee, a welder called John Bell, satisfied Premier that he had been on site and carrying out welding on a day for which he had been paid but in relation to which the turnstile data suggested that he was not present and therefore should not have been. The consequence for Premier was a significant deterioration in labour relations, as they had paid their men on the basis of timesheets, then tried to deduct, and finally had to give way. I accept Mr Warren's evidence that some men accepted that they had gone home early and accepted the deduction but others did not. I also accept Mr Warren's evidence that Premier was warned by the Union that it was illegal to make deductions on the basis of turnstile data. Whether what the Union said was correct or not does not matter: it was a threat of future industrial trouble if Premier did it again. MW rely upon Mr Warren's acceptance that, in this instance, Premier made deductions based on turnstile data. It did so initially though I accept Mr Warren's evidence that it stopped doing so and paid back the sums that had been deducted (whether for all employees or those who had not accepted the deduction). That temporary practice of making deductions seems to me to pale into insignificance when compared with the furore that it provoked and Premier's subsequent deep-rooted antipathy to the use of turnstile data on the Project.

40. The specific rights and wrongs of this episode, or of Premier's distrust of the turnstile data, do not matter. What matters for the purposes of this judgment is that, from then on, Premier were resolutely opposed to having their timesheets verified by reference to the turnstile data which they now believed (rightly or wrongly) to be unreliable. I have no hesitation in accepting Premier's evidence that this was a genuine issue for them and that they developed and thereafter maintained an implacable opposition to turnstile data being used in relation to their works for MW, whether for verification or otherwise. It coincided with problems relating to Premier's invoice 957, which related to an earlier period, as I detail below.
41. One outcome of Premier's opposition to turnstile data was that the parties agreed that Premier would install a biometric clock which their men would use on signing in and signing out and that the data from that clock would be used for verification of timesheets. I accept the evidence of Mr Warren that the motivation for this came from MW and that Premier was instructed to install the clock: it would have been a sensible response in the face of Premier's opposition to the turnstile data and MW's wish for objective data to assist them with verification. The clock was ordered on or about 10/11 April 2018 and installed later that month.

April 2018 discussions

42. I have referred at [17] above to Premier not having the balance sheet to sustain payments to ever-increasing numbers of men and therefore needing prompt payment. MW knew this: on 21 March 2018 Mr Goundry wrote to Mr Schoenhofer: "the issue is, M&W have instructed a Sub-contractor without a heavy financial backing behind them to man up to levels which they cannot maintain without weekly payments." To similar effect, on 13 April 2018 Mr Demase, MW's construction director, wrote to Mr Schoenhofer and others that "Premier is a small contractor He indicates that he is out maybe £700,000 and he's too small a player to carry that much debt. We almost had a walk out this afternoon because there was a rumor spread that he was not going to make payroll." In the same email, Mr Demase referred to turnstile data problems saying "I know there were clock issues but I believe they have been resolved. The net

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being he lost recovery of £30,000.” This appears to be a reference to a deduction of £30,000 from Premier’s invoice 957, which was submitted on 22 March 2018 in the sum of £217,292.50 and paid on 12 April 2018 in the sum of £187,292.50.

43. The basis for the deduction from invoice 957 does not appear from the invoicing and certifying documents (collected together in MW’s disclosure as Payment Certificate 7). Though there are contemporaneous annotations applied by MW to Premier’s invoice they do not obviously lead to a deduction of £30,000; and the deduction is not the subject of further explanatory witness evidence. There is, however, evidence of internal disagreement about how MW should approach the invoice. On 4 April 2018 Mr Goundry emailed Mr Schoenhofer and others submitting “payment 7”, which was for payment of invoice 957. Mr Schoenhofer queried the invoice, asking for details of “times per gate records” and saying “Nothing is urgent. Every application has to get checked and assessed properly.” It was in response to this query about gate records that Mr Goundry replied “M+W Site Supervisor has signed off against timesheets as accurate.” This provoked the retort from Mr Schoenhofer that “I do not care of what they signed off at all! Please check against gate records.” Mr Goundry replied that he would “double check the clocks against the sign offs again.” He said they would have a walk off site if they were not able to pay that week; and he pointed out that there was no reference to site clocks in the original sub-contract, which he described as “very basic”. Mr Goundry then went back to Premier explaining MW’s spreadsheet showing timesheet hours and turnstile records and pointing out widespread discrepancies between the two. It appears that there had been either a meeting or a discussion between Mr Goundry for MW and Mr Warren and Mr Chestney for Premier on 9 April 2018, which is referred to in an email sent to them by Mr Goundry the following day. The net result appears to have been that on 9 April 2018 Mr Goundry sent to the same MW distribution list as before a revised Payment for their approval and action stating “we have made our assessment based on the data available and agreed an on account reduction with Premier Engineering subject to final checks.” Mr Goundry sent Premier the turnstile data from January 2018 to 5 April 2018 with his email to Mr Warren and Mr Chestney on 10 April 2018.
44. These exchanges and Mr Demase’s email of 13 April 2018 support the conclusion that the reduction of invoice 957 was by reference to turnstile data, but no further inference about how the deduction was calculated can safely be drawn. It is probable, and I find, that the episode surrounding this invoice and payment contributed to the difficulties to which I have referred and the agreement that Premier should install the biometric clock. It should be noted, however, that invoice 957 did not cover the Easter weekend and therefore did not cover the hours for John Bell and others that became a bone of contention. Mr Bell’s timesheet for the week ending 6 April 2018 was included in the materials supporting invoice 961, which MW paid in full on 26 April 2018. Precisely how and when it was agreed that Premier would install the biometric clock and that it would be used for verifying timesheets does not appear from the evidence, but I infer that it occurred after MW had asked Premier to check their timesheets against the turnstile data over the Easter weekend and by about 10 April 2018 when Premier ordered the biometric clock. This fits broadly with the discussions and deduction from the invoiced sum on invoice 957 and the problems that Premier experienced with its workforce to which I have just referred. I find that Premier’s opposition to the use of gate data was fixed by the time that the biometric clock was ordered and was the reason for it being installed. The internal discussion

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involving Mr Schoenhofer also indicates that, at that stage, he required Premier's timesheets to be checked properly and deductions to be made as dictated by objective evidence.

45. Mr Schoenhofer's position altered during the week before Saturday, 14 April 2018, because of his appreciation of Premier's need for cash flow. Early on 14 April he wrote to Mr Demase and to senior management in the M+W group describing a solution that he regarded as "workable but unfavourable". After describing how Premier's payment terms had been reduced from 14 days to 10 days because of ever-increasing demands for manpower and how this was just about doable if Premier issued its invoices on Fridays, he continued:

"So we decided on Tuesday this week that we pay now every invoice without assessment as is on-account and do our checks afterwards.

I am not at all happy with that solution as we already can foresee following problem: workers at Premier are paid weekly according their timesheets. There are considerable differences between timesheets and their working hours on site. Tim presented them to Premier's managing director who promised better supervision. We also provide them now with our gate records on a weekly basis. It's hard to cut their invoices afterwards as they already have paid now their workers before we come back with our assessment. If they do not change (increase) their productive hours on site we will bring Premier in a very uncomfortable situation or we just accept their invoices as they are. ... I just can give advice to have at least a close look on their presence at site as we would be forced to cut their invoices if differences between invoiced hours and hours according gate records remain that size we have seen on previous application. And with the on account payment pattern now, we would create a huge problem for them retrospectively or we just accept."

I return to this email at [67] below.

46. On 14 April 2018 Mr Chestney met Mr Demase. The product of their meeting was a document entitled "Pay Basis for Premier Craft", which Mr Demase sent to Mr Chestney the same day as "the payment basis we discussed." He asked Mr Chestney to have his management get back to him by Sunday 15 April 2018 so he could present it to his higher management the following day.
47. The first two pages of the document set out what shift hours would be, what breaks would be permitted, and the basis on which Premier employees would be paid e.g. the Monday-to-Thursday dayshift would be for a total of 11 hours paid work with employees being paid straight time for 7 ½ hours work and time and a half for the overtime. Although stated in terms of what Premier's men would do, this section of the document also served to record the shift patterns that MW required to be worked, which had been the subject of earlier discussions with Mr Donnelly, MW's construction and piping manager from about mid-March 2018. The rates at which

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Premier would be paid had been established by the 12 February 2018 document and Premier had been billing in accordance with those rates since then as agreed: they were not set out again in the 14 April 2018 document. The third page of the document included a series of conditions, some of which referred to payment of Premier's employees but some of which went further and regulated dealings between Premier and MW. Specifically, conditions D to I stated:

“D. Because Premier has work both on the site and off site on M&W's storage facility, Premier will have installed, at their cost, and operating by Monday April 16th a biometrics' reader outside the M&W gate to scan all employees in in the morning and evening. In addition they will maintain a manual signed timesheet to back up all records. All data collected by the biometrics report shall be provided to M&W for each invoice period.

E. Any additional overtime requests above the standard hours above will have to be authorized by the M&W Piping Construction Manager or his delegate.

F. Premier will manage all breaks and insure the craft is back to work immediately following any break period.

G. Premier Management and Supervisors will be responsible for maintaining quality workmanship, insuring a high productivity for the craft they are supervising and shall maintain discipline among its entire workforce.

H. Premier must maintain qualified supervisors and qualified craft.

I. Premier shall submit invoices on or before the close of business each Monday following the week worked.”

48. MW points out that there is no reference to turnstile data in the document. That is consistent with the context in which the discussions were held, namely that Premier had made clear their opposition to using turnstile data and it had been agreed that the biometric clock would be used instead. As recorded in Condition D this was, at least in part, because Premier had to carry out work both within and outside the turnstile perimeter, which both parties recognised and accepted. Because Premier was not prepared to go ahead on the basis of turnstile data, another independent source of verification was required to protect both Premier and MW. Condition D set out the basis upon which the parties would go forward, namely signed timesheets and biometric data. While rejecting subjective intention as an aid to interpretation, I agree with Mr Warren's evidence that because MW had suggested putting in the biometric clocks, Condition D was as clear as day. And I accept Mr Chestney's evidence that “the whole point of the exercise was to come to an agreement where turnstile data was not included.” Viewed objectively and in the context of the discussions and agreements that had taken and were taking place, there was no mention of turnstile data because they were not to be included in the material for verifying Premier's hours and invoices.

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49. In his witness statement Mr Chestney said that Mr Demase instructed Premier during the meeting on 14 April 2018 to install the electronic clocking system on site to ensure that hours recorded on the timesheets were not wildly wrong. For the reasons set out above, I do not think that Mr Chestney is right in this part of his evidence. The agreement that Premier would install the biometric clock came earlier and was reflected in the document for that reason. Mr Chestney and Mr Demase were involved in the process of formalising that agreement and other features of the working relationship in writing.
50. Mr Chestney promptly sent the document to Mr Warren, describing it as “the proposal as discussed today.” Mr Warren approved it the same day and asked Mr Chestney to action it on Premier’s behalf. On 15 April 2018 Mr Demase commended his document for agreement in an email which recognised Premier’s need for cashflow, stating that Mr Warren had been drawing on his own resources to fund payroll and stating that “if we are to keep moving forward with Premier we need to take action as soon as possible.” Mr Meakin forwarded that email and the document to Mr Lakeman and Mr Schoenhofer recommending the proposal and adding “we don’t have much time to go, and Premier are a key part of our success.” Their actions show that both Mr Chestney and Mr Demase thought that their discussions were to be endorsed by others and were not the final word or agreement between the parties. Though they were agreed, what they produced was described as a “proposal” for agreement by their employers, MW and Premier.
51. Things then went quiet. There is no documentary or witness evidence of MW’s higher management (Mr Schoenhofer and Mr Lakeman) considering or formally approving the 14 April 2018 Basis of Pay document: neither Mr Schoenhofer nor Mr Lakeman gave evidence. Equally, there is no documentary evidence of MW going back to Premier formally or expressly to confirm agreement of the terms set out in that document. Mr Meakin’s witness statement refers to internal MW discussions over the following days; but there is no documentary evidence or record to substantiate his evidence on the point, which would be surprising if his evidence were correct given MW’s free use of emails and the significance of the issues being discussed. There is email evidence from 16 April 2018 which shows that MW were still recording turnstile data which it interpreted as showing that Premier’s labour were not working within the turnstile perimeter for their full shifts and that “a good number were clocking off early but being claimed for full shifts”: but that is not the same as senior management discussions of the 14 April 2018 document or its terms. I am not satisfied that there were any such discussions before 1 May 2018; if there were, nothing was done as a result of them. Mr Warren agreed in cross-examination that Mr Chestney “would have” kept him informed of continuing discussions between the parties in mid to late April but, in my judgment, it was apparent from his answers that he had no actual recollection of any such discussions. His evidence does not persuade me that there were any discussions between the parties between 15 April 2018 and 1 May 2018. I am not satisfied that there were any. I deal with the discussions on 1 May 2018 at [80] below.
52. From 14 April 2018 MW stopped supplying turnstile data to Premier and Premier, when it had it, started supplying biometric data to MW.

Payment of invoices

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53. On 19 April 2018 MW paid Premier's invoices 959 and 960 (collected together as Certificate 8). Invoice 959 had been submitted on 3 April 2018 and was in the sum of £308,012.50 for labour. Invoice 960 had been submitted on 6 April 2018 and was in the sum of £58,206.08 for materials. I deal with materials invoices at [67] below. The documents disclose at least part of the history of this application and how these invoices came to be paid in full. There are contemporaneous markings on MW's copy of Invoice 959 which would mark it down to £219,633.38. As with contemporaneous annotations on other invoices, these appear to have been made on the basis of turnstile data. No alternative basis for them has been suggested. However, MW's Sub Contract Payment Request was signed off in the full amount for each invoice by Mr Goundry and Mr Purcell. It was also signed as authorised for payment by Mr Lakeman on 11 April 2018. A Payment Notice in the full amount of each invoice was produced and signed on behalf of Mr Purcell which said that the date for payment was 18 April 2018. On 11 April 2018 Mr Goundry sent an email attaching the documentation for the payment to be made on account to Mr Schoenhofer and two others, referring to "our discussions on site today" and requesting approval as payment was due on 18 April 2018. Mr Schoenhofer replied:

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But please have now a look on all previous applications and conduct an accurate assesment [sic] on them. We do have gates to use the data for crosschecking the timesheets of our suppliers."

54. This evidence supports the inference that MW took the deliberate decision to pay Premier's invoice in full and in the knowledge that there was turnstile data that (a) would support MW in seeking to apply deductions from the interim payment and (b) would not support the terms of the Payment Notice or the approval and authorisation of payment in full. That special arrangements for payment of Premier's invoices were in place is also supported by an email sent by Mr Schoenhofer to Mr Meakin and Mr Lakeman on 19 April 2018 in which he said that he had told them the previous Saturday (i.e. 14 April 2018) that payment of Premier's invoices should follow a process under which "we pay on account and assess afterwards." On 10 May 2018 Mr Winthrop emailed Mr Schoenhofer, copying others within MW, that "the project team has made the decision to make the on account payment to push the project forward in the interim and for the redress to be made later against the biometric information provided... ." In the light of this evidence and the evidence internal to MW's certification documentation, which shows contemporaneous annotations *before* payment was made, I find that MW took the deliberate decision to which I have referred at the start of this paragraph. Specifically, I find that (contrary to what Mr Schoenhofer said in his email of 19 April 2018) MW carried out its assessments *before* paying Premier's invoices.
55. MW's treatment of Invoice 961 followed the same pattern as for invoice 959. It was submitted by Premier on 13 April 2018. The documents are collected under Payment Certificate 9. The invoice was for labour and was in the sum of £351,387.50. Premier's invoice was subject to contemporaneous annotations that would have marked it down from the invoiced sum of £351,387.50 to £247,110.28. Despite this, the invoiced sum was approved for payment by Mr Goundry and Mr Purcell and authorised for payment by Mr Lakeman on 18 April 2018. A Payment Notice for the

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invoiced sum without deduction was signed by Mr Purcell and payment of the full sum was made on the due date, 25 April 2018.

56. Payment Certificate 10 covered Premier's invoice 962, which was submitted on 17 April 2018 for labour in the sum of £340,532.50. Contemporaneous annotations would have reduced the amount owed to £275,388.76. The worksheets had been signed off by Mr Rumsey including specific agreements for bonus payments. The invoiced sum was approved for payment in full by Mr Goundry and Mr Purcell and, on 18 April 2018, Mr Lakeman authorised it for payment in full, the date for payment being 2 May 2018. A Payment Notice for payment of the invoiced sum was signed by Mr Purcell and dated 18 April 2018. The full invoice amount was paid on 3 May 2018.
57. Payment Certificate 11 covered invoices 964 (£366,610.00 for labour) and 965 (£51328.61 for materials), both of which were dated 24 April 2018. Invoice 964 has contemporaneous annotations that would reduce it to £265,777. The timesheets have examples that show Mr Rumsey (who signed them) checking and making adjustments. Despite the contemporaneous annotations, the invoice sums were approved for payment by Mr Goundry and Mr Purcell and authorised for payment by Mr Meakin (though his signature is missing). A Payment Notice for the whole invoiced sums was dated 3 May 2018 and was signed by Mr Meakin. The full amount was paid on 10 May 2018.
58. Payment Certificate 12 covered invoice 967 which was dated 2 May 2018 in the sum of £266,012.50. Contemporaneous annotations would reduce that sum to £218,860. There is evidence of Mr Rumsey specifically authorising entries on the timesheets. Despite the contemporaneous annotations, the full invoice sums were approved for payment by Mr Winthrop (an MW quantity surveyor) and Mr Purcell and authorised for payment by Mr Meakin on 9 May 2018. He also signed a Payment Notice for the full invoiced amount on 9 May 2018. It was paid in full on 16 May 2018.
59. Payment Certificate 13 covered Premier's invoice 968 which was for labour in the sum of £220,272.50 and dated 9 May 2018. The due date for payment was stated to be 24 May 2018. The invoice says "see attached supporting timesheets and biometric clocking report" but it appears that full biometric data was not supplied as Mr Goundry emailed Mrs Braithwaite, Premier's office and account manager, on 10 May asking for "the biometric data in [sic] a shift by shift basis in excel format for the full week", which he later explained was "required to substantiate the invoice." After a delay in provision of the requested biometric data, Mrs Braithwaite asked MW if Premier could be paid 70% of its invoice with the outstanding 30% being paid on presentation of the data. Premier's invoice was subject to contemporaneous annotations which would reduce it to £187,615.41. Mr Rumsey was responsible for signing off the timesheets and there is evidence of him specifically authorising particular payments. Mr Winthrop and Mr Purcell approved and on 17 May 2018 Mr Meakin authorised £154,190.75 for payment, which is 70% of the invoiced total. Mr Meakin also signed the Payment Notice in that sum, referring to Mrs Braithwaite's request for payment of 70% as explanation of the reduction. The Payment Notice was dated 17 May 2018. The due date for payment was stated to be 23 May 2018 and the payment of the 70% was made on 25 May 2018. This is the first occasion where the invoice refers to biometric data and according to Mrs Braithwaite (whose evidence I accept) it was the first invoice supported by biometric data. It was for work carried

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out in the week ending 4 May 2018 and MW relied upon the absence of biometric data to justify reducing its payment. Apparently the outstanding 30% was not subsequently paid, although Mrs Braithwaite supplied additional information on 16 May 2018. There was no suggestion by MW to Premier that the sum due to be paid should be reduced by reference to the contemporaneous annotations or turnstile data.

60. Premier submitted no invoices between 10 May and 1 June 2018. Between 1 and 11 June 2018 it submitted 9 invoices totalling over £2.5 million. The 9 invoices comprised 5 for labour 4 for materials. The periods covered by the labour invoices were the week ending 11 May 2018 to the week ending 8 June 2018. This hiatus is the exception to the general rule that Premier billed promptly in its pursuit of cashflow. The reason for the hiatus has not been explained in evidence. Despite the hiatus in submitting invoices, the labour invoices were supported by signed timesheets that were generally dated by MW at or soon after the relevant period of work.
61. The first labour invoice in sequence is invoice 971, which was for labour during the week ending 11 May 2018 in the sum of £477,677.50. It was dated 1 June 2018 and attached timesheets and biometric data. It is covered by Certificate 16. Contemporaneous annotations would reduce the invoiced amount to £351,309.68. It was approved for payment in full by Mr Winthrop and Mr Purcell and was authorised for payment in full by Mr Meakin on 14 June 2018. Most of the timesheets are signed by Mr Rumsey and his signature is dated 12 May 2018. Mr Meakin signed the Payment Notice in the full invoice amount with payment stated to be due on 20 June 2018. Payment was made in full on 19 June 2018.
62. This sequence of invoices being subject to contemporaneous annotations reducing the invoiced sum but being approved and paid in full comes to a halt with invoice 972. It was dated 1 June 2018 and was for labour during the week ending 18 May 2018 in the sum of £511,672.50, with a payment due date of 16 June 2018. It attached timesheets and the biometric clocking report. Most but not all of the timesheets were signed on behalf of MW and Mr Rumsey did most of the signing with evidence that some adjustments were made. The contemporaneous annotations marked it down to £395,911.23. There is nothing intrinsic and no explanatory evidence to distinguish the annotations on this invoice from those on previous invoices; and MW says they were made by Mr Winthrop, who did not give evidence. There is also a summary sheet comparing hours recorded on timesheets with hours recorded on the turnstile records and identifying a shortfall by reference to turnstile data of approximately 29%. On the information available to the Court it is not possible to reconcile these calculations precisely with the reductions applied by the contemporaneous annotations, but they are similar where comparisons can be made, which provides support for the conclusion that the contemporaneous annotations were made by reference to turnstile data. Mr Winthrop and Mr Purcell approved payment in this reduced sum, which was authorised by Mr Meakin on 19 June 2018 with a stated final date for payment of 20 June 2018. £395,911.23 was included as part of a payment made on 26 June 2018. The payment is covered by Payment Certificate 19. Premier have told the Court that no Payment Notice or supporting documents showing the breakdown of payments or allocation to invoices was received in respect of the payment made on 26 June or the two later payments on 4 and 11 July 2018 to which I refer below and that requests for information about the breakdown went unanswered.

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Although not formally in evidence, I accept that information, which was not contradicted by MW.

63. Invoice 973 was dated 1 June 2018 and was for labour during the week ending 25 May 2018 in the sum of £488,425, with a payment due date of 16 June 2018. It attached timesheets and the biometric clocking report. Most but not all of the timesheets were signed on behalf of MW: Mr Rumsey did most of the signing with evidence that some adjustments were made. The contemporaneous annotations marked it down to £384,074.15. There is nothing intrinsic and no explanatory evidence to distinguish the annotations on this invoice from those on previous invoices. Mr Winthrop and Mr Purcell approved payment in this reduced sum, which was authorised by Mr Meakin on 19 June 2018 with a stated final date for payment of 27 June 2018. £384,074.15 was included as part of a payment made on 4 July 2018. The payment is covered by Payment Certificate 20.
64. Invoice 977 was dated 7 June 2018 and was for labour during the week ending 1 June 2018 in the sum of £439,447.50, with a payment due date of 22 June 2018. It attached timesheets and the biometric clocking report. The timesheets were signed on behalf of MW by Mr Rumsey with evidence that some adjustments were made: his signatures were dated 1 June 2018. I have not identified a copy of the invoice with contemporaneous annotations. Mr Winthrop and Mr Purcell approved payment of £360,581.23, which was authorised by Mr Meakin on 19 June 2018 with a stated final date for payment of 28 June 2018. £360,581.23 was included as part of a payment made on 4 July 2018. The payment is covered by Payment Certificate 21, the documentation for which appears to be incomplete.
65. Invoice 980 was dated 11 June 2018 and was for labour during the week ending 8 June 2018 in the sum of £481,110, with a payment due date of 26 June 2018. It attached timesheets and the biometric clocking report. There are contemporaneous annotations which would reduce the invoice to £359,394.60: MW say these annotations were made by Mr Winthrop. There is also a summary sheet, in the same format as the sheet noted in relation to invoice 972 above, comparing hours recorded on timesheets with hours recorded on the turnstile records and identifying a shortfall by reference to turnstile data of approximately 31-32%. Once again, on the information available to the Court it is not possible to reconcile these calculations precisely with the reductions applied by the contemporaneous annotations, but they are similar where comparisons can be made, which provides support for the conclusion that the contemporaneous annotations were made by reference to turnstile data. The timesheets were signed on behalf of MW by Mr Rumsey, who dated his signature as 8 June 2018: the timesheets provide evidence that some adjustments were made. Mr Winthrop and Mr Purcell approved payment in the reduced sum of £359,394.60, which was authorised by Mr Meakin on 19 June 2018 with a stated final date for payment of 27 June 2018. £359,394.60 was included as part of a payment made on 4 July. The payment is covered by Payment Certificate 22.
66. In summary:
 - i) Between 12 April and 20 June 2018, MW made payments against 8 Premier Invoices for manpower (957, 959, 961, 962, 964, 967, 968, 971). Of those:

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- a) Payment of invoice 957 on 12 April 2018 was reduced by £30,000 by reference to turnstile data;
 - b) Payment of invoice 968 on 25 May 2018 was reduced by 30% because of Premier's failure to provide biometric data;
 - c) Otherwise all invoices were paid in full despite the fact that MW internally carried out contemporaneous checks against turnstile data which, if relied upon, would support reductions in payment against the sums claimed in the invoice.
- ii) From invoice 959 onwards, viewed objectively, the parties relied upon biometric data where it was supplied (and, in the case of invoice 968, where it was not) as objective support for Premier's timesheets and invoices;
 - iii) Again, viewed objectively, neither MW nor Premier referred to or relied upon turnstile data as evidencing or showing the correct amount to be paid on account after 12 April 2018, when invoice 957 was paid in the reduced sum by reference to turnstile data;
 - iv) After 20 June 2018, MW's response changed. There were 4 invoices for manpower against which payments were made between 26 June and 4 July 2018 (972, 973, 977, 980). For three of these (972, 973, 980) the reductions matched the contemporaneous annotations, which were based on turnstile data. No copy of invoice 973 with any markings on it has been disclosed; but I infer that the same approach was probably adopted and that the reduction was by reference to turnstile data;
 - v) Payment by MW of Premier's invoices up to and including invoice 971 had been prompt. Payment of the subsequent invoices was delayed. This coincided with the mechanical works that MW required of Premier moving towards their close.
67. On the face of the invoices and documents collected together under Payment Certificates, there is no explanation for MW's varying approach to making interim payments to Premier on the basis of its submitted invoices, and no explanation was proffered by MW. However, Mr Schoenhofer's email of 14 April 2018 helps to make sense of the varying approach to payments and of evidence which emerged during the trial which is otherwise perplexing.
68. MW's defence of the claim based on hours worked by Premier rests substantially upon spreadsheets compiled by Mr Gillam over time. Originally MW intended to introduce these materials as evidence from another witness; but when that witness' evidence was ruled to be inadmissible, Mr Gillam was drafted in at the last moment. For present purposes, the relevant feature of Mr Gillam's evidence was that from April 2018 until Premier went off site he was asked by the commercial or QS department of MW on a weekly basis to compare Premier's timesheet data with the turnstile data. He would be given the Premier timesheets and, after completing the analysis, would give the data to Mr Winthrop. This was, so far as he was concerned, an entirely normal internal transaction which he would routinely expect to do knowing that it was part of the process for checking the subcontractors' claims for

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payments. This evidence raises the question why the data he was providing was not used as the basis for adjusting Premier's payments.

69. Mr Meakin had given evidence before Mr Gillam. When asked in relation to invoice 967 why on 9 May 2018 when signing the Payment Notice he did not use the turnstile data to make the interim valuation, his response was that MW wanted to keep payments to Premier going but reserved their position – this being a reference to the terms of the Payment Notices saying that the payment was “on account and subject to final checks”. He accepted that the ticks applied by MW to Premier's timesheets would be to confirm that the people were on site. His evidence was that, when the payments were made they were not made in the belief that Premier were entitled to the money but in the belief that MW would claw it back later and that MW were paying them simply to keep them on site. Although his evidence carried a suggestion that MW told Premier that was what they were doing, I reject any such suggestion. Mr Meakin accepted, correctly in my judgment, that Premier would have left site if they had known that was the basis upon which their accounts were being valued.
70. Mr Rumsey accepted that on a normal job he would expect to be in a position to check timesheets and to have real input rather than rubber stamping; but he downplayed the significance of his signing timesheets by saying that he did not have either the knowledge or the resources to enable him to make an informed judgment about the validity of the timesheets. He said that the Project was a failing job and he had to bring it home on time, so he had to use “some strange methods to keep everything oiled and greased and moving along smoothly to where we need to be.” He said it was a volatile site and he was signing the timesheets to keep the peace. He later said that he expected the timesheets to be checked further down the line, and that what he was doing was “keeping the peace”. He said that he did this of his own initiative and not because he was told to do it by someone else. His evidence remains material in this context even though I do not accept that he routinely did no more than rubber stamp either the hours claimed by Premier or the claims for site incentives and bonuses. Specifically, I do not accept that his endorsement of site incentives and bonuses marked on timesheets was mere rubber-stamping. Despite this, I accept that Mr Rumsey was aware of a need to keep the peace with Premier, though the evidence does not disclose precisely how that awareness percolated to him.
71. Mr Goundry, who approved a number of invoices for payment, said that he was aware that the MW supervisor who signed the timesheets did so for record purposes only and pushed the question of checking further down the line. He initially said that he may have had some involvement in checking the data but said it was for others to download the information. Later, he accepted that he either had or could have had the turnstile data available to him. And, in answer to the Court, he said that he was aware of a decision or a policy taken by others to pay Premier on their applications simply to keep them on site. There was also a recurrent theme, echoed by Mr Goundry and Mr Lettice, that the relevant people at MW didn't have the time or the resources to check things properly.
72. Drawing these strands together, Mr Schoenhofer's email of the 14 April 2018 refers to a decision taken the previous Tuesday, which was 10 April 2018, to pay Premier's invoices in full. It left open what the ultimate outcome might be, the alternatives being to try to claw back monies later on the basis of turnstile data which was always available to them or simply to accept the invoices. The decision was taken because

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MW knew that if they challenged Premier's invoices on the basis of turnstile data, Premier would leave site, which was a risk that MW could not afford to take, until about the very end of June 2018 when Premier's contribution to the work was coming towards its end. The imperative of keeping Premier on site underpins Mr Schoenhofer's email and provides the context for what happened between the parties. In my judgment it explains MW's suggestion of the biometric clock, which could be suggested on the basis that it (and not the turnstile data) would provide independent verification. Mr Schoenhofer's email therefore supports a conclusion that the installation of the biometric clock was decided on or about 10 April 2018 on the basis that it would be the source of independent verification for Premier's timesheets.

73. As part of the decision to pay Premier's invoices in full, it was also decided that MW should continue to monitor Premier's timesheets internally against turnstile data from mid-April 2018 with a view to clawing back monies later. This is the effect of Mr Gillam's evidence and the presence of the contemporaneous annotations on the invoices that I have described. It is also confirmed by an email sent from Mr Winthrop to Mr Lakeman (copied to Mr Gillam) on 4 June 2018 in which he listed the labour invoices for the three weeks ending 11, 18 and 25 May 2018 (invoices 971, 972 and 973) and said:

“... suggest we do our final analysis today utilising our turnstile records prior to sending the letter to give Roy an indication as to where we are on deductions beyond the £96k currently held.”

The £96k equates to the £30,000 deducted on payment of invoice 957 and the c. £66,000 deducted on payment of invoice 968. In the event, MW chose to pay the first of these three invoices (971) in full and to reduce payment of the latter two (972 and 973) by reference to their turnstile data analysis.

74. Mr Meakin said that he had conversations with Mr Warren in April 2018 during which he told Mr Warren what they were doing (i.e. paying invoices as claimed with the intention of clawing back overpayments later.) I reject that evidence. MW did not tell Premier what they were doing and, with the exception of an email on 1 May 2018, to which I refer below, there was no further mention of turnstile data between the parties to alert Premier to what was happening. This was, I find, because Premier were still indispensable to MW and they knew that Mr Warren would leave site if he got wind of such a plan. It was only at the end of June 2018 that MW felt able to switch from paying on the basis of Premier's invoices supported by timesheets and biometric data to reintroduce reductions based upon turnstile data. Until then, the only reduction that was made after invoice 957 was by reference to the absence of biometric data. How Mr Schoenhofer's decision not to cut Premier's invoices was disseminated through MW does not appear, but it clearly was known and understood by those who were responsible for approving and authorising payment of Premier's invoices. It is the only credible explanation for their authorising payments that they believed to be contradicted by turnstile data, which went against the grain of how MW treated all its other subcontractors.
75. Nor does it appear clearly from the documents who took the decision to start cutting payments against Premier's invoices again (though it must almost certainly have been Mr Schoenhofer) or how that decision was disseminated within MW. There is,

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however, an overwhelming inference that the decision was taken on the basis that Premier were now dispensable. What does appear from the documents is that on 14 June 2018 Mr Winthrop was asking Premier to supply biometric data and asking for confirmation that biometric data was being used as the basis of the invoice rather than timesheets, to which Premier replied sending the requested data and stating that the biometric data did not include special deals and incentives given by MW management to the workers. On 20 June 2018, when sending payments for approval to Mr Schoenhofer, Mr Winthrop referred to MW having made their assessment of timesheets by reference to turnstile data. It appears that this submission formed the basis for the payments subsequently made on and after 26 June 2018.

76. For the reasons I have given, it was essential for MW that Premier should not understand that MW was making its payments with a view to clawing back large sums later when Premier had paid its workforce on the basis of the signed timesheets. Neither Mr Chestney nor Mr Warren knew what was happening and, if they had done, the response would have been immediate. This contributes to my conclusion that Mr Chestney did not say to Mr Rumsey that it did not matter whether he signed timesheets or not as they (meaning people further down the line in MW) were going to check them on the turnstiles. If anything like that was said, it was said before the decision to install the biometric clock and was no longer applicable after that.
77. MW's treatment of materials invoices showed a different pattern. Typically, the invoices would be accompanied by a summary schedule of invoices and the underlying invoices themselves. The typical pattern is for there to be annotations on the summary schedules, which are normally either ticks or short explanations for disallowing an item:
- i) Invoice 960 was dated 6 April 2018 and was in the sum of £58,206.08 with a due date for payment of 21 April 2018. The invoice refers to attached excel workings, which I have not seen. The supporting invoices were attached. It was paid in full together with invoice 958 on 19 April 2018 under Payment Certificate 8;
 - ii) Invoice 965 was dated 24 April 2018 and was in the sum of £51,328.61 with the due date for payment being stated to be 9 May 2018. The invoice refers to attached Excel workings, which I have not seen. The supporting invoices were attached. The invoice was paid in full on 10 May 2018 under Payment Certificate 11. This was after Mr Schoenhofer had on 3 May 2018 required that the materials invoice be checked before giving his approval to the payment being made "just on account as not finally checked";
 - iii) Invoice 969 was dated 10 May 2018 and was in the sum of £79,965.64. The supporting (apparently excel) schedule of items, which is supported by the underlying invoices, is annotated with ticks or comments leading to deductions of £1,261.96 from the invoice total. The nature of the ticks and comments demonstrate that they were placed by someone with knowledge of the Project and current knowledge that enabled them to form a view that some items were not properly charged e.g. some items are disallowed on the basis that they are Premier overheads; others are allowed although it appears that they were delivered to Premier's premises in Lincoln and not to the Project. Payment of the reduced sum of £78,703.68 (i.e. the invoiced sum less £1,261.96) was

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approved by Mr Winthrop and Mr Purcell and authorised for payment by Mr Meakin on 5 June 2018. It was paid, in the reduced sum of £78,703.68, on 6 June 2018. The Payment Notice, signed by Mr Meakin explained the basis of payment as being “with respect to certain items being deducted as non-recoverable.” It is covered by Payment Certificate 14;

- iv) Invoice 974 was dated 1 June 2018 and was in the sum of £72,611.11 with a due date for payment of 16 June 2018. The supporting (apparently excel) schedule of items, which is supported by the underlying invoices, is annotated with ticks or comments leading to deductions of £1,988.88 from the invoice total. The comments are similar in kind to those on the schedule for invoice 969. Payment of the reduced sum of £70,666.23 (i.e. the invoiced sum less £1,988.88) was approved by Mr Winthrop and Mr Purcell and authorised for payment by Mr Meakin on 5 June 2018. It was paid, in the reduced sum of £70,666.23 on 6 June 2018. The Payment Notice, signed by Mr Meakin explained the basis of payment as being “with respect to certain items being deducted as non-recoverable.” It is covered by Payment Certificate 15;
- v) Invoice 975 was dated 1 June 2018 and was in the sum of £95,218.83 with a due date for payment of 16 June 2018. The supporting (apparently excel) schedule of items, which is supported by the underlying invoices, is annotated with ticks or comments leading to deductions of £12.31 from the invoice total. The comments are similar in kind to those on the schedule for invoice 969. One reduction is of 23p, which evidences close attention to minute detail. Payment of the reduced sum of £95,207.52 (i.e. the invoiced sum less £12.31) was approved by Mr Winthrop and Mr Purcell and authorised for payment by Mr Meakin on 5 June 2018. It was paid, in the reduced sum of £95,207.52 on 26 June 2018. The Payment Notice, which was signed by Mr Meakin, stated that it was being paid in that sum “with respect to certain items being deducted as non-recoverable.” It is covered by Payment Certificate 18;
- vi) Invoice 978 was dated 8 June 2018 and was in the sum of £24,922.16 with a due date for payment of 23 June 2018. The supporting (apparently excel) schedule of items, which is supported by the underlying invoices, is annotated with ticks or comments leading to deductions of £96.60 from the invoice total on the basis that one invoice is “overheads”. Payment of the reduced sum of £24,825.56 (i.e. the invoiced sum less £96.60) was approved by Mr Winthrop and Mr Purcell and authorised for payment by Mr Meakin on 19 June 2018 as part of a larger authorisation that included invoice 979. It was paid in the reduced sum of £24,825.56 on 26 June 2018. The payment Notice, which was signed by Mr Meakin, stated that it was being paid in that sum “with respect to certain items being deducted as non-recoverable.” It is covered by Payment Certificate 17;
- vii) Invoice 979 was also dated 8 June 2018 and was in the sum of £16,726.13 with a due date for payment of 23 June 2018. The supporting (apparently excel) schedule of items, which is supported by the underlying invoices, is annotated with ticks, there being no apparent reductions. Payment of the invoiced sum was approved by Mr Winthrop and Mr Purcell and authorised for payment by Mr Meakin on 17 June 2018 as part of a larger authorisation that included invoice 978. It was paid, as part of an aggregated payment for the two

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invoices of £41,551.69 on 26 June 2018. The Payment Notice, which was signed by Mr Meakin, stated that it was being paid in that sum “with respect to certain items being deducted as non-recoverable”, which in context is a reference to the deduction from invoice 978. Invoice 979 is also covered by Payment Certificate 17.

78. I have reviewed later materials invoices, but they do not add materially to the clear picture given by the evidence I have summarised above. The picture is of MW paying close attention to the materials invoices and marking up deductions where it was thought appropriate to do so. The evidence indicates, and I find, that this exercise was done by someone on behalf of MW who had suitable and sufficient current knowledge to identify whether or not the materials claims were justified. I refer to later invoices when addressing issues 16 to 19 at [246] ff below.
79. The overall effect of this sequence of invoices and payments was that, having peaked at about £1.152 million on 24 April 2018, the sum of Premier’s invoices that were outstanding reduced to £800,000 at the end of that month. The combination of the hiatus in invoicing and further payments being made by MW meant that the sum outstanding against invoices rendered at the end of May was just short of £189,000, of which £96,000 was attributable to the reduction of invoices 957 and 968. After the flurry of invoices at the beginning of June 2018, the sum outstanding rose to over £2.5 million, where it stayed until the end of June 2018. After peaking at just over £4 million at the start of July, further payments brought the level down below £2 million from 4 July 2018. Despite further payments of about £1.5 million in July 2018, the invoiced sums outstanding then rose gradually from about £1.4 million to about £1.7 million by September 2018, from which the level was brought down again by payments to which I will refer later (“the October/November payments”): see [130] below.

1 May 2018 and following

80. On 1 May 2018 Mr Demase re-sent to Mr Lakeman the 14 April 2018 document that had previously gone to Mr Lakeman and Mr Schoenhofer on 15 April. Mr Lakeman forwarded Mr Demase’s document to Mr Goundry, saying “we should review and amend and agree with Premier to formalize the working patterns expected.” Later that day, Mr Goundry sent an email to Mr Chestney and Mr Warren, copied to Mr Lakeman, Mr Meakin and Mr Demase, which said: “Based on discussions held over a number of weeks between both parties please find attached agreed working patterns and basis for invoicing.” The attached document was an amended version of Mr Demase’s 14 April 2018 document, which differed from it in five main respects:
- i) Where the original document had recorded that Premier employees would be paid normal time, time and a half or double time for particular shifts, the revised document listed the rates that MW would pay. These were in accordance with Mr Warren’s agreement on 12 February save for rates for Saturday and Sunday shifts, which were understated by £10 per hour;
 - ii) The revised document omitted Conditions A and B which had provided that all employees would be paid a £2 bonus for every hour worked so long as they worked a full day shift but not for partial shifts and that Supervisors were to be paid an additional £2 bonus for every hour worked;

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- iii) The revised document said that any incentives were deemed included within the hourly rates as set out in the document;
- iv) The revised document introduced the concept of hours “properly worked” as being the basis for payment;
- v) Most importantly, what had been condition D (now condition B) was amended to reintroduce turnstile data, as follows:

“Because Premier has work both on the site and off site on M&W’s storage facility, Premier will have installed, at their cost, and operating by Monday April 16th a biometrics’ reader outside the M&W gate to scan all employees in in the morning and evening. In addition they will maintain a manual signed timesheet to back up all records. All data collected by the biometrics report shall be provided to M&W for each invoice period *to be reconciled against Site Turnstiles to substantiate hours properly worked.*” (Italics show amendment)

81. Mr Goundry initially said that he thought that the contents of the revised document were agreed, based on his discussions with Mr Lakeman and Mr Demase. He later shifted his position, saying that he thought that what was now condition B represented MW’s position on the invoicing procedures that needed to be in place: his evidence carried the suggestion that Mr Demase, being new, had not known about MW’s ways of doing things and that the amendment to new condition B “would have been guidance from what we do with the other labour on the contracts.” On any view, it must have been obvious to Mr Lakeman, Mr Demase and Mr Goundry that what was now being proposed was not what Mr Demase had discussed with Mr Chestney on 14 April 2018 and was materially different, particularly in relation to the reintroduction of turnstile data.

82. Mr Chestney forwarded Mr Goundry’s email and revised document to Mrs Braithwaite who replied to MW on 2 May 2018. She did so on the basis of discussions with Mr Chestney both at the time and previously. She wrote: “[w]hilst we agree in principle with the pay basis, we are unable to agree that hours will be checked against your onsite turnstiles.” She then explained at length that Premier rejected turnstile data because of their previous troubles arising from the abortive exercise that Premier had been requested to carry out checking timesheet information for the week ending 6 April 2018 against MW’s onsite turnstiles. Her explanation tracked the frustration of employees and the amount of time wasted, all of which took up two weeks of Mr Chestney’s time and was a catalyst to more recent problems with the workforce. She concluded:

“It was previously agreed with Stevan Demase that if we installed the biometrics reader and supplied manual timesheets that these would be the only measure of hours worked. Taking into account the above, we therefore state that we do not trust the data from the turnstiles and will not agree to using that as a measure for hours worked..

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We would like to have the pay basis in place as soon as possible, therefore please could we ask that you review your document so that moving forward we can have something we all agree on.”

83. There was no reply to this email. Premier remained on site and submitted its invoice 968 on 9 May 2018, the progress of which is summarised at [59] above. As there set out the parties adopted the biometric data as the basis for the substantiation of the invoice and its absence led to a reduction of 30% when payment was made. No reference was made by MW to turnstile data and by now it was not supplying turnstile data to Premier.

24 May 2018 meeting

84. By the middle of May 2018 Mr Warren was concerned that MW may still be relying on turnstile data and decided to bring matters to a head. His witness statement attributed his concern to MW stopping payments and Premier’s cashflow suffering as a result. This does not fit with the pattern of invoicing and payments that I have outlined earlier, since May 2018 saw substantial payments and no fresh invoices after 10 May 2018. What cannot be disputed is that Mr Warren took advice from consultants who advised him that turnstile data could not properly be used for assessing hours worked by employees where some of the working area for the men was outside the turnstile perimeter. I accept that, whether for the reasons given by Mr Warren or because of MW’s failure to respond to Mrs Braithwaite’s email of 2 May 2018, Mr Warren remained concerned (rightly as it turned out) that MW may try once again to use turnstile data to reduce payments of invoices that were substantiated by timesheets and biometric data. I also accept his evidence that he could not understand why MW would revert to turnstile data given the discussions in April that had led to the installation of the biometric clock. Rightly or wrongly, he came to the view that Mr Lakeman and Mr Winthrop were trying to stop Premier getting paid by any means possible.
85. The result was that on 23 May 2018 Mr Chestney wrote on Mr Warren’s behalf to Mr Meakin, Mr Demase and Mr Lakeman, attaching a letter from Mr Warren and requesting “an urgent meeting in order to resolve our contract with M&W”. Mr Warren’s letter said:

“Following a consultation with Roy Knight we reiterate that our contract with M&W can only be paid on Biometric clock data and signed timesheets to verify and take account of extra hours agreed. ...

Any use of turnstile timings is completely unacceptable for the reasons given.

Please re-issue the agreement and include a statement that promises Premier Engineering will be paid in full based on the attached letter, and that gate timings will never be taken into consideration again. We have wasted far too much time on this when we should be concentrating on completing the contract.”

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86. Mr Warren's evidence was that he and Mr Chestney met Mr Meakin, Mr Lakeman and Mr Demase on the stairs outside Mr Lakeman's office on 24 May 2018. The meeting only lasted 10 minutes because Mr Meakin was late for another appointment. I accept Mr Warren's evidence that he made it very clear that Premier would withdraw its labour immediately if the turnstile issue was not resolved once and for all. As he said in evidence, he could not have afforded to carry on paying his men on timesheets but only being paid on the basis of turnstile records: it would have been suicide for his company. In the light of the past history of dispute about the use of turnstile data and MW's knowledge of Premier's fragile financial situation and the contents of his letter of the previous day, to which I have referred above, I find that the MW representatives could have been in no real doubt that he meant it and that they understood and believed what Mr Warren said.
87. According to Mr Warren, Mr Demase and Mr Meakin instructed Mr Lakeman not to use turnstile data but to use the biometric system to check the timesheets for major inaccuracies. He says that Mr Lakeman was instructed to pay all outstanding invoices and to stop causing issues that would destabilise MW's push to completion. At that point invoice 968 was outstanding and had been the subject of negotiations by reference to the absence of biometric data: see [59] above. Mr Meakin had signed off the Payment Notice on 17 May 2018 with a stated due date for payment of 23 May 2018. The reduced sum was in fact paid the day after the meeting, on 25 May 2018.
88. Mr Warren's evidence is that he produced a set of minutes to confirm the conversation he had just had. His evidence about how the minutes were produced changed. In his first witness statement he said that he had them typed and printed by Mrs Braithwaite. In a letter dated 20 June 2020, Premier's solicitors said that the minutes had been prepared by an "on-site secretary using a computer that was located in M&W's site offices." Mr Warren subsequently amended his statement and said that he himself had typed them and printed them using a computer on site. In his oral evidence he said that one of Premier's employees logged him onto the computer to enable him to use it. Initially he said the employee was Mr McGee, but he corrected his evidence to identify Mr Barnfather after it was pointed out to him that Mr McGee was on nights that week and the meeting happened in the middle of the day. Mr Warren's evidence about what happened next is unchanged. He says he took a set to Mr Meakin's office to try to issue them, but he was not there. He therefore went to Mr Lakeman's office. Mr Lakeman was also not there but someone told him to leave the minutes on Mr Lukeman's desk, which he did. He then left.
89. The minutes record the attendees and state:
- "This meeting took place on site, outside of Tim Lakeman's office, it was kept quite informal.
- The objective of the meeting was to discuss the use of the turnstile gate times, as opposed to timesheets and the biometric clock in system.
- It was agreed that the turnstiles were unreliable at times and didn't allow for works being done on the other side.

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It was agreed that we would only count times on Premier's biometric clocking system, and this would be backed up with signed timesheets.

No further deductions would be made to invoices and payments would be made in full.”

90. In his oral evidence Mr Warren maintained that he had typed the minutes on site even when a false point was made to him suggesting that there was metadata showing the document was not produced until 28 May 2018. Mrs Braithwaite, who I accept as a witness of complete truthfulness and integrity, said that she had not typed them. I accept her evidence.
91. Mr Chestney broadly supported Mr Warren’s account of the meeting: the essential feature was that MW agreed not to use turnstile data. For MW, neither Mr Demase nor Mr Lakeman gave evidence. At one point in their closing submissions, MW described Mr Meakin’s evidence about the meeting as “commanding”. I disagree. His reference to the meeting in his witness statement was perfunctory: while not being prepared or able to say that a conversation did not take place, he relied upon saying “for certain that I am not in the habit of making contractual agreements (as claimed) in the car park.” That remained his position when giving oral evidence, where he did his best to downplay the possible significance of the meeting. Even so, he was forced to concede that Mr Warren’s “position” on the day and in his letter of 23 May 2018 was that he would not continue on site if the gate data was taken into account. He simply asserted that MW’s position was different. What his evidence did not do was to give any explanation of how the meeting went and how it was that Mr Warren was persuaded to keep his men on site.
92. As I have said, invoice 968 was paid the following day, 25 May 2018, in the reduced sum based on the absence of biometric data. The next invoice issued by Premier, invoice 971, was issued on 1 June 2018 and paid in full on 19 June 2018: see [61] above.
93. For completeness I record that MW did not reply to Mr Warren’s letter of 23 May 2018 until 25 July 2018, by which time the situation had changed markedly. By its letter, which was sent by Mr Purcell, MW stated that submitted manhours would be “subject to audit utilising the turnstile records to determine attendance and manhours worked taking due cognisance of agreed break periods.” Because it was written in altered circumstances some two months after Mr Warren’s letter, I do not attribute any significant weight to MW’s reply when assessing what happened at the meeting on 24 May 2018 (which Mr Purcell did not attend).
94. MW submit that the court should reject Mr Warren’s account primarily because (a) it shifted and developed with time, (b) MW’s representatives did not have authority to agree to exclude turnstile data, (c) the meeting was brief and informal, (d) for MW’s representatives to have agreed not to use turnstile data would have been a complete reversal in MW’s position, and (e) it was not followed up or relied upon by Premier until the litigation.
95. I accept that Mr Warren’s account shifted and developed with time. However, there are certain immutable features that are important. The first is the terms of his letter

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dated 23 May 2018. The second is that, as I have accepted above, the potential use of turnstile data by MW was a major issue for Premier, which had the potential to threaten the very existence of the company. Third, Mr Warren went to Hull to sort out the issue for all time. Fourth, as Mr Meakin accepted, Mr Warren's position at the meeting was that Premier would go off site if turnstile data was to be used as the basis for payment. Fifth, the end result of the meeting was that Mr Warren continued to supply manpower to the site and the question of turnstile data was not raised between the parties again. These features support a conclusion that Mr Warren was satisfied by the meeting and was left in the belief that turnstile data would not be used in the assessment of Premier's invoices.

96. The submission that Mr Warren's account shifted goes to the authenticity of the minutes as well as the wider question of the accuracy of his evidence that agreement was reached. I take into account the evidence that Premier was a company with a good reputation and also my assessment of Mr Warren, Mr Chestney and Mr Meakin as witnesses. Starting with Mr Meakin, in some areas of his evidence he was reliable and clear. However, his evidence about the 24 May 2018 meeting was conspicuously vague and unsatisfactory. I explore additional reasons for this vagueness about the meeting below; but the end result is that I do not accept that his memory of the meeting was as poor as he made out. He knew of the potential significance of the use of turnstile data both for its effect on Premier's invoiced sums and upon Premier as he was integral to the process of assessing and approving Premier's invoices, as detailed above. He knew the purpose of the meeting as he had been copied into Mr Chestney's email of 23 May with Mr Warren's letter attached. He also knew that the system of payments on account was meant to lead to payment of what MW genuinely believed was to what was due to be paid: see [22] above. And he knew that on 17 May 2018 he had signed off the payment of invoice 968 reduced by 30% because of the absence of biometric data and not by reference to turnstile data. In short, he knew that the decision had been taken by MW to keep Premier on site even if it involved paying their invoices in full when MW knew that the turnstile data would support substantial reductions. He must therefore have realised the significance of the meeting even if it was conducted informally and was short. The issue was simple and did not require long to be resolved.
97. Turning to Mr Warren, I am not persuaded that the inconsistencies in his evidence about how the minutes came to be prepared should lead to a conclusion that his evidence on this point is untrue or that the minutes are not an authentic document. The central features that I have identified at [71] above explain why he would have wanted to have a record in writing immediately; and I find his account that he then went and tried to hand copies to Mr Meakin and, in his absence, Mr Lakeman, credible. The fact that he left the minutes on Mr Lakeman's desk also explains why he did not follow up with an email. Given my assessment that Mr Warren is essentially a practical man whose qualities have enabled him to build a relatively small and reputable business with limited office back up, the important thing would have been that he had confirmed what he understood to be his agreement by leaving with MW the written record that he had produced. Nor do the inconsistencies between his account and that of Mr Chestney make me doubt the essential substance of their evidence. In my judgment both men were doing their best to give truthful evidence.

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98. For these reasons, which take into account my assessment of Mr Meakin, Mr Warren and Mr Chestney as witnesses, I accept that the minutes were produced straight after the meeting and that Mr Warren first tried to leave a copy with Mr Meakin and then did leave a copy on Mr Lakeman's desk as he says.
99. The submissions that MW's representatives did not have authority to agree to exclude turnstile data and that it would have been a complete reversal in MW's position for them to have done so must be seen in the light of the factual background that I have already set out. What that shows is that MW had a dilemma, which was particularly acute for Mr Meakin at the meeting on 24 May 2018. On the one hand, their normal approach when verifying subcontractor's applications for interim payments was to check them by reference to turnstile data, which was the approach to which Mr Schoenhofer was usually wedded: see [38] above. However, if they adopted that approach with Premier, they would lose them either because Premier would go under or because Mr Warren would pull them out; and that was not to be contemplated because Premier were key to MW's success. So MW had decided to try to ride both horses by (a) introducing biometric data instead of turnstile data in their discussions with Premier and paying their interim invoices in full while (b) continuing to check Premier's invoices by reference to turnstile data though not doing anything about it when paying Premier's invoices. It is material to note that Mr Schoenhofer's email of 14 April 2018, as set out at [45] above, twice leaves open the question of the end result: as he recognised, "with the on account payment pattern now, we would create a huge problem for them retrospectively or we just accept", which in context means simply accepting the invoices in full as the price for keeping them on site. It is unsurprising that Mr Schoenhofer described his solution as "workable but unfavourable." What is clear is that MW did not, and could not, disclose what they were doing or contemplating to Premier. Had they done so, Mr Warren would have pulled Premier off site in short order. The nearest they came was in the revised document sent on 1 May 2018, which provoked the immediate reaction from Premier on 2 May 2018 which I have set out at [82] above.
100. I therefore reject the submission that for MW to agree that turnstile data should not be used was a reversal of their position. It was, in fact, consistent with it because of the decision taken by Mr Schoenhofer on or about 10 April 2018. Specifically, it was consistent with the original 14 April 2018 document which Mr Meakin had endorsed on 15 April 2018: see [50] above. It is inconsistent with the revised draft sent on 1 May 2018 but, for reasons set out earlier, it was wrong to describe that as an agreed document and it was promptly knocked back by Premier. More importantly, on 24 May 2018 Premier were still indispensable for MW, it being six weeks before Premier were asked to downscale on 9 July 2018. Mr Schoenhofer's decision to pay Premier's invoices was still being maintained, as explained above; and it would have been frankly *inconsistent* with MW's overt conduct in relation to invoices since mid-April (as opposed to its carrying out of internal checks) for it to have asserted on 28 May 2018 that turnstile data was to be the touchstone for verification of MW's payment.
101. I reject MW's submission that Mr Meakin did not have authority to agree that turnstile data would not be used. He was the senior person on behalf of MW with whom Premier had direct dealings throughout. He had authority to hire Premier labour and to decide when it was to be withdrawn. It may be true that he was not in the habit of making contractual arrangements in the car park, but these were not

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normal circumstances for reasons that I have explained: he was confronted with the immediate prospect of Premier withdrawing from site, which he could not countenance even if he may have hoped and tried to avoid the issue.

102. Drawing these strands together, I am in no doubt that what Mr Meakin said left Mr Warren with the clear and reasonable understanding that MW agreed with Mr Warren that turnstile data would not be used in assessing Premier's invoices. It is possible that Mr Meakin attempted to duck and weave and to avoid giving a firm commitment because he knew what was in fact going on and could not reveal it to Mr Warren. The exact words he may have used do not matter. What matters is that I accept the substance of Mr Warren's evidence about what happened at the meeting as set out above and in the minutes he produced. I will consider the contractual implications of this evidence later.

Later invoices

103. Invoice 984 was dated 20 June 2018 and was for labour during the week ending 15 June 2018 in the sum of £557,377.50 including 74 bonuses of £600 each. Timesheets including the bonuses were signed by Mr Rumsey, the bonuses being identified as £500 each (to which Premier added 20%). Contemporaneous annotations marked down the invoice to £549,477.50 by adjusting the bonus claims. Other contemporaneous annotations, which appear similar to those on previous invoices, would have reduced this invoice to £433,372.18. Mr Winthrop and Mr Purcell approved payment in the sum of £549,477.50, which was authorised by Mr Meakin and paid as part of a larger payment on 11 July 2018. It is covered by Payment Certificate 23.
104. Invoice 985 was dated 28 June 2018 and was for labour during the week ending 22 June 2018 in the sum of £328,700. Timesheets were signed by Mr Rumsey, who did not date his signatures. While there are ticks on the invoice, there are no contemporaneous annotations marking down the invoice. Mr Winthrop and Mr Purcell approved payment in the invoiced sum of £328,700, which was authorised by Mr Meakin and paid as part of a larger payment on 26 July 2018. It is covered by Payment Certificate 24.
105. Invoice 988 was dated 3 July 2018 and was for labour during the week ending 29 June 2018 in the sum of £386,700. Timesheets were signed by Mr Rumsey, who dated his signatures 30 June 2018. There is evidence of him specifically authorising bonuses on timesheets. While there are ticks on the invoice, there are no contemporaneous annotations marking it down. The ticks appear to be consistent with the attached biometric data. Mr Winthrop and Mr Purcell approved payment in the invoiced sum of £386,700, which was authorised by Mr Meakin and paid as part of a larger payment on 26 July 2018. It is covered by Payment Certificate 25.
106. In summary, the only reduction applied to these three labour invoices was in relation to reducing the bonuses from the £600 claimed to £500 each as appeared on the timesheets.
107. During the same period, four materials invoices were issued by Premier:
- i) Invoice 982 in the sum of £25,979.48;

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- ii) Invoice 983 in the sum of £42,157.50;
 - iii) Invoice 986 in the sum of £41,638.98;
 - iv) Invoice 987 in the sum of £14,355.78.
108. Each of these invoices appears to have been subjected to the same checking routine as described earlier. Each was paid in full save for invoice 986 which was reduced to £41,110.23 by reference to 4 disallowed items, 2 of which were for £5 each. The markings on the invoice schedules indicate close attention to detail.

9 July 2018 and subsequent events

109. It is Premier's case that Mr Meakin instructed Premier to remove its labour from site forthwith on 9 July 2018. It alleges that, since it had arranged for its labour to attend for work at the Project, Premier had no other work for the workforce and was obliged to dismiss them. It offered the workforce 1 week's pay in lieu of notice (which would be in line with the notice that Premier was entitled to from MW pursuant to its agreement based on the 12 February 2018) but the men picketed the Project seeking additional payment in lieu of notice. Premier alleges that MW agreed with Premier's ex-operatives that they would be paid 3 weeks (i.e. an additional 2 weeks over and above the week that had been offered by Premier) and that it was agreed between Premier and MW that Premier would pay its men and be reimbursed by MW.
110. MW denies that any instruction to withdraw its labour was given to Premier on 9 July 2018 (or subsequently) and attributes any industrial unrest to Premier's mishandling of its men unrelated to any such instruction; and it denies the existence of the alleged agreement that MW should reimburse Premier for three weeks pay in lieu of notice.
111. I accept Mr Chestney's evidence that, in the weeks running up to Monday 9 July 2018 Premier were requested to make a big push to complete works, with particular reference to a steam blow shortly before. Although Mr Chestney accepted that the packages they had been given were coming to an end, there is no documentary evidence to suggest that they were about to become completely redundant and I accept Mr Chestney's evidence that there was more work for them to do.
112. I also accept the evidence of Mr Warren and Mr Chestney that there was a flurry of activity on 9 July 2018, with Mr Warren having missed calls from Mr Donnelly and Mr Meakin asking him to contact Mr Meakin. Mr Warren was then contacted by one of Premier's supervisors who told him he was needed urgently on site. He called Mr Donnelly to say that he was unavailable and delegated authority to Mr Chestney to attend a meeting with MW. Mr Warren was not told what was going on.
113. According to Mr Chestney, he attended a meeting with Mr Meakin, Mr Donnelly and Mr Demase and was told that Premier was no longer required and should remove its labour from site forthwith. He was told to keep the QA Team as it remained necessary to produce the QA Documentation and MW still wanted Premier to do that work; and in cross-examination he accepted that the welding inspectors were also to be retained. He raised the entitlement to notice. MW wanted the men off site and agreed that the notice should be treated as "garden leave". He therefore gathered his

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men together, told them the job was finished and that they would get one week's pay in lieu of notice in addition to any hours they had worked over the weekend.

114. The following day a small group of men started a protest at the site gate, which grew over the following days. By 12 July the site was effectively blockaded, with the police turning people away. Premier had other issues with its workforce during its period of working on the Project, at least one of which ended up with an adverse decision in the Employment Tribunal. In briefest outline, the Employment Tribunal decision arose out of Premier's failure to comply with their requirement to give their employees proper statements of employment particulars or compliant contracts of employment and its handling of matters after the men were laid off, including a failure to pay accrued holiday pay. Mr Warren and Mr Chestney tried to downplay the significance of these and other disputes that arose during Premier's involvement with the Project. In my judgment, their real significance was that they contributed to the volatility of the Project site and were symptomatic of a small company that was at or beyond full stretch having responded to MW's requests for greatly increasing and increased manpower. The dominant and immediate reason for the picketing was the decision to lay the men off.
115. I should add that Mr Warren's evidence about the Employment Tribunal proceedings and decision was frequently wrong, as appears from a reading of the decision. In closing submissions MW submit that his evidence was "false"; on another occasion that it was "incredible"; and that he "misled the Court materially". If the submission is that Mr Warren was giving evidence that was knowingly false (i.e. that he was lying), I do not accept it, though I would accept that he has an entrenched and partisan attitude to what led to the Employment Tribunal proceedings and the result that followed. If the purpose of the submission is to cause the Court to discount Mr Warren's evidence wholesale, I reject it, though I remain conscious of the need to guard against partisan recollection in his evidence as with other witnesses on both sides. It is not possible to decide this action simply by preferring one set of witnesses to another wholesale: the documents show both sides' witness evidence and submissions on the facts to be materially inaccurate on frequent occasions, which goes some way to explaining the length of this judgment.
116. Mr Warren's evidence is that, because of the picketing, he and Mr Chestney were asked to attend site on 12 July 2018 to try to sort out the protests at a meeting with MW, representatives of the picketing men and a union representative. The men were no longer employed by Premier and so he regarded the picketing and its resolution as MW's problem. According to Mr Warren, MW offered 2 additional weeks payment in lieu of notice. The union representative wanted more but eventually agreed to MW's offer of 2 additional weeks. Mr Warren was then asked to cooperate with MW by arranging the payments to the men. He agreed to do so and expected MW to pay for both additional weeks. He was asked to write a letter as evidence of the agreement for the union representative to take to the men at the gate, which he did in the following terms:

"Dear Premier Employees,

As managing director of Premier Engineering, I offer a total of 3 wks notice as away [sic] of compensate of termination of employment, as of Monday 9th July 2018.

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Thank you for all your efforts on this contract and I hope you the best in the future. Please stay in contact and if you require a reference in the future, please contact me directly.

[Signed] H Warren MD”

117. MW had requested Further Information about this episode, which was provided by Premier on 18 November 2019. That contained a rather different version of events, as follows:

“Discussions took place regarding lack of notice given by the Defendant to the Claimant, and as a consequence the short notice given to the men by the Claimant. [The union representative] claimed an extra two weeks’ pay in lieu of notice for the men to placate the protesting labour. Mr Roy Meakin verbally offered to pay £85,000.00 towards the cost of this additional liability. That offer was noted but not accepted by Mr Harry Warren as he believed that the Defendant should be liable for all 3 weeks’ pay. Mr Harry Warren was requested to hand-write a signed a letter explaining the proposal, which was taken to the men on the gate by the Union official. ... The proposed additional payment was accepted by the men and all protests ceased immediately and the site returned to work.”

118. Mr Meakin’s evidence is that Mr Chestney was asked to reduce his workforce but not to remove all of them other than the QA team. In cross-examination he said that there was a meeting with a number of subcontractors but it was a perfectly normal conversation that the works were clearly coming to an end and that he gave no instruction to go out and sack the Premier workforce. He says that the first he knew of the suggestion that all Premier employees should leave immediately was when a number of disgruntled Premier employees confronted him in the cafeteria and advised him that Mr Chestney had “announced” that they were to be sacked or replaced. He accepts that this led to picketing and that he attended a meeting with the union, though he says he did not initiate it. He emphasises that the workforce were not employed by MW and that MW was not in a position to negotiate with them. He was, however, conscious of the liquidated damages provisions in MW’s contract, which were at a rate of £84,800 a day. He says he offered to contribute £85,000 on the assurance of both Mr Warren and the union representative that the workforce would return to work the following morning. He says his offer was made as a gesture of goodwill, at the request of the union representative. He does not suggest in his evidence that he wanted Premier back the following day.
119. There is a remarkable absence of documentation surrounding this episode. MW’s case is that MW started downsizing the labour required as works progressed and, by reference to an email on 13 June 2018, that Premier knew its workforce was to be reduced. However:
- i) On 11 June 2018 Mr Demase wrote to Mr Donnelly and Mr Meakin enclosing a list of people on site and giving his opinion that MW “want to rid ourselves of any deadwood”

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- ii) A spreadsheet provided to Mr Demase and Mr Meakin on the morning of 9 July 2018 shows that during the week to 15 June 2018, Premier had on average 110 men on site per day. For the three days from 16-18 June 2018 they had 55, 54 and 9 men on site. The numbers then went back up to over 100 for 2 days (19/20 June 2018).
- iii) On 22 June 2018 a Mr Ashenhurst, who described himself as MW's construction manager, wrote to Mr Demase and Mr Meakin saying that they had c. 24 Premier operatives on site at present and would wish to drop that number to 14 the following week;
- iv) In fact, MW's spreadsheet shows that Premier had 96 men on site on 22 June 2018. Over the five days from 21 to 25 June, Premier had under 100 men on site, with an average over the five day period of 68 men on site.
- v) Premier's operatives on site climbed again from 25 June, with 100 men or more being on site for the three days from 26-28 June (103, 100, 103). Numbers then dipped below 100 for three days (29 June – 1 July: 95, 69, 80) before climbing to well over 100 for each of the five days from 2-6 July 2018 (107, 109, 106, 112, 107) with an average over the five days of 108 and no obvious signs of significant or sustained reduction;
- vi) During the same five day period from 2-6 July 2018 MW recorded that its total number of operatives on site averaged c. 410 (406, 427, 420, 408, 392);
- vii) The Court has not been taken to an equivalent record for the period after 6 July 2018. If there is one, I have not found it;
- viii) On 3 July 2018 Mr Demase wrote to Mr Meakin attaching a list of people they wanted to keep "from the Premier Crews" and that the balance should go on the Thursday, including night shift at the end of their shift. The attached list had 34 names on it, of whom 7 were described as either stores, QA or Supervisors. The following Thursday would have been 5 July 2018, on which day there were 112 Premier operatives on site. As set out at (v) above, there was no sign of a reduction of Premier's operatives to 34 at any stage during the period from 3-6 July 2018;
- ix) Two timesheets marked "nights" show that 16 men, having worked night shifts up to Thursday 5 June 2018, did not work the night shift on Friday 6 June 2018. There is no other timesheet noted as being for nights for that week;
- x) At 11.17 am on 9 July 2018 Mr Meakin wrote to Mr Lakeman that "for your information only, we [are] looking to downsize Premier this week, and will need Francis Brown to pick up some of the slack." It appears that Premier were not the only subcontractor pressing for payment as the email string includes one from the Finance Director of Francis Brown pressing for payment of overdue invoices totalling £194,987.29;
- xi) There is no contemporaneous document recording what was instructed on 9 July 2018 or of any reaction from MW when Premier told their men that they were sacked from the job;

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- xii) The only contemporaneous document recording or evidencing what happened on 12 July 2018 is Mr Warren's handwritten letter, as set out above;
 - xiii) Timesheets attached to Invoice 1003 covered the period 7-9 July 2018 are summarised below;
 - xiv) On 5 August 2018 MW sent a letter in the name of Mr Purcell to Premier "to record that over the period (commencing on Tuesday 9th July) there had been an unexplained and dramatic drop in manpower being deployed by Premier ... on site." The letter purported to instruct Premier "to rectify this breach and restore manpower to the proper levels with immediate effect" and "to recover the delay caused by this event." This letter appears to be of no real value for two main reasons. First, it was sent a month after Premier left site. Second, it was swiftly followed by an irate email from Mr Purcell complaining that the letter (and others in similar terms to other subcontractors) had been sent out without his knowledge and signed on his behalf without his permission. In doing so Mr Purcell referred to "the obvious errors in the logic of the letter." Given Mr Purcell's response, I find this letter of no evidential significance at all.
120. It is common ground that, with the exception of some QA and inspection staff, Premier went off site on 9 July 2018 and that their doing so provoked picketing and protests that was not resolved until after the meeting of 12 July 2018. On any view it was a significant and potentially expensive moment. It would be surprising if Mr Chestney had taken it upon himself to inform his workforce without being sure that their job was over. And if, as MW contends, Premier were *not* told to remove their men on 9 July 2018 it is even more surprising that there is not only (a) no recorded reaction by MW asking Premier what they thought they were doing and refuting any suggestion that their withdrawal was the result of an instruction to Mr Chestney, but also (b) no evidence that Mr Meakin or others took Mr Chestney to task for having withdrawn his men without being asked to do so and at a time when, on MW's case, they were still required. That said, the sparse documentary evidence which I have identified at [119] above refers to reducing or downsizing rather than finishing with Premier altogether.
121. MW's documentary records that I have summarised at [119] above show that the reference in the email of 13 June 2018 to a reduction in labour was at best temporary. Equally, the numbers recorded by MW do not support a finding of a reduction such as suggested by Mr Demase's email on 3 July 2018. Nor do they support the proposition that was put to Premier's witnesses that there was a progressive downscaling "from June onwards" as the works had got to the stage of commissioning tests.
122. Two significant disputes of fact must be resolved. First, was Mr Chestney told that Premier were (with minor exceptions) finished and should leave site immediately? Second, what was said or agreed about who should pay what to bring the picketing to an end.
123. I do not accept that the meeting on 9 July 2018 was the routine affair that Mr Meakin's evidence suggests, for a number of reasons. First, although there are no MW documents indicating that such a dramatic downsizing was in contemplation, the flurry of activity in the morning, with both Mr Donnelly and Mr Meakin phoning Mr

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Warren asking him to make contact suggests that something unusual was going on. In advance of the meeting Mr Warren was also rung by a supervisor telling him he was needed urgently on site. Even allowing for the volatility of the site and the difficulties that Premier was experiencing with its workforce, this evidence does not suggest a routine Monday or meeting. Second, as I have said, for Mr Chestney to have gone out and sacked his workforce shows that he thought that was what he had been told; and, if so, it is inconceivable that he would not have confirmed the position before acting on what he thought he was being told. Although Mr Chestney was less experienced in large projects than Mr Meakin, the idea that he would leave a “routine” meeting as described by Mr Meakin and sack his workforce is, frankly, incredible on my assessment of Mr Chestney. Quite apart from anything else, I cannot conceive that a meeting that could have left Mr Chestney so profoundly mistaken as MW alleges could ever have been “routine”. Third, although there are timesheets showing that the night shift had not been worked the previous Friday, MW’s records of men on site to which I have referred above do not support its submission that the site was winding down to any material degree during June and early July. Fourth, there is the absence of any remonstrations or rebuttals by MW when it learned what Mr Chestney had done; and the absence of any evidence of attempts by MW to get Premier back on site to complete outstanding works. Fifth, Mr Meakin’s email on the morning of 9 July 2018 carries the implication that the downsizing of Premier was going to be greater than dictated by the availability of work, as it was going to create “slack” (which in context means work and a need for resources) that was going to be picked up by Francis Brown. In other words, Premier was (at least to some extent) going to be replaced rather than simply wound down because of a decrease in available work. Sixth, and partly for the reasons just identified, I prefer Mr Chestney’s evidence on this issue to that of Mr Meakin’s. In my judgment, Mr Meakin was once again trying to downplay the significance of an important meeting, just as he did with the meeting on 24 May 2018. I therefore find that Mr Chestney went out and told his workforce that their work was at an end because that was what he had been told by Mr Meakin in the meeting.

124. The reasons for MW’s decision to remove Premier were not canvassed in evidence during the compressed timetable for the trial and I am not able to reach a certain conclusion about why MW acted as it did. However, what happened is consistent with MW having decided that Premier were now dispensable. MW’s closing submissions devote considerable time and effort to portraying Premier’s workforce as being militant and troublesome before 9 July 2018, which MW attributes to Premier’s failure to manage their men properly in a number of respects, including those that led to the Employment Tribunal. It is beyond the scope of this judgment to investigate and make findings on all those submissions; but there were difficulties with their workforce and I have accepted that there are signs that Premier was struggling and overstretched, which lends substance to MW’s submissions that Premier had lost the confidence of its workforce. It may also be indicative of a changing frame of mind on the part of MW that it wrote to Premier on 5 July 2018 complaining about men taking extended breaks, listing weld lengths that had been achieved and stating “We need to improve”. While not making findings about why MW acted as they did, I do not find their action in wishing to be rid of Premier intrinsically implausible: Premier was by now a troublesome one-off, for all the reasons identified in this judgment. It was certainly no longer indispensable.

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125. Turning to the second factual issue, Mr Warren was wrong to think that the picketing was solely MW's problem as the picketers were Premier's ex-employees. Equally Mr Meakin would have been wrong to think that he could remain outside the negotiations, as it was his site that was being closed by the pickets and the dispute did not only affect Premier men. I therefore accept that there was a discussion involving Mr Warren, Mr Meakin and representatives (including union representatives) of the men. Mr Warren's evidence as summarised at [116] above does not demonstrate a concluded agreement with MW about any financial contribution they might make or how it should be made: his evidence is that he expected MW to pay for the additional weeks, not that they agreed to do so. Nor does the version of events provided by Premier as Further Information on 18 November 2019, which refers to a verbal offer by Mr Meakin to pay £85,000 which was not accepted; on that occasion it was said that Mr Warren "believed that [MW] should be liable for all 3 week's pay."
126. On this issue, therefore, I prefer the evidence of Mr Meakin that he offered £85,000 if it would get the men back to work. I accept that Mr Warren may have believed that MW should reimburse him for all sums he had to pay the workforce; but he did not secure MW's agreement to do so. He then made the offer on behalf of Premier to pay a total of three week's wages as intended compensation for the termination of Premier's men's employment on the Project. Nothing in the terms of his offer had the effect of binding MW to contribute.

Removal of QA Documentation and the October/November payments

127. After 9 July Premier issued the following labour invoices:
- i) Invoice 991 on 13 July 2018 in the sum of £415,292.50 for labour during the week ended 6 July;
 - ii) Invoice 993 on 25 July 2018 in the sum of £85,000 which was described as being "payment towards weeks in lieu as agreed with Roy Meakin"; and
 - iii) Invoice 1003 on 30 July 2018 in the sum of £162,847.50 which was based on timesheets for the week ending 13 July 2018 that were described as "in lieu of notice". Some of the timesheets were signed by Mr Rumsey and dated 13 July 2018; others were signed on 20 July 2018 by an MW representative who I am not able to identify with certainty but could be Mr Demase. The timesheets claimed extended hours (i.e. more than 8 per day) and bonus payments for some men over the weekend Saturday/Sunday 7-8 July 2018. From 9 July most entries are for 8 hours and are blocked by shading, the meaning of which is not clear. The timesheets evidence the presence of 80 people on 7 July, 55 on 8 July and 121 on 9 July 2018 including QA and supervisors. These numbers are broadly similar to those shown on MW's spreadsheet for the previous weekend (Saturday/Sunday). The number evidenced on the timesheet for attendance on Monday 9 July 2018 is higher than for the previous Monday. The numbers for the period from 10 July 2018 appear to be notional except for QA staff. There is evidence to suggest that whoever signed on behalf of MW deleted the claims for two men: see H/3/138;
 - iv) Invoice 1004, also on 30 July 2018, in the sum of £236,250.00 which was stated to be "week in lieu for 140 men @ standard rate".

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128. Premier also issued invoices for QA/QC work as follows:
- i) Invoice 1005, dated 30 July 2018, in the sum of £36,810, for QC and other work during the week ending 20 July 2018;
 - ii) Invoice 1006, also on 30 July 2018, in the sum of £29,335, for other QC and progress chasing work during the week ending 20 July 2018;
 - iii) Invoice 1009, dated 8 August 2018, in the sum of £14,995, for QC work during the week ending 3 August 2018;
 - iv) Invoice 1010, dated 17 August 2018, in the sum of £11,250, for QC work during the week ending 10 August 2018;
 - v) Invoice 1013, dated 23 August 2018, in the sum of £13,195, for QC work during the week ending 17 August 2018;
 - vi) Invoice 1019, dated 9 September 2018 in the sum of £12,685, for QC work during the week ending 23 August 2018.
129. MW made payments of £617,614 on 11 July 2018 and of £770,866.01 on 26 July 2018. These payments, which were made in relation to pre-9 July 2018 invoices for labour and materials, left over £1.3 million of the sums invoiced by Premier unpaid, which increased to over £1.7 million by September 2018. On 15 August 2018 Mr Warren emailed Mr Meakin complaining about the absence of payment and said that if no payment was made he would be left with no option but to take “some sort of action, what type I haven’t made my mind up yet but it won’t help the cause.” On 16 August 2018 Mr Winthrop emailed Mr Warren saying that payment of just over £505,318 was being processed. It was not paid. At that stage, Premier was still working on the QA documentation on site. On 23 August 2018 Mr Warren decided to remove the QA documentation from site after hours and to take them to Premier’s head office in Lincoln.
130. Although there may have been practical advantages to doing the QA work at Lincoln, the real reason for the removal of the QA documentation was the non-payment of outstanding invoices and Mr Warren’s wish to exert pressure on MW to pay monies that he believed to be owing to Premier, as he had foreshadowed in his email of 15 August 2018. MW regarded it as tantamount to theft by Premier, and it provoked negotiations which led to an agreement on 24 October 2018 by which MW agreed to pay £850,000 towards outstanding invoices and Premier agreed to hand over the testing documentation (or “test packs”) it had in its possession. The payments were to be made in 5 instalments, which together were the October/November payments. It was also agreed that negotiations should start in respect of the final valuation and payment of Premier’s entitlement, to include payment to Premier for works associated with the completion of the test packs that were identified in the agreement.
131. The October/November payments were made. The test packs were delivered. The negotiations did not succeed. Hence this litigation.

The Issues for Determination

Approved Judgment**A. Labour****Contract**

Issue 1: For the purposes of the valuation of the labour element of the Claimant's account, was there:

- (1) *a binding agreement entered on 12 February 2018 that the Defendant shall give to the Claimant at least one week's notice of termination?*
- (2) *a contract agreed [Claimant version: in about April 2018] [Defendant version: on 14 April 2018] to the effect that labour would be valued by reference to*
 - (a) *timesheets signed by the Defendant checked against*
 - (b) *data obtained from a biometric clock to be installed by the Claimant (but not data from turnstiles)?*

or
- (3) *[Claimant version] a contract agreed on or around 1 or 2 May 2018 to the effect that labour would be valued by reference to "hours properly worked", but that the parties did not agree upon any limitation as to what evidence either party would be entitled to rely upon for the purposes of determining this issue?*
[Defendant version] or a binding agreement entered into on or around 1 or 2 May 2018 as to the essential terms of the pay basis document of 1 May 2018?
or
- (4) *no agreement as to payment?*

132. I deal with issues 1(1) to 1(4) together.

Issue 1(1)

133. The factual background to Issue 1(1) is set out at [10]-[14] above. Although I accept that most of the discussion at the meeting was probably about rates, Mr Warren's document set out both rates and terms that he proposed should apply if MW decided to go ahead with Premier. There is nothing in the document to support a suggestion that his rates but not the other terms were meant to be applicable if they went forward. The additional terms included "Notice minimum 1 week" which was as clear as it was concise. I have already set out the contractual analysis at [11] above: by placing orders for work without doing anything that could be described as a contractual counter-offer, MW accepted Mr Warren's terms which applied to all subsequent work unless subsequently varied. The term as to notice was not varied. It was not mentioned in the 14 April 2018 document or the 1 May 2018 variation, but they did not purport to cover all the same ground as set out in Mr Warren's 12 February 2018 rates and terms documents. The absence of mention of a notice period is therefore not significant.

134. I therefore answer issue 1(1): Yes.

Issue 1(2)

135. The factual background to issue 1(2) is set out at [15]-[108] above, with primary reference to [15]-[44] and the history of MW's treatment and payment of labour invoices summarised at [66] above.

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136. Premier's primary case throughout was that a binding agreement was reached on 14 April 2018; but it kept open the alternative that it was reached in April 2018, if not on 14 April. MW submits that there was no contractual agreement on 14 April 2018 and that the evidence does not support any wider case as to the time when agreement was reached.
137. I do not accept that a binding agreement was reached during and by Mr Chestney and Mr Demase's meeting on 14 April 2018. Both men appreciated that the document Mr Demase produced needed to be endorsed by higher management. However, I am confident and find that the position as set out in Condition D of their 14 April 2018 document reflected the position that had already been reached as a result of the discussions that arose when MW requested Premier to review its position in relation to the Easter weekend by reference to turnstile data. I accept and find that the whole rationale for the installation of the biometric clock was to provide protection and verification for *both* MW and Premier; and that it was requested by MW as a solution to Premier's implacable opposition to the use of turnstile data for verifying the claims based on their timesheets at a time when Premier were indispensable for MW. This conclusion is supported by the evidence that I have set out earlier in the judgement. In particular, it explains why:
- i) Mr Chestney and Mr Demase expressed Condition D in the terms that they did;
 - ii) Having reduced invoice 957 by reference to turnstile data after discussions with Premier in the period to 9 April 2018, MW made no further reductions in its payments by reference to turnstile data until invoice 972, by which time Premier's work was moving to completion and they would no longer be indispensable to MW;
 - iii) Invoice 968 was reduced by reference to the absence of biometric data and not by reference to turnstile data;
 - iv) MW did not tell Premier that they were continuing to check invoices against timesheets with a view to clawing back monies later.
138. The agreement was intended to govern the future dealings between the parties. It was supported by mutual consideration and was implemented by the installation of the biometric clock and by Premier's provision of biometric data in support of its invoices, MW's reliance on biometric data in its assessment of invoices (specifically as set out in the Payment Notice covering invoice 968) and its non-reliance on available and analysed turnstile data.
139. Although the intention (in accordance with normal practice and the forms being used) was that timesheets should be signed by MW, there was no agreement that a failure to sign a particular timesheet would have the effect that it was excluded from consideration.
140. I therefore find that, for the purposes of the valuation of the labour element of the Claimant's account, there was a contract agreed in early April 2018 to the effect that labour would be valued by reference to (a) timesheets which had been presented to and accepted by MW (whether MW's representative signed them as intended or not),

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and (b) data obtained from the biometric clock to be installed by Premier, but not by reference to turnstile data.

141. It is tempting to analyse what happened after 14 April 2018 as demonstrating acceptance by both parties of the terms of the 14 April 2018 document, on the basis that MW continued issuing requirements for Premier to work, Premier submitted invoices backed by biometric data and MW valued those invoices and made payments not by reference to the turnstile data which it had and analysed but by reference to biometric data or its absence. However, in my judgment the better approach is to see the 14 April 2018 document as an attempt to formalise matters that were already subject to agreement and, as such, it was not separately agreed so as to give rise to a separate or varied contract.

Issue 1(3)

142. I would adopt the same approach to the 1 May 2018 revision of the document. It certainly did not represent previously agreed terms. It would, in my judgment, be straining language unacceptably to treat Mrs Braithwaite's 2 May 2018 response as contractual acceptance of the terms of the document other than the reference to turnstile data so as to give rise to a binding contract in relation to the rest, for two reasons. First, early in her email she expressed her agreement with the pay basis as being "in principle", not absolute. Second, her final sentence was "We would like to have the pay basis in place as soon as possible, therefore please could we ask that you review your document so that moving forward we can have something we all agree on." Viewed in context, this was a rejection of MW's *document* and a request that they review it and come up with something that Premier would agree to.
143. MW relies upon a pleading by Premier that "the principles were agreed". That is not the same as saying that the terms set out in the document other than references to turnstile data were contractually agreed by Mrs Braithwaite's response: they were not.
144. As I have found, there was no response to Mrs Braithwaite's email. The status of the 1 May 2018 revision was therefore that it was and remained rejected. It is not possible to identify conduct after 1 May 2018 that constitutes acceptance of the 1 May 2018 revision and no alternative proposal was offered by MW or accepted by Premier.
145. I therefore find that there was no contract entered into on or around 1 or 2 May 2018 either on the terms proposed by Premier's version of the issue or on the terms proposed by MW's

Issue 1(4)

146. It follows that there was agreement as to payment in accordance with my answers to issues 1(1) and 1(2).

Issue 2: Was there a binding agreement made on 24 May 2018 that

- (1) operatives' time would be recorded using only the Claimant's biometric clocking system, supported by signed timesheets, to the exclusion of any other means or evidence as to time?***
- (2) time recorded by turnstiles was unreliable?***

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147. The factual background to issue 2 is set out at [84]-[102] above.
148. I have accepted the importance of the meeting and the substance of Mr Warren's account and minutes. Everyone understood that Mr Warren would pull Premier off site if the issue of turnstile data was not resolved once and for all. That had been made clear by the letter of 23 May 2018 and was Mr Warren's purpose in calling for the meeting. I accept and find that Mr Meakin agreed that turnstile data would not be used in valuing Premier's invoices and said words which amounted to an instruction to Mr Lakeman not to use turnstile data but to use the biometric system to check the timesheets for major inaccuracies. He may have intended to countermand that instruction privately later, as is suggested by the fact that MW went on with their internal checks and contemporaneous annotations. What matters is that he gave the instruction in the presence of Mr Warren and in answer to Mr Warren's demand that turnstile data should not be used. I also accept and find that he told Mr Lakeman to pay all outstanding invoices: he would have known that there was only one outstanding invoice (invoice 968) and that he had already signed it off for payment that was due the next day by reference to biometric data, so this was not a major concession.
149. I am not satisfied and do not find that Mr Meakin said anything about prior deductions (i.e. the £30,000 deducted from payment of invoice 957): the meeting was short and the evidence does not show that this was discussed or said. He did not give an assurance that all future invoices would be paid in full, whatever their amount and validity; what he did agree was that the objective checking and verification should be by reference to the biometric data. The materials that would therefore be "in play" would be the timesheets and the biometric data, but not turnstile data: this is what Mr Warren meant in the last two short paragraphs of his minutes. While it was undoubtedly Mr Warren's position that the turnstiles were unreliable, I doubt that Mr Meakin agreed fully with Mr Warren though he may have accepted in discussions that there could be inaccuracies from time to time. I do not accept that the essential and binding agreement that was reached included binding agreement about the reliability of the turnstiles: that was the stuff of discussion and negotiation and not of binding agreement.
150. I am not persuaded that Mr Warren and Mr Meakin agreed that the biometric data should be the starting point for Premier's invoicing. Rather, the process that I have described earlier of invoicing on the back of signed timesheets was to continue with the biometric data rather than turnstile data being the additional material to be used to check the timesheets for major inaccuracies.
151. I therefore answer issue 2 as follows: there was a binding agreement made on 24 May 2018 that operatives' time would continue to be recorded on signed timesheets and that the biometric data (and not the turnstile data) would be used to check the timesheets for major inaccuracies. There was no binding agreement that turnstile data was unreliable, merely that it was not to be used in the assessment of Premier's invoices.

Issue 3: Was there a binding agreement that

- (1) the Claimant's biometric data formed the basis for identifying commencement of time working for the Defendant?***

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- (2) *the Defendant was contractually responsible for (or: to what extent was each party responsible) the management, supervision, control and direction of the Claimant's operatives?*
- (3) *the Defendant was contractually responsible to the Claimant for the adequacy of the canteen and the speed with which those facilities operated and/or with which the Claimant's operatives used those facilities?*

Issue 3(1)

152. No. There is no evidence to support a finding.

Issue 3(2)

153. I have described the divisions of responsibility at [1], [7]-[9] and [29] above. Those passages indicate the extent to which each party was responsible for the management, supervision, control and direction of Premier's operatives. The working arrangements were developed pragmatically on site and not by reference to any contractually agreed demarcation of responsibilities.
154. MW relies upon the terms of the 1 May 2018 document; but that did not become contractually binding. It also relies upon an implied term that Premier would perform with reasonable skill and care. The scope of that implied term is not developed; but assuming (without deciding) that there is such an implied term, it is of no assistance in determining the relative responsibilities in the complex and sophisticated workplace and working arrangements that prevailed at the Project. In particular, it is of no assistance in attempting to determine whether there were significant failings in Premier's performance and, if so, the reasons for those failings.

Issue 3(3)

155. MW provided and staffed the canteen and, to that extent, were responsible for the facilities it provided. That does not answer the questions raised during trial about whether men were deliberately prolonging their breaks in the canteen for no good reason. On the evidence available to the Court, the only finding I am prepared to make about the provision of the facilities is that there were sometimes queues that may have caused breaks to be extended to some extent, but the extent of this problem cannot be quantified and may easily be overstated. In general terms, the photographic and witness evidence confirms that the canteen was a reasonable facility in the normal run of such things on major construction sites. See also [26] above, which highlights the impossibility of quantifying the whys and wherefores of time spent in the canteen or other times away from the workface.

Issue 4: What meaning and effect should be given to timesheets signed on behalf of the Defendant, if any?

156. I have described how the system from presentation of timesheets to payment of invoices should operate at [15]-[24] above. The system of presenting timesheets to an employer for approval is integral to that system. They should provide reliable and agreed evidence upon the basis of which invoices will be rendered and paid. In this case there was provision in the terms set out in Mr Warren's 12 February 2018 document for all hours to be recorded on signed timesheets for invoicing, meaning that inclusion of hours on timesheets was to be a pre-requisite to invoicing them. That is what in fact happened, including incentive bonuses agreed and signed of by Mr Rumsey and others.

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157. Timesheets are not determinative or conclusive, because mistakes may be made. Signing is the first line of protection against such mistakes causing the employer to be overcharged. It would also be the first line of protection against fraudulently inflated claims, of which there is no suggestion here.
158. In summary, signed timesheets are primary evidence of hours worked. As such, the whole purpose of the system is that they should be capable of being relied upon for the meaning they bear. Their effect, subject to mistakes, should be to record hours worked (and, in the present case, other bonuses and provisions such as holidays and travel) and to provide a solid and reliable foundation for invoicing. Other evidence may take the form of turnstile or biometric data: unless excluded by agreement there is no a priori limitation on the evidence that might be relevant and admissible.
159. In the present case the timesheets are primary evidence, but those signing them for MW have given evidence that they subverted the system by rubber stamping them. For the reasons given earlier in the judgment, I do not accept that MW routinely rubber stamped either the basic hours or the bonuses that they were required to endorse. Those reasons include the internal evidence of scrutiny that can be found within the timesheets as signed on behalf of MW. I can accept that one of the symptoms of a failing project is that MW under-resourced the signing process so that inadequate checks were made. However, I am not persuaded that the timesheets can be downgraded: they remain primary evidence.

Issue 5: In what respects, if any, were the following unreliable

- (1) the turnstiles;***
- (2) the biometric data;***
- (3) the timesheets;***
- (4) the data generated and/or recorded in or by the above?***

Turnstiles

160. My findings under this sub-issue cease to be material because of my finding that the parties agreed to exclude turnstile data.
161. I am not in a position to provide a quantified assessment of the respects in which the turnstiles were unreliable in the sense of malfunctioning. I accept that there were occasions during 2017 when people had to pass cards back and forth through the gates to gain entry or exit, but this was not frequent. There is also evidence of a very small number of card swipes not being recorded. I am unable to determine the precise rights and wrongs of the difficulties that arose over the Easter weekend in 2018. However, as I have made clear earlier, what mattered during 2018 was not the absolute truth about whether the turnstiles were unreliable but Premier's implacable belief that they were, which was set against MW's belief that they were not. It is the conflict generated by those beliefs that dominated the parties' dealings and has determined the length of this judgment.
162. Turning to the data as recorded in the various iterations of Mr Gillam's spreadsheets, it has not been shown that the base data recorded by the gates is substantially inaccurate. The difficulties that have troubled the parties and the Court have predominantly been (a) because (as the parties agreed at the time) some of Premier's working time was spent outside the turnstile perimeter and (b) because of the use that

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MW (by Mr Gillam) has made of the data and the functions and algorithms to which it has been subjected, which led to Premier identifying logic errors and MW coming up with revised iterations, a process that continued before, during and after closing submissions. A further difficulty is that, although MW has the “first in first out” data for the whole disputed period, it does not have interstitial data except for May and June 2018, the rest having been lost by MW’s employer.

Biometric data

163. The biometric clock was not operational until the end of April 2018. There was then at least one occasion when it was inoperative (22 May 2018 according to information provided about a photograph showing it to be out of order). The data from the biometric clock is only available from 29 April to 29 June 2018, whereas the labour invoices that MW now disputes cover the period from 26 February 2018 to 9 July 2018 and thereafter. The biometric data for the first week of operation did not record all operatives: the reason for this is not explained but is likely to be that not all of Premier’s operatives used the new system.
164. Subject to these reservations, it is not alleged by MW (or Premier) that the biometric scanner or the data generated by it is unreliable. There is a dispute about what it shows.

The timesheets

165. The timesheets are typically rounded to show measurements in hours or half-hours. In addition, they record and are the best evidence of enhanced site incentives. The extent to which they may be unreliable is the central issue in the action. Given the proper function of signed timesheets as the first building block on which Premier was to invoice, the starting point is that the timesheets are evidence of what they record; but they are not determinative and may be shown to be wrong by other admissible evidence. That said, rounding to the nearest half-hour, if honest, was not unacceptable and was accepted by MW when signing the timesheets. Modest differences between timesheets and objective data from turnstiles or the biometric clock are to be expected; but it is important to note that the parties did *not* agree that Premier should be paid with the detailed information from the objective data as the primary or determinative source of invoicing.
166. Mr Warren accepted that there were (unspecified) occasions when people put in inflated claims, though he did not accept that it was a widespread problem as he said it would be picked up by their supervisors. In addition, as explained at [29] above I am confident that MW would have been onto Premier if they were aware (as they would have been) of workers simply not being available when they should have been. If MW had been aware of inflated claims they should have challenged the timesheets from the outset. Apart from over the Easter weekend 2018 there is no substantial evidence that they did so, despite there being numerous adjustments on the face of timesheets, some at least of which were made or endorsed by MW during the signing process.
167. What the timesheets do not do is give any indication of what the men were doing during the hours for which payment is claimed.

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- (1) What evidence can or should the court take into account for the purposes of calculating and/or valuing the number of hours of labour in the Claimant's account?***
- (2) What if any reduction should be made to the calculation of the labour element of the Claimant's account in respect of "excessive breaks"?***

Issue 6(1)

168. With the exception of turnstile data, which are excluded by agreement, the Court can take any relevant and admissible evidence into account. The two primary sources of evidence are the timesheets and the biometric data where it exists. The Court also takes into account all of the admissible witness and documentary evidence in support and against the parties' respective cases.
169. MW argues that, even if there was an agreement to exclude turnstile data, it would be artificial and unfair to ignore the fact of the data's existence and its content. I do not agree. The decision to exclude it was a commercial decision taken by MW and Premier in pursuit of their respective financial interests. The fact that MW secretly hoped to reintroduce turnstile data when agreeing not to do so does not render its exclusion unfair. MW achieved its commercial objective, namely to keep Premier on site while Premier was key to MW's success; and it retained objective data in the form of the biometric data where available. In my judgment it would be artificial and unfair to allow MW now to renege upon the agreement it reached having reaped the benefits that it obtained as a result of that agreement.

Issue 6(2)

170. In my judgment MW has not established its "excessive breaks" case, for three reasons. First, it is not possible on the evidence that has been presented to conclude whether, when or where Premier were taking excessive breaks. Even if the interstitial turnstile data were admissible, the Court cannot be satisfied that time spent outside the turnstile perimeter was spent taking breaks rather than working or waiting for work and directions. The most obvious illustration of this difficulty is the fact that there was a briefing at the start of each day shift at 7am, as a result of which MW acknowledges that turnstile data should be adjusted to reflect that early period. While I cannot exclude the proposition that some Premier workmen took excessive breaks on occasions, I am not satisfied that it was prevalent or capable of being quantified either by reference to turnstile data or otherwise, for the reasons outlined earlier in this judgment. I would therefore have rejected MW's case based on alleged excessive breaks even if the turnstile data had been admissible. While objective data (whether from the turnstiles or the biometric clock) may assist in determining when men started and finished their working day, they do not assist in determining what they were doing during the day or why they were doing what. On a site where Premier's primary obligation was to supply men for the shifts that had been requested by MW but responsibility for what happened thereafter was shared in the way I have described earlier in this judgment, I conclude that objective data may be of assistance in determining "first in last out" but not more detailed assessments of working practice and performance than that. It follows that I reject the use of objective data in support of MW's primary case, which it describes as "Excessive breaks". Since it

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cannot be established without reference to a level of detailed information that is not available to the court, I reject MW's primary case.

Issue 7: Was there an implied term as is pleaded at paragraph 28(1) of the defence and counterclaim, and if so to what activity or service does it attach?

171. MW submits that it was an implied term of the arrangements between MW and Premier that Premier was obliged to undertake its management and supervision with reasonable skill and care. In general terms I accept the existence of such an implied term in a contract for the provision of services. However, it goes nowhere because (a) no breach of such a term giving rise to loss or damage has been proved by MW and (b) more generally, MW has not proved that any lack of productivity on the part of Premier was attributable to failings in its supervision and management.

Quantum meruit

Issue 8: In the event that the court finds that there was no agreement as to the essential terms as to payment by the Defendant to the Claimant for labour

- (1) *did the parties agree a form of simple contract, or otherwise?*
- (2) *if so, what hourly rate(s) should be applied in respect of the Claimant's labour, over time, working at weekends?*

172. In the light of my findings on issues 1-7, this issue does not arise.

Performance

Issue 9: In what respects, if any, were the welfare facilities "inadequate"? If at all:

- (1) *to what effect, if any, on the Claimant's operatives' breaks?*
- (2) *if any, as to which disputed labour times or what part of the disputed times?*

Issue 10: Did the Claimant wait in the canteen for instructions consequent upon instructions to stand-by from the Defendant; and, if so, when and for how long?

173. I accept that, as a general description, the canteen facilities were modern and reasonable, though I also accept that there were sometimes long queues, at least in part because both of the tills were not always manned. I accept that there were probably times when breaks were extended because of delays in the canteen. However, I also accept that there were times when Premier's men would be outside the turnstile perimeter, either working productively or waiting for instructions. Because of the complexities of the site and its organisation, which I have described earlier in this judgment, I am not satisfied that there was a significant problem of Premier's men, having turned up for their shift, skiving off to the canteen or elsewhere outside the turnstile perimeter rather than carrying out work that they should have been doing. Had it been a significant problem, the time to pick it up would have been at the time, including on presentation of timesheets or by compiling and recording proper evidence that it was occurring. Neither happened in this case. While I accept that there were times when Premier's men would be waiting for instructions, it is not possible to quantify those times on the evidence before the Court. Even if it had been possible to identify those times, for the Court to attempt to do so with any precision would involve a disproportionate expenditure of limited resources.

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Issue 11: [Issue added by the Defendant but not accepted as being an issue by the Claimant] Insofar as the disputed labour times are those times outside of the construction area, and shortfall between the turnstile hours and timesheet and biometric hours, for each disputed entry:

- (1) What works did the Claimant's operatives undertake during those times?***
- (2) What times claimed were properly worked and due?***

174. See my answer to issue 10. It is frankly unrealistic to expect a Court to achieve the levels of detail that this issue requires when looking back on what was a failing or struggling Project with all the complexities that I have described. At a more general level, where the evidence (i.e. timesheets or other evidence) supports a finding that men supplied by Premier were present as required by MW, MW has not shown that there was a significant problem of time not being “properly worked”. The phrase “properly worked” is itself ambiguous because it implies (and was used during trial by MW to mean) that a man who was present at the site was not working productively, for example in the case of a welder, carrying out a weld. For the reasons given earlier in this judgment, there were many reasons why a man might not be fully engaged in productive work all of the time that he was present and the fact that he was not working “productively” (in the sense meant by MW) does not evidence or mean that his lack of productivity was attributable to fault on the part of Premier. As I have said, Premier’s first obligation was to have the men present in the numbers requisitioned from time to time by MW. What happened then is much more complicated, for the reasons I have given.

Termination

Issue 12: As to alleged termination:

- (1) Did the Defendant by Mr Meakin instruct the Claimant on 9 July 2018 to remove all of its labour from site forthwith?***
- (2) In any event did the Defendant unlawfully terminate the parties' agreement?***
- (3) If so, to what sum, if any, is the Claimant entitled by reason of the above?***
- (4) What if any agreement was there as to payment by the Defendant in lieu of notice?***

Issue 12(1)

175. Yes, save in respect of QA staff and some inspectors: see [109] ff above.

Issue 12(2)

176. The termination was subject to the obligation to give one week’s notice, which had been agreed in February 2018. This was satisfied by Mr Meakin accepting that the men should take the week from 9 July 2018 as “garden leave”: see [113] above. His agreement disposes of the argument advanced by MW that there was no termination, merely a reduction in manpower. It reflects the reality of the arrangements between the parties, which was that MW would requisition labour (and other services) for a week or two ahead and that Premier would then recruit and provide the requisitioned workforce and assume obligations to them as their employer. Sudden cancellation of the requisition, which is what happened here for the great majority of Premier’s workforce, would expose Premier to liability for the cancelled period. The February 2018 agreement for one week’s notice should be understood and interpreted in that factual context.

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177. The Claimant is entitled to the equivalent of one week's payment for the men who would have been working during the week's "garden leave" from 10 July 2018. So far as I am aware, the parties have not disclosed or agreed any requisition by MW for the week ending 13 July 2018 or to Monday 16 July 2018. The evidence I have summarised above leads to the inference, which I draw, that any requisition would have reflected a modest reduction but that a reduction of the scale required by Mr Meakin on 9 July 2018 was substantially inconsistent with it.
178. Premier submitted:
- i) Invoice 1003 on 30 July 2018 in the sum of £162,847.50 which was based on timesheets for the week ending 13 July 2018 that were described as "in lieu of notice";
 - ii) Invoice 1004 on 30 July 2018, in the sum of £236,250.00 which was stated to be "week in lieu for 140 men @ standard rate". This equates to 37.5 hours per man at the lowest rate chargeable by Premier.
179. The following points arise on Invoice 1003:
- i) The numbers for the weekend of 7/8 July 2018 as shown on the timesheets evidence continuing work at about the same level of presence as the previous weekend as shown by MW's spreadsheet and include overtime and bonus hours;
 - ii) The numbers on the timesheets for 10-13 July 2018 appear to be notional and are overwhelmingly for 8 hours per day (or 6 hours on Friday 13 July 2018);
 - iii) There is evidence that whoever signed on behalf of MW paid attention to what they were doing, including the authorising of bonuses.
180. The following points arise on Invoice 1004:
- i) This appears to be a duplication of the claim made by invoice 1003. Both appear to relate to the period of gardening leave agreed by Mr Meakin;
 - ii) Whether or not the invoices are meant to relate to separate and successive periods, they are not both supportable, as the agreement was for one week's payment in lieu;
 - iii) 140 men is too high a number: see [119] above. The average presence during the week to 6 July 2018 as evidenced by MW's 9 July 2018 spreadsheet was 98. If the timesheet numbers for the three days 7-9 July 2018 are adopted, the average presence during the week to 9 July 2018 was 100;
 - iv) The timesheets taken as a whole and during the week before 9 July 2018 record that most men routinely worked much more than 37.5 hours per week, of which much would have qualified for overtime for the men and enhanced rates for Premier;

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- v) Some allowance should be made for the ending of the night shift. It appears from the timesheets that this involved 16 men including 1 supervisor;
 - vi) As I accept that the works were coming towards their end, it seems probable that there would be some further reduction in the requisition of manpower in any event during the week from 10 July 2018.
181. On the information that is available to the Court I would accept Premier's approach of charging for 37.5 hours at the rate of £45 as reasonable. If anything it is conservative because men usually worked longer hours if present. I would reduce the number of men for whom it was correct to charge from 140 to 80. It is possible that 80 is too high a number: but this is, overall, a broad brush assessment by reference to the evidence I have summarised above.
182. Accordingly, I award £135,000 in respect of the week in lieu claimed by invoices 1003 and 1004. This should properly be in respect of the period from 10-16 July 2018 and takes account of the fact that some QA (and possibly other) staff stayed on and are to be treated separately.

Issue 12(4)

183. In its calculations advancing its case, MW does not dispute the £85,000 claimed by invoice 993, which describes the sum as "payment towards weeks in lieu as agreed with Roy Meakin". MW is correct to allow this sum as Mr Meakin's offer of £85,000 as an ex gratia payment was separate from any question of entitlement to the one week's payment in lieu and was a contribution to facilitate the lifting of the pickets and getting the remaining workforce back to work: see [120] above .
184. Premier is therefore entitled to be credited the £85,000 invoiced by invoice 993 in addition to the £135,000 in respect of the week in lieu. Premier is not entitled to any other contribution from MW towards the payments that Mr Warren undertook to pay his workforce on 12 July 2018 or in respect of the termination of Premier's presence on site.

Post-exit claims*Other claims****Issue 14: What if any sum should be allowed or disallowed in respect of invoices 1005, 1006, 1009 and 1010 said by the Defendant to be "unverifiable"?***

185. I reverse the order of issues 13 and 14 because both issues relate to invoices for QA and QC work, with the invoices that are the subject of issue 14 predating those that are the subject of issue 13.
186. The relevant invoices those listed at [128] above and are:
- i) Invoice 1005, dated 30 July 2018, in the sum of £36,810, for QC and other work during the week ending 20 July 2018;
 - ii) Invoice 1006, also on 30 July 2018, in the sum of £29,335, for other QC and progress chasing work during the week ending 20 July 2018;

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- iii) Invoice 1009, dated 8 August 2018, in the sum of £14,995, for QC work during the week ending 3 August 2018;
 - iv) Invoice 1010, dated 17 August 2018, in the sum of £11,250, for QC work during the week ending 10 August 2018;
 - v) Invoice 1013, dated 23 August 2018, in the sum of £13,195, for QC work during the week ending 17 August 2018;
 - vi) Invoice 1019, dated 9 September 2018 in the sum of £12,685, for QC work during the week ending 23 August 2018.
187. MW does not dispute invoices 1013 and 1019. It says that no payment at all should be made against the other four invoices. It submits that Premier has not addressed any of the invoices in detail in its evidence.
188. Invoice 1005 claims for 605 hours work. It is accompanied by a summary of the claims, which are for a week's work for eight employees and a shorter period for a ninth. MW accepts and submits that these are QA staff. The summary document is described as "Daily log week ending 20/07/18 – Summary, Employees not on the clocking machine (hours as per timesheet)." There are no timesheets with the trial documents. There is no biometric data and no detailed evidence about what they were doing. There is no relevant turnstile data, even if it would be admissible, as these operatives are not site-based, but office based, whether at Hull or at Premier's offices in Lincoln. It is worth noting that, although invoice 1005 is for a substantial sum, it is for a small fraction of the sums that were being charged for labour on a weekly basis before 9 July 2018.
189. Invoice 1006 is accompanied by a summary log similar to the one accompanying invoice 1005. It claims for 477 hours work. In this case there are timesheets supporting the invoice summary log and invoice which are not signed by Premier but are signed by Mr Rumsey, his signature being dated 27 July 2018, the last date of the relevant period. The timesheets marry up with the summary log and are accurately reflected in the invoice.
190. Invoice 1009 claims for 240 hours work. It is accompanied by a timesheet which supports the hours claimed. The timesheet is not signed on behalf of Premier but is signed on behalf of MW, probably by Mr Demase, who has dated his signature 7 August 2018, four days after the end of the relevant period. There is no summary log with the trial documents.
191. Invoice 1010 claims for 186 hours work. It is supported by a timesheet that, by my calculations, supports 181 hours work. The timesheet is signed by Mr Chestney for Premier and dated 13 August 2018. It is signed on behalf of MW with the signature being dated 14 August 2018, four days after the end of the relevant period. The MW signature is accompanied by a note which says "Will only accept times at security from now on." There is no summary log.
192. Invoice 1013 claims for 262 hours work. It is supported by a timesheet that, by my calculations, supports 221 hours work. The timesheet is signed by Mr Chestney and dated 20 August 2018. It is signed on behalf of MW with the signature being dated

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20 August 2018, three days after the relevant period. A minor detail is of interest: Mr John Benson's hours for the Sunday are reduced from 8 hours to 6 hours (and his overall hours reduced pro rata) with a note indicating that this has been done. The source of the deduction is apparent from the next supporting page, which is Premier's sign in/sign out sheet and shows that Mr Benson's time was miscalculated by the two hours that were deducted. This minor detail speaks of close attention to detail by the person signing for MW. Invoice 1013 is not disputed in the sum calculated by reference to 262 hours work although the hours listed and claimed in the invoice are not substantiated by the timesheet.

193. Invoice 1019 claims for 206 hours work. It is supported by a timesheet that is signed on behalf of Premier with the signature being dated the same day as the end of the relevant period. It is not signed on behalf of MW. As originally drawn, the timesheet listed 246 hours, but someone has reduced that total to 206 by deleting all entries for the Friday. It is not obvious whether this was done by MW or by Premier. The invoice is not disputed.
194. This being the full extent of the documentary evidence, MW is correct to say that there has been no detailed witness evidence. I would not be over-critical of the absence of witness evidence. The system of compiling spreadsheets and invoices is tolerably clear and the chances that any of the employees could now give reliable evidence about what they were doing (other than at the most general level imaginable) seem remote.
195. I have no doubt that Premier continued working on its QA/QC tasks after 9 July 2018. It was requested to do so and there is evidence of Premier employees working alongside MW on the preparation of QA/QC documentation in the period after 9 July 2018. The consternation on MW's part when Mr Warren decided to remove the QA documentation, speaks to its extent and its importance. So does the 24 October 2018 agreement, which refers to the need to complete 246 test packs, a number which was recognised not to be fixed. On 1 November 2018 Premier's consultant complained to Mr Meakin that MW had created 80 further test packs by adopting a new format, a complaint that Mr Meakin did not accept. The trial bundle includes up to 255 test and weld packs, two volumes of material certification and a volume of consumable certification. On any view, there was a substantial workload that was required and discharged.
196. As I have said elsewhere, signed timesheets provide the Court with important evidence. In the case of these invoices there is clear evidence of MW paying attention to detail, as detailed above in relation to invoices 1010, 1013 and 1019. Of the four disputed invoices, three (1006, 1009, 1010) have timesheets countersigned by MW. The exception is invoice 1005. However, the existence of the summary sheet in the same form as appears with invoice 1009 and including the reference to timesheets suggests that the same system was being used consistently, even if not all the documentation has been made available.
197. For these reasons I am satisfied that there was substantial work being done on QA/QC during the period covered by the four disputed invoices. It is highly probable that there was a timesheet for invoice 1005. It may well have been presented to MW at the time, but the evidence does not support a finding that it was. More importantly,

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the limited adjustments where MW did have and countersign timesheets lends a measure of confidence to the figures in invoice 1005.

198. I would therefore allow the four disputed invoices in full subject to disallowing (a) the shortfall in the hours evidenced by the timesheet for invoice 1010, which (subject to correction by the parties) I interpret as 5 hours (186-181).

Issue 13: What if any sum should be allowed or disallowed in respect of invoices 1029-1039, 1048 and 1049 created in the date range November 2018 to February 2019?

199. These invoices were all dated 30 November 2018 except for numbers 1048 and 1049 which were dated 26 February 2019.

200. As clarified in closing submissions:

- i) Premier no longer pursues the claims included in invoices 1029-1037 to the extent that they advance claims for human resources or quantity surveyor input and no longer pursues invoice 1048. These concessions are properly made on the evidence;
- ii) Invoice 1049 was a claim for a further £85,000 plus 15% uplift described as further payment in lieu of notice. It would be in addition to the £85,000 allowed under invoice 993. For the reasons given under issue 12, it is not recoverable.

201. In the result, the invoices that remain as the subject of Issue 13 are:

- i) Invoice 1034 in the sum of £9,850 for QA/QC work during the last week of August 2018, which is backed by timesheets signed on behalf of Premier, of which one is dated 31 August 2018 and none were presented for signature or signed by MW. Mr Chestney, who signed the timesheets could not say whether he had signed them contemporaneously or when he came back from holiday. And he accepted that he could not attest whether the people mentioned on the timesheets had worked the hours stated, as he did not know;
- ii) Invoice 1035 in the sum of £50,833 for QA/QC work during September 2018, which is backed by timesheets signed and dated on behalf of Premier but which were not presented for signature or signed by MW. This included claims for Mrs Braithwaite's time as a "QA IT Administrator" for approximately 15 hours per week. She described this work as supporting the production of test packs;
- iii) Invoice 1036 in the sum of £55,475 for QA/QC work during October 2018. The timesheets included a claim of 58 hours for Mr Chestney during the week ending 12 October 2018, his explanation for which was that he was there to make sure they got the weld packs out because of an agreement that they would do so. This alleged work predates the formal agreement which was executed on 24 October 2018;

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- iv) Invoice 1037 in the sum of £53,850 for QA/QC work during November 2018 supported by timesheets signed by Mr Chestney. As before, the timesheets were not presented to MW for signature;
- v) Invoice 1038 in the sum of £3,200 for testing 8 welders for competence in March 2018;
- vi) Invoice 1039 in the sum of £3,908 for blasting and painting works carried out in April 2018, charged at cost plus 15%.

Invoices 1034-1037

202. The November 2018 batch of invoices were drawn up by Mrs Braithwaite. She was instructed to draw them up by an external consultant and took the times from payroll documents which did not distinguish between different activities or tasks undertaken by an employee. She said, and I accept, that normally she would work 16 hours a week but during the Project she was working up to 65 hours a week. In the timesheets and invoices she was given numerous descriptions, including “HR Manager” and “QA IT Administrator” but she accepted that these were labels rather than any formalised job description. As I have said, she was Premier’s office and account manager and I have no doubt she played a vital role for Premier bearing in mind that it was a small company. As such, I also accept that she would have turned her hand to anything that needed doing, and that her hours expanded greatly because of the demands made on Premier by the Project. I mean no disrespect to her in saying that, despite the many tasks she was asked to do, she was and remained essentially a business overhead for Premier, whatever label was attached from week to week.
203. MW also established that others included in the timesheets were people to whom multiple labels were attached and who were evidently multi-tasking within and on behalf of Premier. The inclusion of Mr Stead, the consultant QS brought in to advise Premier about their dispute with MW, was also inappropriate.
204. Mrs Braithwaite’s evidence was that she drew up the timesheets that were subsequently used to support the November 2018 batch of invoices contemporaneously i.e. at the time to which the timesheets related. She said that Premier continued to work on the test packs after its main body of workmen left the site because they knew that, if they did not, they would lose the QA team that had started them and that would cause major disasters. She described internal discussions and said that Premier did not raise the invoices at the time as they were not getting paid so the invoices were raised once the agreement of 24 October 2018 had been put into place by Premier’s consultant and Mr Meakin. I accept her evidence on these points. Amongst other things it explains why there was a gap between the sequence of invoices for QA/QC up to invoice 1019, which had been rendered on 9 September 2018, and the November 2018 batch of invoices.
205. In support of its claim for the QA/QC work covered by these invoices, Premier relies upon the same general evidence as outlined under issue 13 in support of its case that it was carrying out substantial QA/QC work to finalise the QA/QC documentation. I accept that general case; but there is also clear evidence of over-egging the pudding by including time for people who should properly be treated as Premier overheads or otherwise inappropriately included. A four-day period of evidence meant that, even if

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in other circumstances it would have been proportionate to do so, it was quite impossible to go through every entry or for MW to cast doubt on the general reliability of the invoicing during this period in the way that they did. Equally, the information left in the hands of the Court for the purposes of writing this judgment does not enable a detailed assessment of each entry on the timesheets and whether or not the individual concerned was appropriately included.

206. In the result, I accept that substantial work continued to be done by Premier on QA work during the period covered by these disputed invoices. But MW has made significant inroads into the reliability of the invoicing process. I make clear, as I have before, that I accept without reservation the integrity of Mrs Braithwaite, who produced the invoices; but in my judgment MW have demonstrated a significant level of over-charging during this period, which is likely to be at least partially attributable to Premier acting under the guidance of its consultant.
207. In this state of the evidence it would be wrong to disallow Premier's claims altogether, since I am satisfied that they did substantial work. The best assessment that I am able to make (which I accept is impressionistic and to that extent arbitrary) is that the remaining elements of these invoices should be reduced by 30%. I reach this figure having compared the on-going levels of charging under the November invoices with the levels that were being charged in the period up to and including invoice 1019, having compared the personnel who are named as taking part in the QA/QC exercise over time, and in recognition of the inroads made by MW in cross-examination.
208. Subject to correction by Counsel, this means that the amounts recoverable under these four invoices are:
- i) 1034: £6,895;
 - ii) 1035: £35,583;
 - iii) 1036: £38,832.50;
 - iv) 1037: £37,695.

Invoice 1038

209. On 7 March 2018 MW asked Premier to arrange for the testing of six welders to Premier procedures. MW undertook to reimburse Premier. The welders were to report to Premier's Lincoln premises, but the documentation suggests that the testing was undertaken at IRIS NDT, also in Lincoln. The test certificates for eight welders are exhibited, dated 13 and 14 March 2018, from which it appears that their numbers had increased from six to eight. The invoice charges (1) £800 for use of the workshop including plant and consumables; (2) £1,200 for "x2 inspectors"; (3) £900 for "supply machining of test pieces" and (4) £300 for transport.
210. On this documentary evidence I am satisfied that the requested work was carried out. MW submits that there is no underlying explanation for the claim and that they are "bogus". Whether or not this is meant to imply that the claims are knowingly false, I reject the epithet. MW rests on absence of proof. It does not suggest positively that

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the work was not requested or was not done; nor does it suggest that the charges levied are excessive if in fact the work was done as requested; nor does it suggest that it has paid for the work elsewhere.

211. The evidence is sparse, but since I accept that the invoice is genuinely based upon work that MW requested Premier to carry out with a promise of reimbursement, I find that it was and that there is no basis advanced for reducing the sum claimed in the invoice.

Invoice 1039

212. Invoice 1039 charges for “blasting and painting works provided as requested”. It includes (1) £2,527.70 for the blasting and priming of 350m of pipes, which is said to have been on 10 April 2018; (2) £690 for blasting and priming approximately 550 fittings; and (3) £690 for transport to Hull (multiple trips). It is said to be charged at cost + 15% and is supported by a back-to-back invoice from Fullbore UK Ltd [“Fullbore”], which describes the work in identical terms and charges Premier sums which, when increased by 15%, give the sums charged by Premier to MW. The Fullbore invoice is dated 15 August 2018.
213. The interesting thing about Fullbore, according to its invoice, is that it shares the same address as Premier (Unit 2-4, Exchange Close, Lincoln LN6 3TR), the same phone number as Premier (01522 880800) and the same fax number as Premier (01522 880808). The layout of the two firms’ invoices are identical apart from the banner giving the company’s name. Fullbore’s invoice states that it has its own website, but a rapid visit to Premier’s discloses that Fullbore is a member of the Harry Warren Construction Group¹.
214. There is no witness evidence about this item: Premier relies upon the documents I have just described. MW submits that there is inadequate evidence to support this item. It advances no positive assertion that the work was not carried out, that it has already been paid for, or that the charging is excessive.
215. I have no reason to disbelieve the documentary evidence that this work was carried out. However, given the lack of transparency about the apparent connection between the two companies, the evidence does not justify a finding that there was an arms-length transaction between Premier and Fullbore that would justify the imposition of the 15% mark up by Premier. I therefore allow invoice in the sum of £3,398 i.e. as charged by Fullbore’s invoice but without a 15% mark up.

Labour: conclusion

Issue 15: Subject to the resolution of the various issues listed above, what is the value of the disputed labour element in the Claimant’s account?

216. There is agreement between the parties to the following extent:

i) Labour conceded by MW: £4,031,462.50;

¹ See <http://www.premierengineeringlincoln.co.uk/engineering-partners/4571973023>

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- ii) QA, supervision and other disputed labour: £1,449,365.00;
 - iii) Labour previously omitted: £365,147.50. This item was conceded in closing because something in excess of 800 shifts had previously been omitted by MW.
217. For the reasons discussed in detail earlier in the judgment, MW's reliance on turnstile data in these proceedings is misplaced. In the period before the introduction of biometric clock data, the timesheets are the best evidence of hours worked by Premier's workforce.
218. Biometric data was first available from 28 April 2018, which was during the period covered by invoice 968. There is a major discrepancy between biometric data hours and timesheet hours for that week, which is explained by incomplete take-up and use of the biometric clock in the first week after its installation. Thereafter, there is a reasonably close correlation between biometric clock hours, timesheet hours and invoiced hours. I take this as evidence supporting the inference (which I have indicated elsewhere that I make) that there was no substantial problem of workmen claiming for hours when they were not present. There is also a fairly constant correlation (generally to within about 7.5-8.5%) between biometric clock hours and turnstile hours save for the periods for invoices 968 and 985. I take this correlation as confirmatory evidence of the validity of using the biometric data as the basis for an independent data check on timesheet hours. The explanation for the discrepancy between biometric and turnstile hours in relation to invoice 968 is the incomplete take-up and use of the biometric clock. The discrepancy during the period covered by invoice 985 is more interesting because it is caused by stand-downs which kept the men outside the turnstile perimeter during times when they had signed on with the biometric clock.
219. The approach to quantification should be as follows:
- i) In the period up to and including 27 April 2018, Premier is entitled to recover on the basis of its timesheet hours as recorded on the timesheets presented to MW, without reference to turnstile data;
 - ii) From 28 April 2018 to 4 May 2018, Premier is entitled to recover on the basis of its timesheet hours as recorded in the timesheets presented to MW, subject to checks against biometric data where it is available;
 - iii) For the period covered by labour invoices between number 971 and 991 inclusive, Premier is entitled to recover on the basis of its timesheet hours as recorded in the timesheets presented to MW, subject to checks against biometric data;
 - iv) The checks against biometric data should be on the basis of rounding the lower limit to a 7 am start and with data rounded to the nearest half hour. This reflects the approach adopted by MW in its formulation of its "first in last out" case using turnstile data, but applying it to biometric data instead;
 - v) Timesheet hours should only be adjusted by reference to biometric data where the process outlined in (iv) above leaves a discrepancy of more than half an

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hour, in which case an adjustment may be made to reduce the discrepancy to half an hour.

Errors in nightshift rates

220. Premier claims that £6,307.00 has been wrongly disallowed by MW because it has used the wrong rates for the night shifts for the night shifts on 11 and 12 May, 2, 8, 9, 29 and 30 June 2018. It appears to be common ground that the rates should have been £55 and £60 per hour. An adjustment has been made to the agreed figure for labour by reference to the shift on 11 May 2018. MW says that it has applied the same rates for the other shifts. If that is incorrect, the adjustment should be made.

Missing night shifts

221. Premier claims that £17,525 has been wrongly deducted because of reliance on turnstile data. MW now concedes £3,282.50 of that amount. If Premier's claims are supported by timesheets (which I understand that they are), they are upheld *unless* the biometric data shows that they did not attend.

Bonus hours awarded on top of full shift

222. Premier claims that £23,615 has been wrongly deducted in respect of a 3 hours bonus that was offered by MW to men who worked a full shift over the May 2018 bank holiday period. MW agrees that the offer was made and that the bonus is payable on proof that the men worked. It now concedes £6,840 of the £23,615 by reference to timesheets that are specifically endorsed by (typically) Mr Rumsey to indicate agreement to the bonus. The claim is rejected where there is no specific endorsement by Mr Rumsey on the timesheet.
223. MW relies upon the document that was sent to Premier on 1 May 2018 in support of its submission that all additional bonuses had to be authorised. That document has no contractual effect for the reasons set out earlier in the judgment, but the general submission is not controversial as it had been agreed by acceptance of Mr Warren's 12 February 2018 document. That does not mean that MW had to specifically endorse the authorisation on each relevant timesheet, though it would have been good practice for Mr Rumsey to have done so.
224. Since it is common ground that the offer was made, the 3 hours is recoverable in respect of all men who worked the full shift over the bank holiday. The primary source for determining who did is the timesheets, subject to checking their presence by reference to the biometric data.
225. On a separate point, there is a dispute about the rate to be applied. MW submits that the bonus is to be paid at standard day and night shift rates i.e. £45 as the day rate and £55 as the night rate. There is no evidence that a higher rate was agreed in respect of these bonuses. The rate should therefore be the standard rates, as MW contends.

Travel hours

226. Premier claims £80,630 in respect of travel based on timesheet entries. The entries were occasionally crossed out by MW; sometimes the system adopted by the checker

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was that they were ticked or, less frequently, initialled by MW. There are also many occasions where there is no separate mark against the travel item on the timesheet. Premier routinely included the timesheet hours for travel in its invoices, though they were not separately designated as being in respect of travel; and they claimed them at £45 per hour. MW routinely paid these travel claims having scrutinised the invoices.

227. The only other evidence about travel of which the Court is aware is:
- i) In the 12 February 2018 document, which provided for “travel costs (blue book)”; and
 - ii) In Mr Meakin’s statement where he says that M+W accepted the biometric clock arrangements “along with the agreement that the biometrics report would just be a back-up check due to the amount of information the timesheets contained, such as bonuses *and travel* which couldn’t possibly be logged on the biometrics machine.” This reference to the inability to log “travel” is irrelevant unless MW accepted that it was liable to make some payments for travel.
228. On this slim evidence, I accept that there was an agreement that Premier would charge for travel. If Premier had routinely specified its travel claims as separate items which showed that £45 per hour was being claimed, I may have regarded Premier’s routine payment of those claims as sufficient evidence of agreement of that rate. But they did not; and, on the evidence that is available to the Court, I am not satisfied that the agreement was for reimbursement of travel time at the same hourly rate as for working time. MW submits that an appropriate rate of reimbursement would be £18 and, in the absence of any evidence to the contrary and of any evidence that Premier paid its men travel time at more than £18 per hour, that rate appears reasonable.
229. I therefore allow the disputed claims for travel where it is supported by the timesheet, subject to applying a rate of £18 per hour.

£500/600 bonus

230. MW and Premier agreed that men should be payed a bonus if they worked full 12 hour shifts over the weekend of 8/9/10 June 2018. MW agrees that it authorised payment of a £500 bonus. Premier claims an additional £100 per man on the basis that this represents NI and Pension Contributions that fell payable on the making of a £500 payment to their men. They therefore claim £4,100, being the incremental £100 they say they incurred.
231. Once again, there is scant evidence in relation to this item. By an internal MW email dated 4 June 2018 Mr Demase wrote to Mr Meakin and others stating “I have the approval to authorize a £500 bonus to crafts that work full 12 hour shifts for next weekend. That’s 12 hours on Friday, Saturday and Sunday ... but only if they work all three days.” A later email, dated 3 July 2018, records Mr Demase as confirming to Mr Winthrop that “NI and Pension Contributions was never discussed only the £500 per man achieving the agreement.” Mr Demase did not give evidence and I am not aware of any evidence from Premier about any discussion or agreement. As between the parties, there is no documentary record of the discussion or agreement.

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232. In the absence of positive evidence that pensions or NI contributions were discussed, it cannot be said that a reference to paying men a £500 bonus necessarily meant that pension contributions and NI would be paid on top: it is equally consistent with the men being paid a bonus having an overall value of £500. This item of Premier's claim therefore fails.

Easter Bank Holiday rates

233. Premier claims £46,120 because it had to pay an uplifted bank holiday rate in order to persuade the men to give up their Easter bank holiday weekend. Premier has charged £95 per hour. MW have allowed a rate of £65 per hour, that being the highest rate identified on Mr Warren's 12 February 2018 document. MW's case is that no higher rate was agreed between Premier and MW and that, in the absence of agreement, what Premier had to pay their men in order to persuade them to work was a matter for Premier and the men and not for MW.
234. There is no evidence to support an agreement or obligation for MW to pay the rates being sought by Premier under this head.

Saturday rates

235. Premier alleges that MW have applied a depressed Saturday rate that they say was agreed in the light of the 1 May 2018 Pay Basis document. Premier says that application of the rates agreed in and from April 2018 continued to apply.
236. The applicable rates were those agreed on the basis of Mr Warren's 12 February 2018 document: the rates for Saturday for general site operatives were £55 per hour for Saturday morning and £65 per hour for Saturday afternoon and Sunday. Those rates did not change, either in April 2018 or on the basis of MW's Pay Basis document of 1 May 2018, for the reasons given earlier in this judgment.
237. These findings should resolve this issue.

Safety stand downs and pressure test exclusions

238. Premier claims £227,760 for 9 day and 25 night shifts where there are substantial inconsistencies between the timesheets and the objective data because the whole workforce is late onto site, early off site or else not on site at all. I understand this to be a reference to turnstile data, which has formed the basis of MW's objections. The item has come to be formulated as it has because Premier has suggested that the discrepancy between timesheets and turnstile data is accounted for by there being events known as safety stand downs, where men who were present and ready to work were stood down for one reason or another. Premier relies upon biometric data which, where available, evidences many more hours than the turnstile data. Premier submits that this shows the men were present and signed in but (if regard is had to the turnstile data) did not make it through the gates. That appears to me to be a reasonable assumption, which I accept.
239. There is an almost complete absence of oral evidence relevant to these claims. There is no evidence that MW instructed Premier to stop working during the times that are the subjects of these claims. Equally, there is no evidence to support the suggestion

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made by MW in support of its deductions that Premier's men were out on strike or otherwise absent for no justifiable reason. Had that been the case, MW should have picked it up at the time when countersigning timesheets and approving payment. There is no evidence that they did so. The evidence, so far as it goes, is to be found in the signed timesheets and is to the contrary. Otherwise there is simply no evidence.

240. Given my conclusions on the use of turnstile data, it is the timesheets and, where available, the biometric data that are the primary evidence.
241. I will consider the first 10 separate items in detail and then review the other items to identify whether there is a difference of principle or fact that justifies separate treatment. The first 10 are:
- i) 12 March 2018 day shift. Timesheets were submitted which typically claimed for 11 hours per day. There is evidence of internal scrutiny and the claimed hours being approved at the time by MW and of Mr Goundry having direct involvement: see for example E/6/11-18. MW has now conceded 4 hours per worker for 37 workers, amounting to £6,600. The evidence of the timesheets indicates that the men were present and available for work for the times shown, and that this was accepted by MW at the time. In these circumstances, the hours claimed by the timesheets for the shift are recoverable by Premier;
 - ii) 16 April 2018 day shift. The timesheets evidence contemporaneous scrutiny leading to the payment of invoice 964 in full. MW's case is that the hours are attributable to an unsanctioned strike. That case is not, so far as I am aware, supported by any document. MW refers to an email dated 25 September 2018 which states in relation to 16 April 2018 "half day off site for safety concerns following boiler leak – Premier on site at this stage (?) but not instigators." This does not support the case that Premier's men were on an unsanctioned strike: to the contrary it suggests that they remained on site. Given the approval of the timesheets on contemporaneous scrutiny, the timesheet hours are recoverable;
 - iii) 18 June 2018 day shift. This was the date of a celebratory hog roast. The charge based on timesheet hours (£35,105) is substantiated by biometric information (which would lead to a slight increase in the charge). The primary evidence is from the timesheets. MW say that they have allowed the sum based on timesheet hours (£35,105). On the available information that is the correct outcome;
 - iv) 19 June 2018 day shift. There was a steam blow on this date. MW's case is that Premier was not required to stop working on that date. Premier claims £39,085 based on timesheets which were signed by Mr Rumsey. They are substantially supported by biometric data. The invoice was paid in full after scrutiny: see Payment Certificate 24. The primary evidence of the spreadsheets plus the supporting evidence of the biometric data together with the contemporaneous approval and payment lead to the conclusion that this claim should be allowed;
 - v) 20 June 2018 day shift. There was a pressure test of the fire water ring main that day. Premier claims £43,427.50 on the basis of timesheets that are

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substantially supported by biometric information. It should be allowed for substantially the same reasons as applied to the 19 June 2018 day shift;

- vi) 21 June 2018 day shift. Premier claims £41,427.50 on the basis of timesheets that are substantially supported by biometric data. The claim should be allowed for substantially the same reasons as applied to the 19 June 2018 day shift;
 - vii) 4 July 2018 day shift. Premier claims £45,945.00 on the basis of timesheets that are substantially supported by biometric data. The claim should be allowed for substantially the same reasons as applied to the 19 June 2018 day shift;
 - viii) 16 April 2018 night shift. Premier claims £12,780 based on timesheets. The position is in all material respects the same as in relation to the day shift: see (ii) above. The claim should be allowed;
 - ix) 28 May 2018 night shift. Premier claims £13,520 on the basis of timesheets which were countersigned by Mr Rumsey and authorised for payment as part of invoice 977. The claim should be allowed;
 - x) 9 April 2018 night shift. Premier claims £23,562 based upon timesheets that were countersigned by MW and approved for payment as part of invoice 962, as described above. There is an absence of biometric data. There was “fire water testing” which affected a limited part of the site. MW’s case is that Premier could have worked elsewhere on site and that they were not instructed to leave site. There is no evidence on the point one way or another. The timesheet hours should be allowed.
242. I have examined the other items under this head of claim/deduction. They do not give rise to any different questions of fact or principle that would lead to a different conclusion.
243. In each case, therefore, the deduction is disallowed on the basis of the primary evidence of the timesheets. Where there is full biometric information (i.e. after the biometric clock system was fully up and running on 5 May 2018), Premier’s recovery is limited to the extent that the biometric information substantiates the claim, adopting the approach identified at [219] above.

Residual overstatement

244. There is a figure of £63,511.03 which Premier describes as “other miscellaneous or unexplained differences”. MW treats this as a concession that Premier’s claim is overstated by that amount. It appears to be a function of the way in which the claims have been presented for the assistance of the Court. No detailed submissions have been made in relation to this figure, which requires explanation. If the figure is based upon timesheet hours and rates, it should not be regarded as a concession. If it is not based upon timesheet hours and rates, different considerations would apply. I will hear counsel on this point on finalisation and hand down.

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245. The financial consequences of these rulings should be calculated and agreed by the parties.

B. Materials and plant

Issue 16: [Defendant version:] To what items and sums, if any, is the Claimant entitled concerning disputed materials and plant claimed in invoices 960, 965, 969, 974, 975, 978, 979, 982, 983, 986, [987], 989, 994, 1007, 1008, 1011, 1012?

Issue 17: [Defendant version:] To what items and sums, if any, is the Claimant entitled concerning disputed “delivered to Lincoln”? Was each disputed item required, delivered to and used at the site in the Claimant’s works for the Defendant?

Issue 18: [Claimant version] What is the value of materials and plant supplied by Premier?

Issue 19: [Claimant version] What if any deduction should be made against Premier’s account in respect of

- (1) plant / materials said to have been removed by Premier;*
- (2) PPE;*
- (3) small tools and/or consumables;*
- (4) duplicated invoices;*
- (5) items of stationery or other costs said to be overhead;*
- (6) lost plant;*
- (7) materials and/or plant said to have been delivered to Premier’s offices in Lincoln;*

246. These issues account for just under £100,000 of difference between the parties.

247. There is an immaterial dispute between the parties about the correct totals of three invoices (960, 965, 969). MW submits that the total aggregate invoiced value of the plant and materials invoices is £707,330.04. This is marginally greater than the sums appearing in Premier’s calculations and I accept it as accurate.

248. I have described invoices 960-979 at [77] ff above. I have described invoices 982-987 more briefly at [107]-[101] above. I provide a brief summary of the other plant and materials invoices here:

- i) Invoice 989 was dated 12 July 2018 and was in the sum of £83,843.27 based on listed sub-invoices for materials and tooling charged at cost plus 15%. There is no evidence of MW checking the invoice and no payment was made against it;
- ii) Invoice 994 was dated 25 July 2018 and was in the sum of £29,375.70 based on listed sub-invoices for materials and tooling charged at cost plus 15%. There is no evidence of MW checking the invoice at the time and no payment was made against it;
- iii) Invoice 1007 was dated 1 August 2018 and was in the sum of £10,054.22 based on listed sub-invoices for materials and tooling charged at cost plus 15%. There is no evidence of MW checking the invoice at the time and no payment was made against it;

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- iv) Invoice 1008 was dated 8 August 2018 and was in the sum of £12,000.99 based on listed sub-invoices for materials and tooling charged at cost plus 15%. There is no evidence of MW checking the invoice at the time and no payment was made against it;
 - v) Invoice 1011 was dated 17 August 2018 and was in the sum of £7,230.10 based on listed sub-invoices for materials and tooling charged at cost plus 15%. There is no evidence of MW checking the invoice at the time and no payment was made against it;
 - vi) Invoice 1012 was dated 23 August 2018 and was in the sum of £6,490.83 based on listed sub-invoices for materials and tooling charged at cost plus 15%. There is no evidence of MW checking the invoice at the time and no payment was made against it.
249. The first significant difference between this last batch of invoices and the previous ones for plant and materials is that there is no evidence of contemporaneous checking of the last batch of invoices. The second significant difference is that, for those invoices where contemporaneous checking is evidenced, the invoices were paid practically in full; but no payment has been made in relation to this last batch of invoices.
250. MW's case on plant and materials is based upon a reassessment by MW of Premier's invoices and approximately 1150 sub-invoices that support the sums claimed by Premier. This reassessment leads to what MW describes as the "true value" of each invoice. So far as the Court is aware, the reassessment has been conducted by looking at each sub-invoice and deciding whether it should be allowed or disallowed on the basis of what appears on the face of the document. The evidence does not disclose who carried out the reassessment, though I understand the spreadsheet to have been compiled by Mr Gillam, who had no direct knowledge of the Project or the subject matter of the invoices. There is no evidence that MW's reassessment was carried out by anyone with contemporaneous knowledge of the invoice when it was originally submitted by Premier or the plant and materials represented by the individual sub-invoices. Premier did not submit detailed evidence in support of individual invoices. Its case is that it submitted its plant and materials invoices in good faith at the time on the basis of sub-invoices that were attributable to the Project and recoverable from MW.
251. The terms set out and agreed by reference to Mr Warren's 12 February 2018 included that materials, small tools and equipment and hired plant were all to be charged with a 15% uplift. All Premier's invoices for plant and materials included the 15% uplift. Mr Warren's evidence was that what he called "specialised" PPE was chargeable to MW. His general approach was that, other than "normal" or "standard" PPE (e.g. boots, normal overalls, glasses, gloves, hi-viz jackets, helmets and such like, which Premier as employer was legally obliged to supply to its employees) the rates for labour that he agreed with MW meant that everything else was to be free issue to Premier. He said, and I accept, that there were some (unspecified) quantities of the items claimed that were obtained by Premier for other contractors, in which case Premier would be entitled to be reimbursed even if the items were otherwise to be regarded as standard PPE.

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252. In the course of focused and proportionate cross-examination of Premier's witnesses, MW challenged various heads of charges passed on to MW by reference to individual Invoices and Sub-invoices:
- i) General PPE: Mr Warren accepted that general PPE is an overhead of Premier's business and is not chargeable to MW. In slightly more detail:
 - a) Mr Warren maintained that specialised PPE or PPE bought for other contractors to use was properly chargeable, but he accepted that an invoice for helmets shown by sub-invoice 34 was not chargeable by Premier. The relevant information on the sub-invoice was simply that it was for 2 white safety helmets. Similarly, sub-invoice 4 charged for 20 FFP2 masks, which Mr Warren accepted were not chargeable;
 - b) Sub-invoice 53 was for various sizes of hi-viz overalls, which Mr Warren accepted would be Premier's responsibility unless being provided by Premier for another contractor. Although there are references in the contemporaneous documents to Premier supplying materials for other contractors, there is nothing on sub-invoice 53 or elsewhere to indicate that it was supplies for others and Mr Warren, for obvious reasons, did not know whether it was or not. Similarly, sub-invoice 57 was for hi-viz clothing and was accepted as not being chargeable to MW;
 - c) On the other side of the line, Mr Warren maintained that zinc galvanised spray charged under sub-invoice 58 was a supply that was chargeable;
 - d) MW submits that the sub-invoices do not evidence *any* specialist PPE or PPE that Premier was not obliged to supply pursuant to s. 9 of the Health and Safety at Work Act 1974 and Regulation 4 of the PPE At Work Regulations 1992. I accept that PPE falling within those statutory obligations should be treated as Premier overheads and are not rechargeable to MW;
 - ii) MW challenged what small tools were chargeable by reference to sub-invoice 97 which was for a set of Allen keys. Mr Warren rejected the suggestion that these were either tools of Premier's business or that of the individual tradesmen and not the responsibility of MW. Mr Warren's response was that these were specialist tools and that he would be given a long list of stuff that Mr Lettice gave him to obtain for his men. He drew the distinction in the case of a pipe-fitter who he would expect to provide his own tape measure and string line but not a set of hexagon keys. If this list from Mr Lettice exists it has not been identified by Premier in the evidence on which it relies in support of its claim for plant and materials. I accept that there is a distinction as drawn by Mr Warren. It is quite impossible to form a reliable view of where, if at all, the dividing line should be drawn on individual sub-invoices on the basis of the terms of the sub-invoices themselves and there is no evidence that proves where the demarcation lines should be drawn.

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253. In closing submissions, MW gave examples of invoices that come under the various heads of challenge identified in the present issue:
- i) Sub-invoice 422 is for the supply of printer ink and highlighters from a supplier in Hull. It was passed for payment under Payment Certificate 15 but is now challenged on the basis that stationary is an overhead cost which, in the absence of further explanation, is correct;
 - ii) As an exemplar of “lost plant” MW relies upon sub-invoice 1151, which supports Premier’s invoice 1012. The sub-invoice is dated 16 August 2018 and is a sales invoice from Top Lifting Ltd for the supply, in the main, of chain blocks and clamps in the sum of £4,744.46. The schedule of equipment is similar in scope and type of equipment to that included on sub-invoice 288, the difference being that sub-invoice 288 is for hire of the equipment from 7-16 April 2018. The only other possible indication of why this sub-invoice and the sale to which it relates occurred in August 2018 is in the supplier’s statement that Premier’s reference for the order was “MWHULL18 LOST”. These two invoices taken together support the inference that equipment that was supplied to Premier on hire was not returned when they went off site in July 2018. The fact that the plant was “lost” is itself uninformative except as indicating that it had not been returned to the suppliers. It does not indicate how or in what circumstances the plant was “lost”, particularly in circumstances where Premier’s exit from the site was abrupt, as described above, and MW retained control of the site. Premier has not provided any evidence to explain how this sales invoice came about. However, the fact that, as between the supplier and Premier, Premier may have been responsible for the equipment does not mean that it was “lost” by Premier for the purposes of allocating responsibility between Premier and MW. This is a good example of a sub-invoice where the parties’ approach to evidence results in the Court not being able to reach a conclusion that MW’s approach is valid;
 - iii) Sub-invoices 945-946 are for the hire of site safes which, in the absence of evidence to the contrary, would form part of Premier’s office overheads. There is no evidence to the contrary;
 - iv) MW cites duplication of claims, as with sub-invoices 131 and 132;
 - v) MW alleges that some items for which Premier has charged have been removed and retained by Premier. They cite sub-invoice 29, which supports invoice 960, and is for 7 grinders. So far as I am aware, there is no evidence about what became of these grinders one way or another.
254. In this state of the evidence, the scrutiny and assessment of Premier’s invoices at the time they were submitted is of cardinal importance for three simple reasons of reliability and justice. First, the invoices were submitted when Premier had current knowledge of the reasons why each sub-invoice was submitted. Second, MW’s contemporaneous assessment of the invoices was carried out by people with current knowledge of Premier’s work on the Project and what their requirements for plant and materials would be or had been. That was, therefore, the time when issues could and should have been raised if it was reasonably arguable that Premier was overcharging by approximately 14% (£100,000 out of a cumulative total of approximately

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£700,000). Third, it is inevitable that the Court would have inadequate evidence on which to make detailed findings if the alleged overcharging is not raised until later. Even if detailed evidence were available, it would be grossly disproportionate to expect the Court to trawl through all the disputed items.

255. MW asked the Court to examine the sub-invoices in detail in order to form its own assessment. I have looked at many but by no means all. I have not examined all the challenged sub-invoices for two reasons. First, it involves a disproportionate use of the Court's limited resources. Second, on the basis of the sub-invoices that I have examined, many do not provide sufficient information to enable a Court to form a valid independent judgment whether the objections that are now advanced are justified or not. While some sense of what is proportionate must be retained, Premier has not provided a significant evidential response to the various criticisms that MW has made, all of which are of long standing, having been raised by way of spreadsheet response with the Defence in October 2019. At the same time, my review of very many challenged items leads me to conclude that (a) the exercise undertaken by MW as reflected in its current objections was largely theoretical and based on a review of the contents of the sub-invoices rather than actual knowledge, and (b) the descriptions of the grounds of challenge are often so succinct as to be uninformative.
256. Two points emerge from this brief introduction. First, Mr Warren's 12 February 2018 document and the acceptance of its terms by MW is consistent with and supports Mr Warren's evidence that all plant, materials, small tools and equipment *other than* PPE or other equipment which Premier was legally obliged to supply to its employees to enable them to carry out their basic work were to be chargeable to MW: see [10] above. Second, it is at least possible that the same level of detail on a sub-invoice may be sufficient for Premier to establish its claim where there is the additional evidence of MW having scrutinised and passed it at the time but may be insufficient in other circumstances. Equally though, where MW have scrutinised and approved a sub-invoice for payment in the context of one Premier invoice, there may be no obvious reason why a similar sub-invoice should not be held to be chargeable to MW where it appears in support of one of the invoices for which there is no evidence of contemporaneous scrutiny.
257. My approach, after a general survey of all the invoices and most of the sub-invoices that support them has been:
- i) To look at the overall reductions that MW now seeks to achieve in relation to invoices which it previously scrutinised and paid: the comparison being between what was paid and what is now contended for;
 - ii) To take one invoice (invoice 969) as an exemplar of an invoice that was substantially passed after scrutiny at the time and to look at the challenged sub-invoices in detail applying a materiality threshold of £150. I take invoice 969 because it is the scrutinised invoice that MW's present case seeks to reduce by the largest sum;
 - iii) To review one invoice (invoice 989) where there is no evidence of contemporaneous scrutiny by MW. I have chosen invoice 989 as the largest invoice submitted after 9 July 2018;

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- iv) To look for specific examples where the foregoing exercise does not reveal sufficient information to support even a broad brush approach to MW's objections; and
- v) Then to reach an overall assessment of the extent to which, if at all, a reduction should be made to Premier's plant and materials invoices.

Previously scrutinised invoices: summary

258. The table below shows the invoices that were subject to scrutiny, what was paid originally and what MW contends for now.

| Invoice Number | Sum Claimed £ | Sum Paid £ | MW present case £ | Present case reduction £ | Present case reduction % |
|----------------|---------------|------------|-------------------|--------------------------|--------------------------|
| 969 | 79,965 | 78,703 | 69,102 | 10,862 | 13.5 |
| 974 | 72,655 | 70,666 | 67,529 | 5,126 | 7.0 |
| 975 | 95,219 | 95,207 | 88,974 | 6,245 | 6.5 |
| 978 | 24,922 | 24,825 | 17,590 | 7,332 | 29.4 |
| 979 | 16,726 | 16,726 | 14,608 | 2,118 | 12.7 |
| 982 | 25,979 | 25,979 | 19,477 | 6,502 | 25.0 |
| 983 | 42,157 | 42,157 | 40,000 | 2,157 | 5.1 |
| 986 | 41,638 | 41,110 | 40,307 | 1,331 | 3.2 |
| 987 | 14,355 | 14,355 | 14,335* | 0 | 0 |

*MW's closing annex mis-transposes the invoice amount but does not propose any reduction.

Invoice 969

259. I have described invoice 969 at [77(iii)] above. It was supported by invoices numbered at the time and in MW's spreadsheets for trial as sub-invoices 275-415. It was paid virtually in full at the time under Payment Certificate 14 after apparent scrutiny by MW: deductions of £1261.96 were made from an invoice in the sum of £79,965.64, an overall reduction of just under 1.6%. MW now contends that should be allowed in the sum of £69,102.68, a reduction of £10,863, approximately 13.5%.

260. When originally scrutinised and approved for payment, deductions were made against the following 8 sub-invoices:

- i) 294 – £82.78: “overhead”;
- ii) 315 - £61.32: “overhead”;
- iii) 316 - £173.62: “overhead”;
- iv) 317 - £534.98: “overhead”;
- v) 336 - £23.14 (of which £16.77 allowed): no explanation;
- vi) 337 - £137.99: “overhead”;
- vii) 361 – £257.60: “overhead”;

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- viii) 388 - £26.50 (of which £19.20 allowed): no explanation.
261. On MW's present case, 37 sub-invoices have been disallowed in whole or in part: 278, 282, 287, 289, 294, 302, 310, 311, 312, 315, 316, 317, 329, 330, 331, 332, 334, 335, 337, 354, 361, 381, 388, 389, 390, 391, 392, 393, 398, 404, 405, 406, 407, 409, 410, 414, 415. Sub-invoice 336, which was challenged in the original scrutiny, is no longer challenged.
262. Dealing with challenged sub-invoices where the amount challenged exceeds £150, I highlight those that were challenged on initial scrutiny: NB the figures on the spreadsheet are net of the 15% mark up, which is added at the end. This explains discrepancies between the figures below and the figures above: see, for example, sub-invoice 316 above and below:
- i) 282 - £165.02: the invoice tab on the MW spreadsheet says "disallowed – PPE". The first four items on the invoice are disallowed. They are for spanners, browguards, visors and goggles. There is no indication that the equipment was ordered for other contractors. Apart from the spanners, it appears to be standard PPE and the objection well founded. There is no evidence about the spanners. I would therefore hold that the objection is well founded for the three items of PPE (£141.52) but that the spanners come within the obligation of MW to reimburse Premier for the cost of small tools;
 - ii) 287 - £270.10: the invoice tab says "Equipment retained by Premier". The objection implicitly accepts that the equipment was required for the Project works. There is no evidence to substantiate this objection.
 - iii) 289 - £1,305: the invoice tab says "Equipment and PPE retained by Premier". The items disallowed from this sales invoice include full body harnesses, alloy bow shackles, lanyards, shock absorber and scaffold hooks and delivery. On the limited information that is available, I would disallow the body harnesses as necessary PPE. The objections in relation to the other items are not substantiated. There is no evidence about what became of the equipment. Specifically, there is no evidence about the source of the assertion that the equipment was retained by Premier. The objection is sustained in relation to £480 of the £1,305;
 - iv) 310 - £320.35: the invoice tab says "No delivery address – delivery note 28221 required as proof". Despite this objection, MW allows £60 for the first two items on the sub-invoice. There is no evidence of split delivery. The absence of the delivery note does not justify disallowing the rest of the items where some are allowed. The objection is therefore rejected;
 - v) 311 - £179.85: the invoice tab says "No delivery address – delivery note 28221 required as proof". MW allows £430 in respect of the first two items of the invoice but rejects the third. This objection is rejected for the same reasons as given under sub-invoice 310 above;
 - vi) 312 - £179.85: the invoice tab says "No delivery address – delivery note 28087 required as proof". MW allows £20 in respect of the second item on this sub-

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invoice but rejects the first. The objection is rejected for the same reasons as given under sub-invoice 310 above;

- vii) 316 - £150.97: the invoice tab says “All disallowed – stationary – delivered to Lincoln”. The sub-invoice is for stationary and similar items that properly form part of Premier’s overheads. The objection is sustained.
- viii) 317 - £465.20: the invoice tab says “All disallowed – stationary – delivered to Lincoln”. The objection is sustained for the same reasons as given under sub-invoice 316.
- ix) 329 - £1,512: the invoice tab says “No delivery address – Delivery Note 28100 required as proof.” MW has allowed some items but not others, for no obvious reasons. The objection is rejected for the same reasons as under sub-invoice 310 above.
- x) 354 - £725.76: the invoice tab says “Disallowed Plant Hire – PPE”. The items on the sub-invoice are items such as safety harnesses and safety ropes. There is no evidence that they are other than normally required PPE. The objection is sustained.
- xi) 361 - £224: the invoice tab says “Disallowed – overhead”. The disallowed item is described as “site security CCTV” on a sub-invoice that also includes for the biometric clock system which Premier was requested to install. There is no evidence to establish that the provision of CCTV was required as a Premier overhead. An additional feature of this objection is that the costs of transport are allowed by MW, though not the items themselves. This item was disallowed on initial scrutiny, as an overhead. On this state of the evidence, the objection is not sustained.
- xii) 381 - £983.48: the invoice tab says “Various disallowed items – see Invoice”. The evidence available to me and identified by MW does not enable me to identify the items that have been disallowed by MW. There are items on the invoice that are evidently PPE e.g. helmets, gloves and glasses. On the information available to me, I would sustain this objection to the extent of £350.
- xiii) 389 – £576.91: the invoice tab says “Disallowed Small Tools – Equipment retained by Premier”. For the reasons given above, small tools were reimbursable +15%. This objection is rejected.
- xiv) 391 - £278.66: the invoice tab says “Disallowed – small tools -delivered to Lincoln.” I am not able to form an independent view of what items were the subject of this invoice. On the assumption that they were small tools, they are reimbursable + 15%. This objection is rejected.
- xv) 405 - £241.50: the invoice tab says “Equipment retained by Premier”. The objection implicitly accepts that the equipment was required for the Project works. There is no evidence to sustain this objection. It is rejected.

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- xvi) 406 - £187.20: the invoice tab says "Equipment retained by Premier". The objection implicitly accepts that the equipment was required for the Project works. There is no evidence to sustain this objection. It is rejected.
 - xvii) 414 - £314.70: the invoice tab says "Equipment retained by Premier". The objection implicitly accepts that the equipment was required for the Project works. There is no evidence to sustain this objection. It is rejected.
263. Of these material objections amounting to £8,080.55 I therefore sustain the objections to the extent of £2,313.45. If that ratio were to be extrapolated to cover all of MW's objections, the objections would be sustained to the extent of £3,109 (10,863 x 2,313/8,080) or 3.9% of the invoice total. It would lead to recovery by Premier of £76,856 under invoice 969.
264. In relation to invoice 969:
- i) MW's objections based on PPE are generally well founded;
 - ii) Objections based on the absence of delivery notes are not well founded;
 - iii) Objections based on small tools are not well founded;
 - iv) Objections based on alleged removal of plant and equipment are not well founded;
 - v) Objections based on items being stationary/overheads are well founded;
 - vi) Objections based on plant being lost are not well founded.

Invoice 989

265. Invoice 989 claimed £83,843 based on listed sub-invoices for materials and tooling charged at cost plus 15%. MW claims deductions of £17,527.43 or approximately 21%. Once again I have taken a materiality threshold of £150. The material objections are in relation to the following sub-invoices (using figures that are net of the 15% markup):
- i) 937 - £193.50: the invoice tab says "Overhead – Disallowed". The sub-invoice provides details of the supply of water and rental of water coolers to Premier at the Hull Site. There is no evidence to suggest that this was other than for Premier's Project office. As such it is an overhead. The objection is sustained;
 - ii) 983 - £588: the invoice tab says "Overhead – disallowed". The sub-invoice is for the hire of site security CCTV during June 2018. There is no information about where the CCTV was located and no basis for holding that it was for Premier's own use so as to be an overhead. The objection is rejected;
 - iii) 987 - £7,411.24: the invoice tab says "Materials – POD required", which I take to mean Proof of Delivery required. The sub-invoice comprises 15 pages of listed equipment with numerous references to delivery notes. The total value of the sub-invoice is £9,011.72 of which MW allows £1,600.48 and disputes

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the balance. The Court does not have any breakdown showing which items are disputed and which are not. There is no obvious or identified reason for the Court to discriminate between some items and others. This is an example of an objection where the information is too scant for any conclusion to be made in MW's favour. This sub-invoice also disallows £1,855.44 on the basis that the goods were removed. There is no indication in the evidence that has been drawn to my attention of how this figure is calculated, computed or otherwise made up or the factual basis for the objection. The objection is rejected;

- iv) 1029 - £182.32: "Equipment retained by Premier". There is no evidence to sustain the objection that Premier retained the equipment to which this sub-invoice relates. The objection is rejected;
 - v) 1030 - £193.24: the invoice tab says "Equipment retained by Premier". The objection is rejected for the same reason as given for sub-invoice 1029;
 - vi) 1031 - £522: the invoice tab says "Equipment retained by Premier". The objection is rejected for the same reason as given for sub-invoice 1029;
 - vii) 1034 - £5,445.91: the invoice tab says "Proof goods were delivered to site – Delivered to Lincoln". This sub-invoice is 18 pages long, listing very many items of equipment, and is in the total sum of £7,724.22. MW allows £2,328.31 but objects to the balance. The Court does not have any breakdown showing which items are disputed and which are not. There is no obvious or identified reason for the Court to discriminate between some items and others on the basis of a challenge to where the goods were delivered. This is an example of an objection where the information is too scant for any conclusion to be made in MW's favour. Of the £5,445.91 that MW would disallow, £1283.87 is included in the column "Goods removed." There is no indication in the evidence that has been brought to the attention of the Court to explain the source of this number or how it is calculated, computed or otherwise made up or the factual basis for the objection. £3,835.39 is included in the column for PPE. Again there is no breakdown to indicate how that figure is calculated, computed or otherwise made up. The sub-invoice does include many items which look like "standard" PPE. On this unsatisfactory state of the evidence, I would allow £2,000 as a broad brush approach to the question of PPE – a figure which is bound to be wrong but which balances the evidence provided by the sub-invoice against the lack of any clear basis for the figure disallowed by MW. Otherwise, the objection is rejected.
266. Of these material objections amounting to £14,536.21 I therefore sustain the objections to the extent of £2,193.50. If that ratio were to be extrapolated to cover all of MW's objections, the objections would be sustained to the extent of £2,646 (17,527.43 x 2,193/14,526) or approximately 3% of the invoice total. It would lead to recovery by Premier of £81,987 under invoice 989.
267. On this basis in relation to invoice 989:
- i) MW's objections based upon items being overheads are soundly based except in relation to the CCTV system;

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- ii) MW has shown that Premier charged significant quantities of “standard” PPE to MW which it should not have passed on;
- iii) MW’s objections based on lack of proof of delivery or items being retained or removed by Premier are rejected.

Goods removed

268. As an additional check, I have reviewed one further substantial sub-invoice where MW has made substantial disallowances for goods said to have been removed or retained by Premier:

- i) Sub-invoice 553, which is in the sum of £2,060, all of which is disputed on the basis “Equipment retained by Premier – delivered to Lincoln”. It forms part of the support for Invoice 975, which MW scrutinised at the time and paid almost in full having done so: see [77(v)] above. No reduction was then made in respect of this sub-invoice. The sub-invoice lists items of equipment of which by far the most expensive is an inverter. The nature and purpose of this equipment would have been clear to MW when scrutinising the sub-invoice at the time. There is no evidential basis for sustaining this objection, which appears to rest upon assumption of retention rather than anything else. It is rejected.

269. I have also looked at 10 other material sub-invoices to confirm the approach that MW has adopted in relation to the main heads of challenge that it advances. That review does not raise any significant question of fact or principle.

Conclusions on Materials and Plant Invoices

270. MW seeks a reduction of £20,267.35 in respect of plant or goods said to have been retained or removed by Premier. This head of challenge has substantially failed for lack of explanation and evidence.

271. MW seeks a reduction of £38,288.62 in respect of PPE that Premier has included in its invoices to MW. This head of challenge has substantially succeeded because there is widespread evidence of “standard” PPE being included. I would not allow the proposed reduction in full because it is not possible to carry out even a broad brush audit of the objection on the basis of the available information.

272. MW seeks a reduction of £20,024.40 in respect of small tools and consumables. This head of challenge substantially fails because of my conclusion that small tools are reimbursable as a result of the contractual effect of the 12 February 2020 document, meeting and agreement.

273. These three heads of challenge, if allowed in full, would amount to approximately £78,500. There are approximately £7,044 “miscellaneous items” of challenge also advanced.

274. In my judgment it is not possible to approach the resolution of these issues on a purely mathematical basis. The absence of evidence is partly explained by the need to retain a sense of proportionality; but there remains a lack of basic evidence on either side

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that would make any attempt at precision realistic. I take into account (a) the levels of reduction applied by MW where there is evidence of contemporaneous scrutiny, (b) the broad effect of my review of invoices 969 and 989, and (c) the apparently paper-based nature of much of the exercise carried out by MW as the basis of its current objections.

275. On the basis that substantial reductions should be made for PPE but that the other heads of challenge have substantially failed, I would uphold MW's challenge to the plant and materials invoices to the extent of £43,000 net, to which the 15% mark should be applied. This leads to an aggregate reduction of £49,450.
276. I therefore find that Premier is entitled to recover £655,194 (704,644-49,450) in respect of its claim for plant and materials. Standing back, this amounts to an overall reduction of about 7%, which seems reasonable to me in the light of the considerations I have set out in the section of the judgment.

C. Final account: conclusion

Issue 20: Taking into account agreed items (for supervision and sums paid to date) what is the balance of the final account?

277. Having seen this judgment in draft, the parties have agreed a judgment sum of £512,916.73 + VAT payable to the Claimant. The calculation supporting this figure is annexed to this judgment as Schedule A. Inclusive of VAT, the judgment sum is therefore £615,500.08.

D. Interest

Issue 21: To the extent that the court upholds either the claim and/or the counterclaim what if any interest should be awarded in respect of either.

278. Premier claimed interest on outstanding balances due to it from time to time at 8.5% over base relying on the Late Payment of Commercial Debts (Interest) Act 1988. MW contended for interest at 3%. The parties have now agreed the figure for interest subject to one point which will be resolved and reflected in the order that sets out the financial consequences of this judgment.

SCHEDULE A
CALCULATION OF JUDGMENT SUM

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| Premier Engineering (Lincoln) Ltd v MW High Tech Projects UK Limited (HT-2019-000286) | | | | | |
|---|------------|------------|--------------------|-----------------|---|
| Schedule of Judgment Sum | | | | | |
| Invoice Details | | | | | |
| Invoice Number | Tax Date | Due Date | Net Invoice Amount | Judgment Amount | Judgment paragraph reference |
| 917 | 23/10/2017 | 22/11/2017 | £ 13,580.00 | £13,580.00 | para 30 |
| 934 | 21/12/2017 | 20/01/2018 | £ 800.00 | £800.00 | para 30 |
| 942 | 06/02/2018 | 08/03/2018 | £ 2,985.00 | £2,985.00 | para 30 |
| 943 | 06/02/2018 | 08/03/2018 | £ 10,815.00 | £10,815.00 | para 30 |
| 947 | 26/02/2018 | 28/03/2018 | £ 13,630.00 | £13,630.00 | para 30 |
| 950 | 06/03/2018 | 05/04/2018 | £ 20,015.00 | £20,015.00 | para 30 |
| 952 | 13/03/2018 | 12/04/2018 | £ 46,335.00 | £46,335.00 | para 219(i) |
| 953 | 13/03/2018 | 12/04/2018 | £ 72,367.50 | £72,367.50 | para 219(i) |
| 954 | 14/03/2018 | 13/04/2018 | £ 12,817.50 | £12,817.50 | para 219(i) |
| 956 | 21/03/2018 | 20/04/2018 | £ 122,727.50 | £122,727.50 | para 219(i) |
| 957 | 22/03/2018 | 21/04/2018 | £ 217,292.50 | £217,292.50 | para 219(i) |
| 959 | 03/04/2018 | 03/05/2018 | £ 308,012.50 | £308,012.50 | para 219(i) |
| 961 | 13/04/2018 | 13/05/2018 | £ 351,387.50 | £351,387.50 | para 219(i) |
| 962 | 17/04/2018 | 17/05/2018 | £ 340,532.50 | £340,532.50 | para 219(i) |
| 964 | 24/04/2018 | 24/05/2018 | £ 366,610.00 | £366,610.00 | para 219(i) |
| 967 | 02/05/2018 | 01/06/2018 | £ 266,012.50 | £266,012.50 | See adjustment for bios below in accordance with para 219 |
| 968 | 09/05/2018 | 08/06/2018 | £ 220,272.50 | £220,272.50 | See adjustment for bios below in accordance with para 219 |
| 971 | 01/06/2018 | 01/07/2018 | £ 447,677.50 | £447,677.50 | See adjustment for bios below in accordance with para 219 |
| 972 | 01/06/2018 | 01/07/2018 | £ 511,672.50 | £511,672.50 | See adjustment for bios below in accordance with para 219 |
| 973 | 01/06/2018 | 01/07/2018 | £ 488,425.00 | £488,425.00 | See adjustment for bios below in accordance with para 219 |
| 977 | 07/06/2018 | 07/07/2018 | £ 439,447.50 | £439,447.50 | See adjustment for bios below in accordance with para 219 |
| 980 | 11/06/2018 | 11/07/2018 | £ 481,110.00 | £481,110.00 | See adjustment for bios below in accordance with para 219 |
| 984 | 20/06/2018 | 20/07/2018 | £ 557,377.50 | £557,377.50 | See adjustment for bios below in accordance with para 219 |
| 985 | 28/06/2018 | 28/07/2018 | £ 328,700.00 | £328,700.00 | See adjustment for bios below in accordance with para 219 |
| 988 | 03/07/2018 | 02/08/2018 | £ 386,700.00 | £386,700.00 | See adjustment for bios below in accordance with para 219 |
| 991 | 13/07/2018 | 12/08/2018 | £ 415,292.50 | £415,292.50 | See adjustment for bios below in accordance with para 219 |
| 993 | 25/07/2018 | 24/08/2018 | £ 85,000.00 | £85,000.00 | para 184 |
| 1003 | 30/07/2018 | 29/08/2018 | £ 162,847.50 | £135,000.00 | para 182 |
| 1004 | 30/07/2018 | 29/08/2018 | £ 236,250.00 | £0.00 | para 182 |
| 1005 | 30/07/2018 | 29/08/2018 | £ 36,810.00 | £36,810.00 | para 198 |
| 1006 | 30/07/2018 | 29/08/2018 | £ 29,335.00 | £29,335.00 | para 198 |
| 1009 | 08/08/2018 | 07/09/2018 | £ 14,955.00 | £14,955.00 | para 198 |
| 1010 | 17/08/2018 | 16/09/2018 | £ 11,250.00 | £10,975.00 | para 198 |
| 1013 | 23/08/2018 | 22/09/2018 | £ 13,195.00 | £13,195.00 | para 187 |
| 1019 | 06/09/2018 | 06/10/2018 | £ 12,685.00 | £12,685.00 | para 187 |
| 1029 | 30/11/2018 | 30/12/2018 | £ 9,390.00 | | para 200(i) |
| 1030 | 30/11/2018 | 30/12/2018 | £ 13,790.00 | | para 200(i) |
| 1031 | 30/11/2018 | 30/12/2018 | £ 18,512.50 | | para 200(i) |
| 1032 | 30/11/2018 | 30/12/2018 | £ 15,135.00 | | para 200(i) |
| 1033 | 30/11/2018 | 30/12/2018 | £ 12,872.50 | | para 200(i) |
| 1034 | 30/11/2018 | 30/12/2018 | £ 14,990.00 | £6,895.00 | 208 |
| 1035 | 30/11/2018 | 30/12/2018 | £ 61,282.50 | £35,583.00 | 208 |
| 1036 | 30/11/2018 | 30/12/2018 | £ 76,255.00 | £38,832.50 | 208 |
| 1037 | 30/11/2018 | 30/12/2018 | £ 64,300.00 | £37,695.00 | 208 |

Approved Judgment

| Invoice Number | Tax Date | Due Date | Net Invoice Amount | Judgment Amount | Judgment paragraph reference |
|----------------|------------|------------|--------------------------------|--------------------|--|
| 1038 | 30/11/2018 | 30/12/2018 | £ 3,200.00 | £3,200.00 | 211 |
| 1039 | 30/11/2018 | 30/12/2018 | £ 3,907.70 | £3,398.00 | 215 |
| 1048 | 26/02/2019 | 28/03/2019 | £ 35,837.50 | | 200(i) |
| 1049 | 26/02/2019 | 28/03/2019 | £ 110,500.00 | | 200(ii) |
| 960 | 06/04/2018 | 06/05/2018 | £ 58,206.08 | | See para 276: all materials / plant treated together |
| 965 | 24/04/2018 | 24/05/2018 | £ 51,328.61 | | See para 276: all materials / plant treated together |
| 969 | 10/05/2018 | 09/06/2018 | £ 79,965.64 | | See para 276: all materials / plant treated together |
| 974 | 01/06/2018 | 01/07/2018 | £ 72,655.11 | | See para 276: all materials / plant treated together |
| 975 | 05/06/2018 | 05/07/2018 | £ 95,219.83 | | See para 276: all materials / plant treated together |
| 978 | 08/06/2018 | 08/07/2018 | £ 24,922.16 | | See para 276: all materials / plant treated together |
| 979 | 08/06/2018 | 08/07/2018 | £ 16,726.13 | | See para 276: all materials / plant treated together |
| 982 | 18/06/2018 | 18/07/2018 | £ 25,979.48 | | See para 276: all materials / plant treated together |
| 983 | 18/06/2018 | 18/07/2018 | £ 42,157.50 | | See para 276: all materials / plant treated together |
| 986 | 28/06/2018 | 28/07/2018 | £ 41,638.98 | | See para 276: all materials / plant treated together |
| 987 | 28/06/2018 | 28/07/2018 | £ 14,355.78 | | See para 276: all materials / plant treated together |
| 989 | 12/07/2018 | 11/08/2018 | £ 83,843.27 | | See para 276: all materials / plant treated together |
| 994 | 25/07/2018 | 24/08/2018 | £ 29,375.70 | | See para 276: all materials / plant treated together |
| 1007 | 01/08/2018 | 31/08/2018 | £ 10,054.22 | | See para 276: all materials / plant treated together |
| 1008 | 08/08/2018 | 07/09/2018 | £ 12,000.99 | | See para 276: all materials / plant treated together |
| 1011 | 17/08/2018 | 16/09/2018 | £ 7,230.10 | | See para 276: all materials / plant treated together |
| 1012 | 23/08/2018 | 22/09/2018 | £ 6,490.83 | | See para 276: all materials / plant treated together |
| 1028 | 27/11/2018 | 27/12/2018 | £ 30,948.72 | | See para 276: all materials / plant treated together |
| | | | Materials | £655,194.00 | See para 276: all materials / plant treated together |
| | | | £ 8,187,994.34 | £7,561,347.50 | |
| | | | Paid to date | £6,859,076.28 | |
| | | | Sub-Total | <u>£702,271.23</u> | |
| | | | Less May Bank Holiday Bonus | -£16,775.00 | See paras 222 and 225 |
| | | | Less £500 not £600 | -£4,100.00 | para 232 |
| | | | Less Adjustment for Biometrics | -£49,000.00 | para 219 |
| | | | BH Rates | -£65,237.50 | para 233 |
| | | | Less Travel adjustment | -£54,242.00 | para 228 |
| | | | Total | £512,916.73 | Excluding VAT, costs and interest |