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**IN THE COMPETITION**

Case Nos. 1249/5/7/16

**APPEAL TRIBUNAL**

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

10 November 2016

Before:

**THE HONOURABLE JUSTICE ROTH**  
(The President)  
**WILLIAM ALLAN**  
**PROFESSOR STEPHEN WILKS**

(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

**SOCRATES TRAINING LIMITED**

Claimant

- and -

**THE LAW SOCIETY OF ENGLAND AND WALES**

Defendant

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**DAY 3**

## **APPEARANCES**

Mr. Philip Woolfe (instructed by Socrates Training Limited) appeared on behalf of the Claimant.

Ms. Kassie Smith QC with Ms. Imogen Proud (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Defendant.

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1 THE PRESIDENT: Sorry to keep you waiting. There was a slight hold up this morning.  
2 MR. WOOLFE: Sir, you should have somewhere in front of you a sheet of paper which contains  
3 the tables from Mr. Williams' report you asked me for.  
4 THE PRESIDENT: Thank you very much.  
5 MR. WOOLFE: I would suggest if you want a place for them you put them in the back of the tab  
6 of Mr. Williams' report, so that is bundle B, tab 1, and perhaps you could place them at the  
7 very back of that tab.  
8 THE PRESIDENT: Yes, thank you. MR. GRAHAM MURPHY (continued)  
9 Cross-examination by MR. WOOLFE (continued)  
10 MR. WOOLFE: You will recall that I had just finished asking you questions about the Solicitors  
11 Regulation Authority outcome focused approach to training and I am going to ask you to go  
12 on to ask you some questions about the Wills and Inheritance Quality Scheme, but before I  
13 to that I just want to take you back to one thing you said yesterday in response to a question  
14 from the Tribunal. Mr. Allan asked you how far the CPD was actually used to monitor the  
15 completion of training by individuals and you said -- for the Tribunal's note this is page 90  
16 of the transcript at line 27 -- that it was used constantly, but only a limited number of  
17 people had access to it.  
18 Are you aware that in the course of these proceedings Socrates asked The Law Society to  
19 give it disclosure of the numbers of individuals who completed training in each year?  
20 A. If that was part of disclosure, yes.  
21 Q. Were you aware that Socrates had asked for it?  
22 A. I presume so, yes. I cannot recall, obviously there was a lot of information that was asked  
23 for.  
24 Q. Are you aware that The Law Society response was to say they did not hold that data?  
25 A. How did we respond to that? If you can refresh my memory.  
26 Q. It says:  
27 "The defendant does not hold data on individuals. In order to ascertain the number of  
28 individuals that undertook CQS training each year and the dates on which individuals  
29 undertook such training, the defendant would be required to manually sift through a  
30 database of more than 36,000 CPD records."  
31 A. Yes, so we hold the individual records, but as we said there we would need to sift through  
32 those 35,000, 36,000.

1 Q. But the CPD portal you are saying was used on occasion to track the extent to which firms  
2 actually took the training?

3 A. That is right. Individual members of staff register on the CPD Centre, so we cannot track  
4 them firm based, but we can track them on an individual basis.

5 Q. So what you are saying, just so I understand, is that you cannot go to the CPD portal, sort by  
6 firm and see what individuals --

7 A. That is my understanding, that an individual registers on that CPD portal as an individual.

8 Q. But then how do you track a firm's compliance with its requirement to train its staff if you  
9 cannot look on the CPD portal by firm?

10 A. Because we would track via the application forms and the relevant people listed within that  
11 application form.

12 THE PRESIDENT: Just so I have understood that, so when the application form comes in for  
13 reaccreditation, the SRO has to list the people, is that right?

14 A. There is a list of relevant people.

15 THE PRESIDENT: Then your staff can go on the portal person by person?

16 A. They would, yes, so they would look at the application form and check on an individual  
17 basis against those individual names. So, for example, I could check that Mr. George did  
18 his AML training in January of this year, but I would not be able to check it as Socrates, it  
19 will be under Mr. George.

20 THE PRESIDENT: Yes.

21 MR. WOOLFE: But as we were exploring yesterday, prior to August 2015 predominantly it was  
22 done by working on the basis of the SRO certification?

23 A. It was the certificates that were supplied.

24 Q. Thank you. If I can move on to the Wills and Inheritance Quality Scheme now, which you  
25 deal with in your second witness statement, and if you can perhaps turn up your second  
26 witness statement and turn to paragraph 29, which is perhaps a good place to start, on page  
27 7. In a sense the first line of paragraph 29 summarises the thrust of what your evidence is  
28 trying to show, which is that "a more appropriate comparator of the CQS is WIQS" and you  
29 say that it demonstrates that members had met a minimum standard of expertise. You say  
30 the difference is really -- paragraph 30 -- that one is aimed at consumers where there are not  
31 other comparable stakeholders to lenders, whereas the CQS is aimed at another group of  
32 stakeholders as well.

33 A. Yes.

- 1 Q. You broadly summarise that they similarly have mandatory training.  
2 Do you have volume E2? Can you take that out. Can you turn to tab 25 please. You  
3 should have there the Council minutes of 6 February 2013 and the Chief Executive makes a  
4 report. If you turn over one page, to page 4 of the minutes, you see something about the  
5 CQS transaction portal work was continuing, then over one more page, page 5, you get to  
6 the Wills Quality Scheme, WQS, what later became the WIQS, is that right?
- 7 A. Yes.
- 8 Q. It says here:  
9 "The new Wills Quality Scheme (WQS) is being closely modelled on the processes  
10 and format of the CQS."  
11 So in fact they are not just similar by coincidence, the WQS is explicitly modelled on the  
12 CQS, that is right, is it not?
- 13 A. Yes.
- 14 Q. So it is unsurprising they have similar requirements, when one was modelled on the other?
- 15 A. They are intrinsically the same thing, same modelling, yes.
- 16 Q. You go on to say:  
17 "This consistent approach to quality ...(Reading to the words)... to encourage volume  
18 take-up."  
19 So part of the reason for having a very similar model for CQS and WIQS was precisely to  
20 make it easy for firms who do both conveyancing and wills to be accredited in both  
21 schemes?
- 22 A. Yes.
- 23 Q. It would be the case, would it not, that a lot of the firms, especially the smaller firms who do  
24 a lot of conveyancing would also be doing a lot of wills work?
- 25 A. Not necessarily. I do not know the specific breakdown, but obviously it is a very different  
26 area of practice.
- 27 Q. But it is also one where typically people do often make a will when they buy a house, do  
28 they not?
- 29 A. Surprisingly enough, no, they do not, no. You would think that is the logic, but they do not.
- 30 Q. It is also the case, is it not, that one of the reasons that The Law Society was concerned  
31 about the CQS and protecting firms doing conveyancing was precisely because  
32 conveyancing is often a gateway to selling other legal services to consumers?
- 33 A. I do not know. I do not have a legal practice, I do not know what their business models are.

1 Q. Can I take you forward now to ask you about the reconfiguration of the CQS and first of all  
2 I just want to explore what exactly the reconfiguration was intended to achieve, because  
3 there seems to be -- help the Tribunal here -- there seems to be a variety of different changes  
4 that were being considered on different tracks and it helps to distinguish between them?  
5 THE PRESIDENT: By "the reconfiguration" you mean the 2014/2015 changes?  
6 MR. WOOLFE: Perhaps it is easier if the question -- what I hope will become clear to the  
7 Tribunal is that certain changes were considered for certain reasons that then -- I do not  
8 want to --  
9 THE PRESIDENT: No, I understand that.  
10 MR. WOOLFE: Then certain changes were actually made.  
11 Can I get you to turn to bundle D3. You can put E2 away for the moment, but perhaps have  
12 it somewhere to hand. Bundle D3, if you turn to tab 79. This I think is an exhibit to Mr.  
13 Smithers' statement but it is a CQS technical panel meeting and on the first page your name  
14 appears, so you were at the meeting?  
15 A. Yes.  
16 Q. You had been at The Law Society by about six, seven months by that stage?  
17 A. Six months by that stage.  
18 Q. If I could just ask you to turn to page 1002, using the bundle numbering, so it is the third  
19 page in the document, and paragraph 13:  
20 "It was agreed that it would be useful to define years 1 to 3 ...(Reading to the words)...  
21 will be expected to take two update courses each year."  
22 So that is broadly the origin of how the reconfiguration, the training came about, was it not?  
23 A. Yes. That was where it was agreed, obviously there was some work that was done prior to  
24 that.  
25 Q. Yes and I am going to take you to some of that in a moment. But it was a matter of  
26 consolidating, was it not, the existing mandatory training into core modules?  
27 A. Yes.  
28 Q. So it was not a case of leaving out things that had been done before?  
29 A. No, it was looking at what was the most relevant information or training courses within  
30 those first few years.  
31 Q. Just to clarify a point, it says:  
32 "All relevant persons would be expected to undertake all core modules."

1 Presumably that means all core modules the first time they have to take them, not that they  
2 have to ...

3 A. No, exactly.

4 Q. Then it goes on to say:  
5 "The update courses will focus ...(Reading to the words)... related to conveyancing."

6 A. Yes.

7 Q. "Risk and compliance will be focused ...(Reading to the words)... and fraud updates."  
8 So it was envisaged that fraud updates would be something that would be part of the update  
9 process, would it not?

10 A. Within the context of these minutes, yes, but whether it continues to be part of those updates  
11 is a matter for the market basically to decide.

12 Q. Well, I will come on to more of that in a moment, but -- I will perhaps look at what actually  
13 happened later on.  
14 Now can I just take you to another document which is in volume E2, tab 39. You have  
15 minutes of a membership board meeting of 30 November 2014. You were not, according to  
16 the minutes, at this meeting, is that correct?

17 A. No, correct.

18 Q. But you were at The Law Society at that time?

19 A. Yes.

20 Q. Can I ask you to turn over the page and at the bottom it says "Veyo and CQS update."  
21 Can you just briefly explain to the Tribunal what "Veyo" denotes?

22 A. Veyo was an e-conveyancing portal that The Law Society developed.

23 Q. When was it launched?

24 A. It was not.

25 Q. So it was under consideration then by this stage?

26 A. Yes, it was under development.

27 Q. But you say it never actually launched?

28 A. Correct.

29 Q. Okay. If you just turn over the page, it seems that Mr. Nigel Spencer was giving a  
30 presentation about Veyo and CQS with the focus being on the future positioning of the CQS  
31 in the market, he gave an overview of the market context, Veyo, CQS and the differences  
32 between the schemes, and he goes on to say:

1 "It was essential that CQS was repositioned in the market ...(Reading to the words)...  
2 CQS model needed to be developed."

3 He goes on to say:

4 "Veyo would be a self-service online application process ...(Reading to the words)...  
5 focus on the quality of work."

6 So what he seems to be saying is -- we heard a lot from Mr. Smithers about how the CQS  
7 created a secure trusted community, so what was being proposed was when Veyo came  
8 onboard -- and obviously it has not happened, but when Veyo came on board that function  
9 would be taken over by Veyo; that was broadly the intent, is that right?

10 A. The intent was to use Veyo as the online application processing methodology. At the  
11 moment it is very -- to undertake an application for CQS it is very admin heavy and this was  
12 basically a proposition to basically digitise that process.

13 Q. So what they are looking at here is a proposition that would have this function of creating a  
14 secure, trusted community, online community, being taken by Veyo, whereas CQS would  
15 focus on the quality of work.

16 A. Yes.

17 Q. It goes on to say:

18 "... by mid-2015 CQS was to be restructured to reflect the relative positioning of Veyo  
19 and the CQS probity checks were to be commercially outsourced to the Veyo  
20 platform."

21 So the probity function of CQS would effectively be taken over by Veyo; that is what was  
22 being considered, yes?

23 A. Well, I was not at that meeting. This is senior strategic operations taking place here, I was  
24 not party to those discussions.

25 Q. Perhaps just this question then: the reposition they are talking about there is one that did not  
26 happen because Veyo never came online?

27 A. Correct.

28 THE PRESIDENT: You were in charge of the CQS?

29 A. I was in charge of CQS, I was aware that Veyo was being built. From my position it was a  
30 case of, as I have just stated, it would be used as an online platform for firms to register.  
31 Veyo's backbone was the CQS protocol, so therefore it made sense if another part of the  
32 organisation was digitising that application process for us to actually make use of that.

33 MR. ALLAN: Have you finished with this document?

1 MR. WOOLFE: I have finished with that document now.

2 MR. ALLAN: Well, just before we leave it, if you look at the first full paragraph, and Mr.  
3 Woolfe read this to you, "Market threats to the CQS was also discussed". Although you  
4 were not at the meeting, presumably you would have been aware of some concern about  
5 market threats, if there were any. Could you elaborate a little bit on what those might be?

6 A. I presume they are talking about the likes of Lender Exchange and LMS, which are panel  
7 management systems, but, as you said, I was not at that particular meeting. As I said, this is  
8 a strategic document, high level, executive individuals at this particular meeting to which I  
9 was not a party to.

10 MR. ALLAN: Okay, thank you.

11 MR. WOOLFE: Mr. Murphy, please feel free to put away bundle E2 for now.

12 So there is a suggestion made from the technical panel that the training requirement within  
13 the CQS be restructured and that is something that went ahead and I will explore in a  
14 moment, and then there was a separate proposal which would mean restructuring the whole  
15 nature of the CQS because Veyo came online and that --

16 A. In terms of its administration, yes.

17 Q. Okay, thank you.

18 Now can I ask you to take up bundle D9 and this contains the exhibits to your statement.

19 Sorry, perhaps in your second statement at paragraphs ... I apologise, sorry, I think I have a  
20 false reference.

21 THE PRESIDENT: Which tab in D9?

22 MR. WOOLFE: Well, I am just ... I think that is fine.

23 Going back to your first statement at paragraph 112, you begin to discuss the roadshow,  
24 which is part of the process that led to the restructuring of the CQS.

25 I am just going to get to the context for something else.

26 THE PRESIDENT: Let Mr. Murphy find it.

27 A. Yes.

28 MR. WOOLFE: You undertook some roadshows to get feedback on the CQS as it was perceived,  
29 and the training requirements. At paragraph 116 you have some feedback about the extent  
30 to which law firms rely upon the relevant training. You see only 7 per cent indicated they  
31 rely solely on The Law Society training, so it is true, is it not, that only very few firms rely  
32 on the training provided by The Law Society to meet the minimum standards that they feel  
33 they have to meet?

1 A. As it says there, only as per the questionnaire. I think the question related to your training in  
2 general, of which the answer was 7 per cent.

3 Q. At paragraph 118 you say that you developed an outline for the remodelled CQS:

4 "This was produced in the membership board meeting of ..."

5 It says October 2010, can I just confirm that that should be October 2015?

6 A. It should, yes. My fault.

7 Q. Then at paragraph 128 you say you attended the CLLC meeting, that is Conveyancing and  
8 Land Law Committee meeting, in September 2015, some minutes are included, and you  
9 reported on the proposed changes and you say at paragraph 130 that a paper was submitted  
10 to that meeting to explain meetings that you had undertaken, and you say that you wanted to  
11 ensure they had no objection to the proposed changes to the CQS.

12 Now, I just would like to go through those with you. If you turn to tab 80 in bundle D9.

13 This you say is the notes of a meeting with Yorkshire Building Society and it is notes in the  
14 form of an email sent, amongst other people, to you, from Rachel Hawkins on 8 May 2015  
15 and it seems to contain a summary of what was discussed. If you just read down in that  
16 email:

17 "YBS [Yorkshire Building Society] were really impressed with the ...(Reading to the  
18 words)... and the robust nature."

19 They refer to their own panel application process and this is Rachel Hawkins' assessment of  
20 YBS' position. Then it says:

21 "Key areas of the assessment for them were: probity checks, financial stability,  
22 training of non-qualified staff, SRO data, PII and claims."

23 So the only reference to training in this document that they thought was key was training of  
24 non-qualified staff, that is right, is it not?

25 A. No, they are very much of the opinion that all training is important. This particular  
26 reference is in regards to the amount of non-qualified staff that were joining firms at this  
27 particular time.

28 Q. So the specific concern they are raising about training is in relation to non-qualified staff, is  
29 it not?

30 A. In this particular area, yes.

31 Q. Then can I ask you to turn over the page to tab 81. This is an email, again from Rachel  
32 Hawkins, to several people, you included, dated 21 May 2015, setting out a meeting with  
33 Aon. Could you just confirm who Aon are?

1 A. Aon are a large insurance organisation.

2 Q. They are relevant as insurers rather than as lenders?

3 A. Yes.

4 Q. Then we have a series of headings, "Use of CQS data for Aon, perceived reputation of  
5 accreditation", we looked at that briefly. It says:  
6 "Lexcel is sometimes used with caution with insurers ...(Reading to the words)...  
7 problems being discovered."  
8 So these were the concerns from the point of view of an insurer about, in both of these  
9 cases, the firm's history over time, is that fair to say?

10 A. Yes.

11 Q. Then under "CQS assessments" it says:  
12 "Generally seemed to have a positive response to our assessment."  
13 Then this:  
14 "Questioned what the Society and the scheme would be doing to evolve with the  
15 requirement of a statement of competence rather than CPD points."  
16 So they are asking here, are they not, whether or not you will be moving to something more  
17 like what the SRA now do, rather than sticking with the old fashioned CPD based  
18 approach?

19 A. Yes, the question was asked because obviously at that time the SRA had announced  
20 changes to the CPD.

21 Q. But they would have viewed that positively, would they not?

22 A. I cannot remember.

23 Q. Then it goes on to refer to -- they are asking how often you use your enforcement powers.  
24 It says:  
25 "It was explained a new assessment has been put in place and next year we are aiming  
26 for circa 100."  
27 What does that refer to?

28 A. So at that time we were rebuilding our desk based assessment systems and we were -- the  
29 expectation at that time was that we would be undertaking around about 100 desk based  
30 assessments across the year.

31 Q. There is nothing in this minute about whether or not the consolidation of the mandatory  
32 training was a good or a bad idea?

1 A. No, there is not. I am sure it was discussed because I am sure the presentation I put into my  
2 exhibits shows that it was discussed.

3 Q. But it was not something that Rachel Hawkins saw as significant enough from Aon's point  
4 of view to be worth minuting?

5 A. No.

6 THE PRESIDENT: Before you leave that document, just looking at the first bullet at the top,  
7 under "Use of CQS data for Aon", I think you were in court when I asked Mr. Smithers  
8 whether CQS had been successful -- one of its aims and hopes was that it might help your  
9 members to get better insurance premiums.

10 A. Yes.

11 THE PRESIDENT: Is it right it does appear from that that Aon at least as one presumably PII  
12 insurer, does use it to get better premiums, is that my understanding of the first point?

13 A. My recollection of that particular meeting was that we raised that issue and they said that  
14 CQS, because it had only been established for four or five years, it did not quite have the  
15 historical length at this precise moment in time, but perhaps in 18 months, two years' time  
16 there will be enough data for them to start looking at changes to PII cover in relation to  
17 having CQS.

18 THE PRESIDENT: So when it says "Aon used the data to identify CQS", do you understand that  
19 to mean Aon hoped to use the data in the future?

20 A. Obviously claims history within conveyancing, it takes a long time for claims to come  
21 through, so what they said at that meeting was that their expectation would be that they  
22 would be able to use that data at some point in the future to look at revising PII cover, but  
23 obviously they have to have data going from start to finish.

24 THE PRESIDENT: I do not quite understand that. Data from start to finish --

25 A. Okay, from the --

26 THE PRESIDENT: Obviously it is not the only thing --

27 A. No, absolutely.

28 THE PRESIDENT: -- there would be a lot of other things. Clearly the claims history is important  
29 --

30 A. Yes.

31 THE PRESIDENT: -- and if you have a terrible claims history, just because you are CQS  
32 accredited you are not going to get a low premium. But I do not quite follow why you need  
33 a history of CQS data going back several years?

1 A. Because the claims can come about several years after a transaction took place.

2 MR. WOOLFE: Mr. Murphy, can I ask a question. Is it your understanding that the insurers  
3 were interested in using CQS to basically track populations of firms?

4 A. Yes.

5 THE PRESIDENT: Only it says in the third bullet, with regard to Law Society accreditations,  
6 Lexcel and CQS:  
7 "Insurers rarely state they will apply a discount for accredited members, although  
8 those new to the market ..."  
9 I understand that to be insurers new to the market?

10 A. Yes.

11 THE PRESIDENT: "... are more inclined, but it is a factor considered when assessing the risk of  
12 a practice."

13 A. Yes. I am sure the -- obviously I cannot speak for the insurers, but I am sure that they take  
14 CQS into consideration. What we are hoping will happen is that obviously those claims  
15 will -- that PII cost will fall over time because we will be able to prove that having CQS is  
16 beneficial to their claims history.

17 THE PRESIDENT: Yes.

18 MR. ALLAN: But in terms of the pricing impact it seems there is a distinction to be made  
19 between the underwriting premiums that a mainline insurer like Aon can obtain and the  
20 discounts that they would themselves offer to the firms. Is that correct or not?

21 A. I do not know, sir, I am sorry. I cannot answer that.

22 MR. WOOLFE: I think your evidence, Mr. Murphy, is there is something in this document about  
23 considering the facts in respect of any firm, whether or not it has CQS accreditation, but  
24 there was a specific hope The Law Society had that you could show over time that the  
25 population of CQS firms had a lower claims rate and that could be beneficial to firms in due  
26 course?

27 A. That is correct, yes, in due course.

28 Q. So that sort of thing that lenders were doing of looking at groups of firms who have a  
29 certain accreditation, looking at their risk profile, that is what this appears to be talking  
30 about under the heading of "Perceived reputation for accreditations" below, is that right?  
31 The second bullet point where it says "CQS is viewed with caution as this has not been  
32 established all that long" --

33 A. Yes.

1 Q. -- that is the kind of thing they were talking about under that heading, that they had not had  
2 the data?

3 A. Yes.

4 Q. Similarly under the first bullet point there was a historic issue about firms gaining Lexcel  
5 accreditation, it might indicate they had some problems in the past?

6 A. I cannot comment.

7 MR. ALLAN: Before you leave the document could I just ask about the desk based assessment  
8 point and just to understand that a bit better. The fact that it says "next year we are aiming  
9 for about 100" suggests that given the total number of CQS accredited firms, it suggests  
10 that the desk based assessment is an exception rather than the rule, or have I misunderstood  
11 it?

12 A. No, every firm is assessed on accreditation or reaccreditation. This is an extra layer of  
13 assessment that we undertake --

14 MR. ALLAN: What does it comprise?

15 A. We look at their compliance with the protocol, we look at any complaints that have been  
16 raised against that individual firm and understand the rationale behind those complaints, so  
17 those complaints might come in from other solicitors, or they might come in from the  
18 public, for example. We basically ensure that they are compliant with the scheme rules and  
19 then the next stage of that assessment is then the onsite visits.

20 MR. ALLAN: The trigger for selection for desk based assessment, is that some sort of red flag is  
21 thrown up?

22 A. Yes, it is intelligence led.

23 MR. ALLAN: Right. Sorry, I am just going back to the final bullet of the "Use of CQS data"  
24 where it says:  
25 "AML underwriters want to see engagement with risk management and not just tick  
26 boxing exercises."  
27 How in that context would you characterise the treatment of the normal run of the mill firms  
28 that do not raise red flags? How close is the interrogation of their performance in the  
29 reaccreditation process?

30 A. Very deep. I mean we go even to the extent of checking their social media profile.

31 MR. ALLAN: Of all firms?

32 A. Of firms that have -- if, for example, we see some complaints coming in, we will dig  
33 deeper.

1 MR. ALLAN: Then that is part of the desk based assessment.

2 A. Yes. But in terms of the actual application in the first place --

3 MR. ALLAN: The run of the mill firms who do not raise a red flag in some way?

4 A. Currently it takes about 65 to 70 days to do a from start to finish for an application. Within  
5 that there are very deep checks on the probity of the firm and the individuals concerned as  
6 well. We look at finances, we look at the complaints history, we look at their insurance.  
7 There are a whole manner of issues that we look at and I think part of my evidence is the  
8 actual application form, or reaccreditation forms that we use, so it is very deep that we go  
9 to.

10 PROFESSOR WILKS: Mr. Murphy, I am sorry to prolong this for a moment, but on the  
11 question of reaccreditation you say in your evidence that four to five firms are refused  
12 accreditation on first application. How many firms exit the scheme because you do not  
13 reaccredit them?

14 A. I do not have that figure to hand.

15 PROFESSOR WILKS: Are there any?

16 A. Yes, absolutely.

17 PROFESSOR WILKS: It would be interesting to know.

18 A. We constantly, through the desk based assessment systems and also the intelligence that we  
19 gather -- we have a link directly with the SRA so we are able to see intelligence on firms  
20 even before the firm finds out that they are being investigated and if we consider it is  
21 harmful to the reputation of the scheme, or other members of the scheme, then we will  
22 revoke that accreditation.

23 PROFESSOR WILKS: So the typical reasons for that to happen are to do with fraudulent  
24 allegations, or --

25 A. Quite possibly, yes. Or non-compliance with the protocol, consistent non-compliance with  
26 the protocol.

27 PROFESSOR WILKS: Do they fail training?

28 A. If you fail training you are asked to undertake it again, but we have had instances where we  
29 will remove firms because they have not done the training, or they have failed the training,  
30 yes.

31 PROFESSOR WILKS: Thank you.

32 MR. WOOLFE: Mr. Murphy, can I just ask you, just to help on this point, can you take out  
33 volume E2 again, and if I can ask you to turn to tab 51, which is right towards the back. If

1 you turn over the page within that tab, so you can see where the email chain starts, and it  
2 starts from Bernard George at Socrates sent on 8 July 2016 with a Freedom of Information  
3 request. He asks what percentage of firms that apply for accreditation under the CQS are  
4 unsuccessful in their application and then he clarifies what he means by that:

5 " ... not those who have their forms returned, I mean what proportion submit a valid  
6 application and are then refused accreditation."

7 The response is back on the first page from Mr. Bob Stanley, information compliance  
8 manager, and he says:

9 "The information is as follows ...(Reading to the words)... 178 applications received."

10 That is a much lower number of applications received in say 2012/2013, is it not?

11 A. Yes.

12 Q. One application was rejected, therefore 0.56 per cent. In 2015/2016 115 applications, again  
13 slightly lower, and one application rejected.

14 So the numbers who are being actually rejected are pretty low, are they not?

15 A. Well, this is in relation to accreditation, it is not in relation to reaccreditation.

16 Q. Fair enough.

17 A. Because that was the question that was asked.

18 Q. Yes, absolutely.

19 A. Submit a valid application and then are refused accreditation, not reaccreditation.

20 Q. Then if you turn over to tab 52 -- perhaps I will ask you first, do you recognise those figures  
21 or not?

22 A. Yes.

23 Q. For accreditation and not reaccreditation, those would be correct?

24 A. Based on the narrow criteria of the request, yes.

25 Q. So firms who apply for accreditation in those years and who were never granted  
26 accreditation, not that they had problems to be overcome, but they were never granted  
27 accreditation, that is one in each year?

28 THE PRESIDENT: Sorry, I am slightly lost. You are in tab 52?

29 MR. WOOLFE: Sorry, sir, I have been in 52. I went back to a question about tab 51, I apologise.

30 I just wanted to check the meaning of the figures.

31 THE PRESIDENT: 51 is initial accreditation.

32 MR. WOOLFE: Initial accreditation not reaccreditation is what Mr. Murphy is saying.

33 THE PRESIDENT: Yes.

1 MR. WOOLFE: I wanted to understand that within those applying for initial accreditation in each  
2 year one application was conclusively rejected in each year.

3 A. Yes, but as the request states, it asks, you know:  
4 "I am not asking what percentage of forms have been returned due to oversight like a  
5 missing signature or absent enclosure."  
6 Now, enclosures for us is part of the absolute assessment criteria, so if they do not enclose  
7 the relevant paperwork then they will be rejected.

8 Q. For example if they did not allow you to do the checks on criminal records and things of  
9 that sort?

10 A. Exactly, yes.

11 Q. But I imagine you would want to help people through the process to give you the  
12 information you need?

13 A. Absolutely yes.

14 Q. But only one in each year are actually "No, you just do not meet the standard and you are  
15 not coming in"?

16 A. Yes. But that is because the majority of them have already been accredited.

17 Q. Then if you turn to tab 52, this is a request, you can see the request at the top of the page  
18 here -- well, sorry, the answers seem to have been embodied in the request, and some  
19 questions about the assessment and you have the numbers of practices visited and a specific  
20 question about how many practices have had their CQS accreditation revoked as a result of  
21 visits and then you have some figures.

22 A. Yes.

23 Q. I appreciate you are going to say that is a narrow question --

24 A. Indeed, it is, it is just based on visits.

25 Q. -- but do you think those figures are correct for that narrow question?

26 A. Based on visits, yes, I believe they are correct.

27 MR. ALLAN: Would anybody have their accreditation revoked without a visit?

28 A. Absolutely. If we find that there is information about fraud, for example, we would revoke  
29 that accreditation and we would then, on that day of revocation we would inform all of our  
30 stakeholders, so our lenders.

31 MR. ALLAN: Although you do not have precise numbers, do you have any sense of the order of  
32 magnitude of such events? They sound fairly extreme.

33 A. 10s, 20s per year.

1 MR. ALLAN: Per year?

2 A. Maybe, yes. I would need to obviously clarify that and I can clarify that, but yes. It is  
3 extreme because obviously what we are trying to do is improve the quality of the service  
4 that conveyancing solicitors provide, so if we can improve that quality by helping them to  
5 develop their systems, develop their training, develop their understanding of the  
6 conveyancing process, then we will do and that is what basically the desk based assessment  
7 does, it is a process whereby we help a firm understand what the expectations of them are  
8 and move them towards where we expect them to be.

9 THE PRESIDENT: I think it would be helpful, Mr. Murphy -- obviously you have not got the  
10 figures in your head, quite understandably, no one would expect that, but if we could be  
11 supplied over the next week with the numbers. I think there are three categories: one is  
12 firms refused initial accreditation and we have some figures of that; then there is firms  
13 revoked as a result of a visit --

14 A. Well, the visits are as per this evidence.

15 THE PRESIDENT: Yes, we have got that. There is then Mr. Allan's question of how many  
16 revoked, and by revoked does that mean cancelled within the period of validity?

17 A. Revoked means we as The Law Society take that accreditation away from them.

18 THE PRESIDENT: Yes, take away. In total -- I think from 2013 -- we do not need to go back  
19 further. Yes, 2013, 2014 and 2015 and 2016, so that is one we do not have. The second one  
20 is the number of firms who are actually refused reaccreditation, who applied for  
21 reaccreditation and you say "No", so that is not a revocation as such, it has not been taken  
22 away --

23 A. No.

24 THE PRESIDENT: -- but it is a refusal to renew.

25 A. Yes. I will see if I can generate those figures for you.

26 THE PRESIDENT: You obviously cannot do it in the course of the evidence. It can be done by  
27 letter.

28 MR. WOOLFE: Just to try and save Ms. Smith some time both in re-examination and in closing,  
29 I just want to make clear it is no part of the case that I am advancing that the CQS is any  
30 way improperly lax about accreditation. That is not part of the case.

31 THE PRESIDENT: No, I think it is just helpful to know how it works.

32 MR. WOOLFE: Seeing as the question was raised by the Tribunal, I thought I would take you to  
33 such evidence as we do have to assist you on that.

1 Now can I take you back to -- you can put E2 away now and you can -- yes, put it away.  
2 There will be one more document, but put it away for the moment. I am on the last topic  
3 now.

4 We are still ploughing through the minutes of the meetings that you refer to at paragraph  
5 130 of your statement. We have done Yorkshire Building Society and Aon. The next one  
6 you refer to is the CML, The Council of Mortgage Lenders, that is in tab 82 within bundle  
7 D9 and my question -- I just ask you to note, training is not actually mentioned at all in the  
8 note of this meeting, is it?

9 A. It is not mentioned in this particular minute, but as per my evidence, the presentation that  
10 we gave also included training.

11 Q. But this is at the time when you are telling the mortgage lenders what you are doing for the  
12 restructuring of the training in the CQS --

13 A. Correct.

14 Q. -- and we do not have any views expressed in the minute of the meeting about whether or  
15 not mandatory training is essential, or indeed anything else about the training?

16 A. Well, it says neither.

17 THE PRESIDENT: Mr. Woolfe, I mean, you do not need -- if Mr. Murphy was not at the  
18 meeting, I think Rachel Hawkins was, you do not need to put to the witness formally that  
19 there is nothing in this note about training, for him to say "No, I have read the note, there is  
20 nothing in it". You can do that in closing.

21 MR. WOOLFE: It is simply because he refers to five or six minutes and it is in the context of  
22 apparently -- in the context of a discussion of training, this is in paragraph 130. Some of  
23 them refer a little bit to training, some do not. It is just easiest to go through them all --

24 THE PRESIDENT: It is just you can take us to them in closing. It might be quicker.

25 A. The presentation that was given during all of those meetings was a standardised  
26 presentation which included the mandatory training.

27 THE PRESIDENT: Yes, and the presentation is at -- where is the presentation? I have the  
28 presentation at roadshows, but I do not --

29 A. That would be -- intrinsically it was the same.

30 THE PRESIDENT: Was there a separate presentation?

31 A. It was basically the same presentation that was then just tweaked per --

32 THE PRESIDENT: So we can take it that the one at GM4 --

33 A. If I can ...

1 THE PRESIDENT: Well, I am looking at your evidence, paragraph 125, that is the only  
2 presentation I think you refer to.

3 MR. ALLAN: That is the solicitor --

4 THE PRESIDENT: I know, it is a solicitor presentation. That is why I am a bit -- because you  
5 referred a couple of times now to a presentation that was given to --

6 MS. SMITH: Perhaps, Mr. Murphy, do you have GM4 there?

7 A. I have, yes, I am just look -- this is the same -- as I say, the presentations that we gave to  
8 both the lenders and also on the roadshows for the 2015 roadshows was intrinsically the  
9 same presentation where we ran --

10 MR. ALLAN: Which?

11 MS. SMITH: It is GM4 in bundle D5, I apologise. Perhaps you could wait for a moment, Mr.  
12 Murphy, so that the Tribunal can find the documents and then you can explain what you  
13 were about to explain. Perhaps I could also draw your attention -- there is a document at  
14 GM5, the following tab, which is a presentation by Rachel Hawkins. If you have a look at  
15 that as well and then you can explain perhaps to the Tribunal what GM5 and GM4 are.

16 A. Certainly.

17 THE PRESIDENT: I am so sorry, you do refer to it. It is in paragraph 18 of your statement, right  
18 at the beginning, I think, Mr. Murphy.

19 MS. SMITH: To lenders, yes, GM5.

20 THE PRESIDENT: You say:

21 "A presentation entitled 'The Law Society CQS' which was presented by Rachel  
22 Hawkins to lenders and that was given at meetings with the following lenders ..."  
23 So it is the GM5 document, I think, is that right? That is how I understand your evidence  
24 there. Which was given to lenders at the meeting. So that is what you are referring to I  
25 think. Well, that is what you say in paragraph 18, so I think I had overlooked that.  
26 Thank you, Ms. Smith.

27 MR. WOOLFE: Now, I --

28 MS. SMITH: Before you go on, I think we were going to give Mr. Murphy an opportunity to  
29 comment on those if he wanted to. He is just having a look at the document.

30 MR. WOOLFE: I do not have any questions about that document, but if there is anything you  
31 would like to say about it ...

1 THE PRESIDENT: Yes. The reference -- you say that referred to training. I think the reference  
2 is on -- it is hard to read the page numbers in my copy because they coincide with the black  
3 at the bottom left, so they all look like page 11.

4 MS. SMITH: I think it is 116, is that what you are looking at, sir? 116 certainly mentions  
5 training.

6 THE PRESIDENT: Yes, I cannot see the numbers, but it is after the title page then the sixth page:

7 "Once a practice is accredited they are under an obligation to ..."

8 Then the third bullet:

9 "Complete relevant CQS training."

10 A. Yes.

11 THE PRESIDENT: That is the reference to training and I think that is the only reference.

12 A. Yes. Then we will have talked through the changes that we were therefore making.

13 THE PRESIDENT: Yes.

14 MR. WOOLFE: Can I ask you now to turn back to volume D9 and turn to tab 83. This is a note  
15 of a meeting with Santander, 11 June 2015, and you refer to that at paragraph 130(d) of  
16 your statement. What you say is:

17 "At this meeting Santander cited the need for more training, including on cybercrime  
18 and AML issues."

19 I just want to take you to the document itself, D9, tab 83. So again we have an email from  
20 Rachel Hawkins to you, to do with a follow up. It says:

21 "Hi all, as usual ...(Reading to the words)... meetings."

22 It says:

23 "The accreditation ...(Reading to the words)... in decision-making."

24 Then "Training":

25 "There is a real opportunity for there to be more training ...(Reading to the words)...as  
26 it is also of concern to them."

27 What I suggest to you is that what Rachel Hawkins is doing here is identifying a  
28 commercial opportunity for you?

29 A. This was about engagement with lenders and ensuring that what we were doing and the  
30 changes that we were making to the scheme and the development of the training was in line  
31 with what our stakeholders wanted and needed and what the sector needed as well, and that  
32 has been borne out in the update training that we will be issuing shortly.

1 Q. What has happened is that the lenders have discussed some issues regarding malware, so  
2 cybercrime issues --

3 A. Yes.

4 Q. -- and Rachel Hawkins is passing this on as being an opportunity for there to be more  
5 training to be given, is that right?

6 A. She is passing on comments that Santander made. Whether or not it is an opportunity, I  
7 would not view it as such, I would view it as intelligence as to what our stakeholders are  
8 concerned about.

9 Q. Then in the interests of time, you refer to two more meetings at tabs 84 and 85 in that  
10 bundle. I just want to check you confirm there are no references to training in those  
11 meetings, so no significant -- my question for you is it is the case, is it not, that no  
12 significant feedback was received from Metro Bank and National Australia Bank about the  
13 need for training at those meetings?

14 A. No, because they were happy with the training that was being provided.

15 Q. Then finally, you refer to a meeting with HSBC on 15 June 2016 and you say that in the  
16 time available you have not been able to identify a note. Can I just ask you now -- you can  
17 put away D9, you can put it away forever, and just turn back to volume E2 again and at tab  
18 56, the very last tab in that, there is a table in that tab "HSBC and CQS development":  
19 "The table below summarises ...(Reading to the words)... initial responses."  
20 So there is clearly some sort of meeting at which HSBC give some suggestions. This is not  
21 dated. Do you think that this would be the note of the meeting you have not been able to  
22 identify? It may or may not be, please take your time to see if you think it might be?  
23 (Pause).

24 A. Sorry, what was the question, sorry?

25 Q. The question is do you think that would be the note of the meeting -- you mentioned a  
26 meeting at paragraph 131 of your statement, a meeting with HSBC on 15 June this year. Do  
27 you think that that might be a note of that meeting, or do you think it is a note of a different  
28 meeting?

29 A. I think this was quite possibly a different meeting. The note on 15 June was much more  
30 about their strategy, I believe, so HSBC's conveyancing strategy and the changes they are  
31 looking to make.

32 Q. So you do not know when this meeting would have been?

33 A. No, I do not.

1 Q. I am going to take you to item 4 on the second page. There is a list of issues identified by  
2 HSBC. Item 4, "CQS staff fraud awareness", and in the second column, which is headed  
3 "HSBC recommendation", it says "Internal formal training for CQS staff" and it says "The  
4 Law Society welcomes the suggestion".  
5 If I just take you back to the first page of that again, it says at item 4:  
6 "Regarding CQS staff training ...(Reading to the words)... aimed very squarely at CQS  
7 staff."  
8 So is that HSBC wanting those staff at The Law Society dealing with CQS to have some  
9 internal formal training on fraud, is that what this is?  
10 A. I really do not know. I have not seen this note previously. There is no date, no context. I  
11 cannot help you I am afraid.  
12 MR. ALLAN: If you look at item 3 just above item 4 where it talks about CQS staffing levels  
13 and the recommendation:  
14 "The Law Society should demonstrate that it has the staff to carry out current work in  
15 recommended volume."  
16 That might suggest when they are talking about CQS staff in item 4, it is The Law Society  
17 staff?  
18 A. Yes.  
19 MR. ALLAN: Did anything happen following this, in terms of internal training?  
20 A. In relation to conveyancing per se?  
21 MR. ALLAN: In relation to fraud awareness of CQS staff within The Law Society?  
22 A. Not that I am aware of, I cannot comment on that.  
23 MR. ALLAN: Right.  
24 THE PRESIDENT: I suppose it is difficult if you cannot date the note to recall when --  
25 A. Yes. I have no context to that particular reference.  
26 MR. WOOLFE: Mr. Murphy, I do not have any further questions for you.  
27 A. Thank you.  
28 MS. SMITH: Before you put that away, that E2 -- I do have some questions in re-examination. If  
29 you have that open still.  
30 A. E2, yes.  
31 MS. SMITH: Sorry, we were about to start closing it. E2, very back, tab 56. I am doing a bit of  
32 detective work. Do you see in the first paragraph, the last line it says -- or the last but one:

1 "Thought will also need to be given to how some of these recommendations might be  
2 dealt with in the context of the data sharing solution which the CML is currently  
3 working on."

4 That is The Council of Mortgage Lenders data sharing solution, so does that give you any  
5 indication of when this document might have been produced?

6 A. No, I am afraid it does not.

7 Q. Well, I think in submission I will say the data sharing solution was back in 2012 and this is  
8 the Panel management data sharing, but we will --

9 THE PRESIDENT: I do not think we can take much more out of that document.

10 MS. SMITH: Except that contact with lenders right back in 2011 and 2012.

11 THE PRESIDENT: Yes well, we have heard evidence on that anyway.

12 We will be back at 10 to 12. Do you have much re-examination?

13 MS. SMITH: Four or five points.

14 THE PRESIDENT: Yes. We have also got Mr. George to come back.

15 MS. SMITH: I am fully aware of that. I think hopefully some of the questions and indications  
16 given by my learned friend Mr. Woolfe will mean I can take him relatively shortly.

17 THE PRESIDENT: All right. We will be back at 10 to.

18 (11.45 am) (A short break)

19 (11.55 am) Re-examination by MS. SMITH

20 MS. SMITH: Mr. Murphy, I just have a few questions just to clarify a few issues and I hope to  
21 keep it brief.

22 First of all, yesterday you recall Mr. Woolfe was asking you about Lexcel and you said that  
23 Lexcel does not have the same stakeholders as CQS, CQS has the lenders. That was one of  
24 the points you made. You made a number of points. But you also in that context said, "I  
25 speak to mortgage lenders constantly and weekly and I constantly talk to them about  
26 training content and accreditation". Having been talking to them all the time, what do you  
27 think the lenders' reaction would be if instead of being supplied by The Law Society CQS  
28 training was to be supplied by third party trainers?

29 A. They would be extremely worried. They are -- the situation at the moment is that they have  
30 confidence in the training provision that we provide, the mandatory nature of it and they  
31 would be worried that third parties would not be able to supply the quality, the depth, the  
32 knowledge and also the auditing processes that we have in place. It would also elongate the

1 application process, or the reapplication process, to which they would also be worried  
2 about.

3 Q. When you say elongate the application process for accreditation or reaccreditation, can you  
4 just explain what you meant?

5 A. So at the moment we check -- as I have stated, we check on our CPD site the individual  
6 records, so the individual has done the training they are supposed to do. If we were to use a  
7 third party, or third parties, then we would have to go and check all of those different  
8 providers to ensure that all of those individuals have done that training and we would not  
9 necessarily know which individual had done the training for which provider.

10 Q. Thank you, that is helpful.

11 Mr. Woolfe also referred you to the SRA rules and the change to outcome based training  
12 and he put to you that was an acceptable approach for obtaining a knowledge of the law.  
13 Have you, The Law Society, or you personally, considered putting in place outcome  
14 focused training for the CQS?

15 A. The way that we are structured within The Law Society I have not personally looked at  
16 that. We have a training department, so they may well have looked at it. But what you also  
17 have to consider is that the mandatory training that we offer is two hours. Obviously the  
18 SRA require you to undertake a lot more than that two hour training module.

19 Q. Do you have any views on the appropriateness or otherwise of outcome focused training for  
20 the CQS, or is that something --

21 A. It is outside of my remit, but --

22 Q. That is fine.

23 A. Okay.

24 Q. If you do want to say something then obviously do.

25 A. Well, what you have to remember is CQS gives a uniformity of understanding within the  
26 conveyancing world, so for example if you look at my statement, my second statement,  
27 paragraph 62, section B, it says -- the final sentence is:

28 "There is a uniform understanding of the law and best practice associated with  
29 residential conveyancing."

30 That is what our mandatory training offers.

31 Q. Thank you, that is helpful.

32 MR. ALLAN: Sorry to interrupt you, Ms. Smith, but just to follow up your question.

1 I think one of the meeting notes that you were taken to, I think it was Santander, asked  
2 about the outcome based approach. Have any of the other lenders that you or your staff  
3 have spoken to raised that particular issue?

4 A. I have not had any conversations with any lenders about the outcome based approach, no.

5 MR. ALLAN: Thank you.

6 MS. SMITH: Just one final question on Lexcel: are you aware when this was introduced?

7 A. I am -- early 1990s, I believe, but I do not know. I do not know.

8 Q. Can I take you to a document that you were taken to in the context of the questions about  
9 WIQS, the Wills and Inheritance Quality Scheme. If you take out E2 and go in E2 to tab 25  
10 please. You were asked some questions about what is on page 5, do you have that?

11 A. Yes.

12 Q. Under the heading "Wills and Quality Scheme" and you were asked about the first  
13 paragraph under that heading and the suggestion was put to you -- I will put words in Mr.  
14 Woolfe's mouth, he did not say it in these terms, but effectively you were leveraging from  
15 the CQS to get people to join WIQS, that conveyancing firms were likely to take up WIQS  
16 and that was what was being considered here?

17 MR. WOOLFE: Just to be clear, I did not intend to suggest there was any kind of leveraging  
18 from one to the other. That was not my --

19 MS. SMITH: That is fine. What I was going to ask you about is what you were not taken to on  
20 page 5, which is the second paragraph, and in particular you were not taken to the first  
21 sentence of the second paragraph and it says:

22 "We are conscious that the drivers for the WIQS are not as acute as they were for the  
23 CQS, with lender pressure on quality assurance as the key factor."

24 What do you understand that to be talking about?

25 A. Well, if you just look at the actual numbers within the scheme, for example, so CQS has  
26 over 3,000 member firms, WIQS has less than 190 at the moment. In terms of this  
27 particular sentence stakeholders are fundamental to CQS in terms of the lenders and the  
28 insurers. There is no such fundamental stakeholder group for WIQS, so therefore we have  
29 to work with our lenders and our insurance stakeholders very closely, whereas with WIQS  
30 we do not have that stakeholder group.

31 Q. Right, I have just put away E2, but can you not put away E2, because the next document I  
32 want to take you to are some other documents that you were taken to by Mr. Woolfe in a  
33 different context and this was about the checks carried out by The Law Society upon

1 accreditation and reaccreditation and the numbers of applications that were being refused by  
2 The Law Society. Now, I am not going to take -- you were taken to the documents at tab 51  
3 and 52 of E2, which were the Freedom of Information requests made by Mr. George and  
4 you have clarified that the responses to those -- the numbers that came out in those  
5 responses were, you said, because of the narrowness of the Freedom of Information  
6 requests. You are nodding?

7 A. Yes.

8 Q. I am not going to take you -- there are a number of documents in this bundle, internal  
9 documents that record the numbers revoked, the number of unsuccessful accreditation  
10 applications and I am aware that the President has asked The Law Society to produce a table  
11 of those figures, so I am not going to take you to all of them, but I would just for fairness  
12 like to take you to one, which is at tab 26. Let us start with tab 26. Do you have tab 26?

13 A. Yes.

14 Q. You see this is an email from Ben Harrison to Agatha Uchendu and Ben Harrison we see at  
15 the bottom is the accreditation and CQS technical manager, commercial affairs. You see  
16 various unless set out. Could you just talk the Tribunal through those numbers as at 7  
17 March 2013.

18 A. Okay. So we have 2,276 firms that are part of the scheme and we also look at the  
19 supervisory arrangements of a firm, so of those 2,276 firms there is an additional 1,902  
20 branches associated with those firms.

21 The next line is we have rejected 86 firms, so that is the totality of the firms that had been  
22 rejected from the scheme at that time I believe.

23 In terms of work in progress, that is the number of applications that we have going through  
24 the technical or operations team at that moment in time, so they are dealing with 286  
25 applications, and as it says, the retention rate is 97 per cent, so that is a year on year analysis  
26 of how many firms have reaccredited year on year.

27 Q. Then we have mention of "Announced and unannounced visits continuing"?

28 A. Yes.

29 Q. Although you told us that after 2013 the processes and procedures for desk based  
30 assessments and visits was changed, beefed up --

31 A. Yes.

32 Q. -- and it says 351 firms have been subject to desk based assessments.

33 It says about 97 per cent retention rate, do you have any comments on why that is so high?

1 A. It has remained high as well. Obviously CQS, they use it to access the market. Lenders  
2 have huge power in this market. CQS was launched as a pro competitive product and so our  
3 retention rates remain that high and they are likely to do so.

4 Q. There is just I think one --

5 MR. ALLAN: Sorry, could I just ... just for my understanding.

6 The penultimate paragraph refers to Mr. Olowe, former Chief Executive of CLC, what is  
7 CLC?

8 A. It is The Council of Licensed Conveyancers. So there is --

9 MR. ALLAN: That is fine.

10 MS. SMITH: Can I just for the Tribunal's note and for the transcript. We will produce the  
11 document requested by the President, but there are similar documents, internal emails, for  
12 different dates at tabs 20, 23, 26 and 34, but I am not going to take you to all of them.

13 THE PRESIDENT: It is not a key part of the case. It is really just for background.

14 MS. SMITH: Then just one final document that I would like to take you to. You can close E2  
15 and put that away. We really have finished with that one now. If I could ask you to take  
16 out D9, tab 83, which is the Ms. Hawkins email to you about Santander following up.

17 A. Yes.

18 Q. This was put to you by Mr. Woolfe and he did say to you that what Ms. Hawkins was doing  
19 with talking about the training under the second bullet point, with Santander, was that she  
20 was identifying a commercial opportunity for The Law Society, do you recall him using  
21 those words?

22 A. Yes, I do.

23 Q. Can I ask you to look seven lines down in that paragraph, second bullet point headed  
24 "Training", and the sentence there is:

25 "This would allow us to really focus on our members and educate them on something  
26 extremely relevant to them as well as to work closely and build better relationships  
27 with lenders."

28 Do you have any comment on that in the light of what Mr. Woolfe put to you?

29 A. Well, again, as I said to Mr. Woolfe, this was not about a commercial opportunity, this is  
30 about understanding the needs of our stakeholder groups, especially our lenders, to ensure  
31 that everything we do within the scheme is pertinent to our stakeholder groups. So for  
32 example the new training that we are developing that will be updated next month has a  
33 focus on cybercrime and that is as a direct result of some of the conversations we are having

1 with lenders and their problems in relation to cybercrime within conveyancing. So this  
2 focus is what we focus on, the conversations that we have with lenders and the  
3 conversations that we also have with our CQS members as well, and again they are very  
4 worried about cybercrime, so that is why cybercrime is one of our updated modules.

5 Q. Thank you, Mr. Murphy, those are all the questions I have in re-examination. The Tribunal  
6 might have some questions for you. Questions from THE TRIBUNAL

7 THE PRESIDENT: We have just a few questions, largely by way of just clarification to make  
8 sure we have understood some of the evidence and we do not go astray.

9 Just one thing I suppose I ought to clarify, if you could be given bundle B, and if you go to  
10 tab 1 there at paragraph 16 in this document, which is the report of Mr. Williams, who is  
11 giving economic evidence, but here he is just setting out some facts on page 5. In paragraph  
12 16 he says:

13 "... I understand that the practical features [of CQS membership] include the  
14 following:

15 "a) access and right to use the CQS logo;

16 "b) access and right to use The Law Society's logo;

17 "c) a display of the firm's accreditation on The Law Society's 'Find a Solicitor'  
18 website;

19 "d) benefit from Law Society marketing activities; and

20 "e) use of related The Law Society promotional materials."

21 Can I just check, is that correct?

22 A. Other than The Law Society logo, so we supply them with the CQS logo, we supply them  
23 obviously with -- that logo is then displayed on the "Find a Solicitor" website. We  
24 undertake predominantly digital marketing activities and we have previously supplied  
25 promotional material such as window stickers, for example, or leaflets that they can use to  
26 promote their membership of CQS.

27 THE PRESIDENT: And the Law Society logo, because that is something any member can use, is  
28 that right?

29 A. My understanding from a brand perspective is that the brand team are very reluctant to  
30 release that logo to anyone. There has to be a specific reason as to why you would use the  
31 logo.

32 THE PRESIDENT: I understand, so we take out (b)?

33 A. Yes.

1 THE PRESIDENT: Thank you. You can put away bundle B. It was just a small point.

2 Now if you could go back to your first witness statement, which is in bundle D, you have,  
3 from my perspective very helpfully, set out how the scheme developed year by year. I think  
4 you start on page 12 with year 1, which is 2011 and call that heading D and then on page 13  
5 we have year 2, 2012, and you describe all that. At page 15 we have year 3, 2013. Then on  
6 page 16 we have year 4 and then it is really just understanding the next year, which starts on  
7 page 19, year 5. Now, I know there was the big review going on and there is a lot of  
8 explanation about that, but in the meantime of course solicitors were applying for  
9 accreditation or reaccreditation.

10 A. Yes.

11 THE PRESIDENT: I have not quite picked up, it may be I failed to understand it, the sort of  
12 equivalent information for year 5 that you have given for every previous year, so that is  
13 what I am just trying to understand really. There were, you say, two year 5 update models  
14 that were introduced --

15 A. Yes.

16 THE PRESIDENT: -- but they were introduced on 29 September 2015.

17 A. That is correct.

18 THE PRESIDENT: That is what you say.

19 A. Yes.

20 THE PRESIDENT: Subsequently there were the two new core modules, including the core  
21 financial crime, but that was not until 29 April 2016.

22 A. Correct.

23 THE PRESIDENT: So what I am trying to understand is who had to take what in -- and if you go  
24 back to one of the previous years, say if you go back to for example paragraph 99 where  
25 you are dealing with year 4, you see you set out very clearly year 4, the first time staff had  
26 to do all this, and then in paragraph 100, staff which had had accreditation had to complete  
27 two new mandatory modules introduced in 2014 and you specify --

28 A. Yes.

29 THE PRESIDENT: Can you just give me the equivalent information for year 5, because that is  
30 what I am missing?

31 A. Certainly. So year 5 the expectation was that those that were already part of the scheme  
32 would do the two update modules.

33 THE PRESIDENT: But the update modules only came in on 29 September.

1 A. That is right, yes, but they had -- but members of the accredited -- or relevant staff would  
2 have taken the previous year's training in 2014, so at some stage we have to introduce that  
3 change.

4 THE PRESIDENT: Then they would have to do those within --

5 A. Within six months.

6 THE PRESIDENT: Of them being introduced?

7 A. Of their reaccreditation -- yes, I can see the confusion, because obviously we were in a  
8 transitional period. So under normal circumstances a firm would have been given six  
9 months from the date of their reaccreditation to undertake their training, but obviously if a  
10 firm had been reaccredited prior to the updates being issued they would have the option of  
11 doing the current training, so 2014 training, if they had not already have done that, or the  
12 update training as was issued on 29 September.

13 THE PRESIDENT: Yes. Then new joiners?

14 A. New joiners, again because we were in that transitional stage the expectation was that they  
15 would do the current training that was available because the 2014, 2013, 2012 and 2011  
16 training had not been withdrawn from the website, so the expectation for any firms that  
17 were joining was that they were still to do that training in that six month period.

18 THE PRESIDENT: So that would be the same then as set out in paragraph 99?

19 A. It was -- but obviously the firms that then joined slightly later in sort of October,  
20 November, for example, they would not have necessarily had to do the previous year's  
21 training because we were just about to issue the core training.

22 THE PRESIDENT: So they could wait.

23 A. Yes.

24 THE PRESIDENT: This is not a criticism of anything, transitions are always difficult.

25 A. Absolutely.

26 THE PRESIDENT: Not at least for legislation, I can tell you, but I am just trying to understand  
27 what happened. So they could wait until the new modules.

28 A. Yes, we gave them a slightly longer mandatory period.

29 MR. ALLAN: Sorry, this is really a point of detail, but just going back to the people -- the older  
30 people that you have referred to, how did the withdrawal of new build purchases and  
31 leasehold, which I think happened, fit into that; would new members of staff joining in 2015  
32 who could not wait for the new modules still have to do new build purchases and leasehold?

1 A. From my recollection the communications that we were sending out to new firms was that  
2 they had the option to do the training modules that were there.

3 MR. ALLAN: Including new build and leasehold?

4 A. Yes, or because we were communicating the fact that the new training was coming.

5 MS. SMITH: Just to assist, I think this is the paragraphs you are thinking about, Mr. Allan, but  
6 just to assist Mr. Murphy with getting in his mind the dates of withdrawal, if you have a  
7 look at paragraph 139 of your first witness statement, that refers to when the leasehold and  
8 new build modules were withdrawn. They were withdrawn before the rest of the courses  
9 and --

10 MR. ALLAN: I think that is what I had in mind.

11 MS. SMITH: Yes, I think that is what you were thinking about.

12 A. Sorry, yes.

13 MS. SMITH: That is in late September 2015 and then you say in your witness statement in  
14 paragraph 145 that in March 2016 you then reported for year 1 to 4, the rest of them had  
15 been withdrawn, so there was a staged withdrawal.

16 A. Yes, staggered approach.

17 MS. SMITH: Also just for the Tribunal's record, this is explained in a little more detail, sought to  
18 clarify in Mr. Murphy's second witness statement, pages 10 to 11. There is a little more  
19 clarification because it was this slightly complicated transitional period.

20 MR. ALLAN: Thank you very much.

21 A. Yes. Obviously we have firms joining constantly as well, so that transition was difficult.

22 THE PRESIDENT: No, I understand. Thanks very much.

23 Then I wanted to just again clarify about accreditation and reaccreditation. You refer to that  
24 back in paragraph 51 of your first witness statement and you exhibit the letter. We do not  
25 have to turn it up, I am sure you are familiar with it. My understanding is that there is this  
26 detailed application form and checks are carried out on the information, DBS check and so  
27 on, and then if all that is satisfied a firm gets the accreditation but it is a condition that they  
28 have to complete the training within six months?

29 A. That is correct. That is part of the scheme rules, yes.

30 THE PRESIDENT: That is how it works. Then at the end of the six months, or earlier, the SRO -  
31 - well, you say at paragraph 44 that once a practice has received accreditation it remains  
32 accredited for a year and you go on in that paragraph to say:

1 "In applying for reaccreditation the SRO is asked to confirm that training has been  
2 completed by all relevant members of staff."  
3 That is still the position, is it?  
4 A. Indeed, yes.  
5 THE PRESIDENT: Does the SRO also have to confirm at the end of six months of accreditation  
6 that the training has been carried out, or do you wait until reaccreditation?  
7 A. We wait until reaccreditation. But, as I mentioned previously, the operations and technical  
8 team have sight of everyone's training records, so there can be and there is spot checks  
9 carried out.  
10 THE PRESIDENT: Yes, indeed. Perhaps this is a silly question, but I ought to ask it. The  
11 training, as I understand it there are training materials, it is all online --  
12 A. Yes.  
13 THE PRESIDENT: -- they are viewed online and then at the end there is questions, or a quiz, or  
14 test or whatever you want to call it and that comes at the end.  
15 A. Yes.  
16 THE PRESIDENT: When the spot checks are carried out, or indeed the SRO's confirmation, does  
17 that mean not simply they have viewed the slides online, or the materials online, but they  
18 have successfully completed the test?  
19 A. Yes, as far as I know, yes, because the way that the CPD Centre works is you are given a  
20 certificate that you have met the required level, so that is then stored in your "online  
21 wallet", I believe the phrase is, so we can see that a relevant person has passed the test.  
22 THE PRESIDENT: Yes, and if you do not pass the test you do not get that certificate, one  
23 presumes.  
24 A. Yes, exactly.  
25 THE PRESIDENT: If you do not pass it, you can take it again?  
26 A. You can take it again, yes. But obviously if you have not passed the test and you come to  
27 reaccredit, we will not reaccredit you.  
28 THE PRESIDENT: Yes, so you have to be satisfied --  
29 A. Exactly.  
30 THE PRESIDENT: -- not only that they have looked at it, but they have understood it and passed  
31 the test.  
32 A. Yes.  
33 THE PRESIDENT: That is how you monitor that they have reached the quality.

1 A. Indeed, yes.

2 THE PRESIDENT: Going back to the new revised arrangement, which you explain, after the  
3 restructuring, you set out in paragraph 152 of your statement the costs of the two new core  
4 modules and I think you have previously set out the cost of the two updates. I do not know  
5 if you were involved in that, but is that something, when you set these prices for the  
6 restructured scheme in 2016, were those costs the subject of discussion with lenders, those  
7 prices?

8 A. Price information not generally. We will discuss pricing, so, for example, we would have  
9 mentioned that the price has decreased.

10 THE PRESIDENT: You would inform them of that.

11 A. Yes.

12 THE PRESIDENT: But in deciding what price to charge, is that something you discussed with  
13 the lenders? It is something internal to The Law Society?

14 A. Not from my recollection. They would not have any input on the specific pricing.

15 THE PRESIDENT: Yes. Then we have the new financial crime module that has come in and I  
16 think you are in charge of that, as it were, as part of the CQS scheme. If a solicitor takes  
17 that module in the year they have to, of the core, that year -- and we have heard about the  
18 mandatory training under the money laundering regulations, the statutory -- if they do your  
19 new financial crime module what more would be needed, if anything, that year to constitute  
20 adequate training under the money laundering regulations?

21 A. I am sorry, I am not in a position to answer that because I do not know about the AML  
22 regulations. What I can tell you obviously is that the mandatory training equates to two  
23 hours and whether or not a firm would feel that one hour in a financial crime module is  
24 sufficient to cover their obligations, I do not know. I would presume not but ...

25 THE PRESIDENT: Could we ask you to look at bundle A and at tab 2. If you go to the very end  
26 of tab 2, the last page in tab 2, this is just a list provided by The Law Society of its courses  
27 that it provides under the category of anti-money laundering regulation. Is this something  
28 you are familiar with?

29 A. I am familiar with the number of courses that we do for AML.

30 THE PRESIDENT: Yes, and do you get and deal with queries from solicitors saying "Which of  
31 these do I need to do to satisfy the obligations?" Is that something they ask you?

32 A. The practice advice service within The Law Society may well get questions in relation to  
33 this.

1 THE PRESIDENT: Is that something you are familiar with?

2 A. Not myself, no.

3 THE PRESIDENT: It is not fair to ask you.

4 A. No.

5 THE PRESIDENT: Yes. Well, then I do not think it is right to ask you any more questions about  
6 that. We can put that away.

7 The last thing that I wanted to just explore, and my colleagues may have some other  
8 questions, is just this question of the income from the CQS and the training aspect and if  
9 you could take out E2 at tab 54. You were referred to this by Mr. Woolfe, and it is marked  
10 "Confidential", so I will not refer to any actual figures, but I want to just go back to  
11 something you were asked about to try and understand it. One can see, as was pointed out  
12 to you before, that the training income from 2014 to 2015 -- and this is year ending 31  
13 October -- has gone up by 2.5 times, which is quite striking. Can you just, for my benefit,  
14 explain again why you think that is?

15 MS. SMITH: I am not going to stop Mr. Murphy answering that question, if he feels able to do  
16 so, but in light of the questions that you and your colleagues asked yesterday I have taken  
17 further instructions on these figures and I am not sure it is within Mr. Murphy's area of  
18 expertise as to how these figures were put together --

19 A. No.

20 MS. SMITH: -- they certainly were not put together by him, but I can give an explanation, having  
21 taken instructions from those who did put the figures together, I can perhaps give a little  
22 more detail on how the figures were put together, and particularly the training income  
23 figure.

24 THE PRESIDENT: Yes, you could do that tomorrow.

25 MS. SMITH: I am very happy, obviously, for you to ask Mr. Murphy any questions about that,  
26 but it might be more productive for me to explain having taken instructions this morning  
27 from those who did put the figures together.

28 THE PRESIDENT: Yes. Certainly, Mr. Murphy, you should not give evidence or feel under any  
29 pressure to give evidence on something you do not know.

30 A. As I said yesterday, these are not figures that I put together, I am not familiar with them and  
31 I would prefer to err on -- with Ms. Smith.

32 THE PRESIDENT: Yes, well I wouldn't ask you anything about costs, it is just behind the -- but  
33 you know about the prices and you know the number of people doing it, that is why I

1 thought that as you were in charge of the scheme you might be able to help us a bit on why  
2 you think it had gone up that much. But, Ms. Smith, if you think it is better that that is an  
3 explanation that comes from you on instructions, we will not ask Mr. Murphy, but we are  
4 quite keen to understand that.

5 MS. SMITH: Yes.

6 THE PRESIDENT: If you are going to deal with it by way of speaking on instructions, will the  
7 person who gave you instructions be here tomorrow in case we have any questions?

8 MS. SMITH: I think we can make arrangements to make sure they are.

9 THE PRESIDENT: Yes. We asked for this information and I think it is fair that we can ask  
10 questions about it.

11 MS. SMITH: Of course.

12 THE PRESIDENT: Perhaps I will just ask you this then, Mr. Murphy. The last paragraph on that  
13 page says:

14 "We do not currently have any income of profit forecast for 2016."

15 This was produced over the summer. Are you given a budget for the CQS by -- we know  
16 there are various committees, boards and so on. You are in charge of CQS. Did the Law  
17 Society not give you a budget?

18 A. Yes, there is a very small budget that I am given which is primarily in relation to the  
19 promotion of the scheme.

20 THE PRESIDENT: Yes, and is there a budget for the preparation of training material? We heard  
21 you use outside people, you commission them to put it together?

22 A. Yes, but it is not an area -- it is not a budget that I am responsible for. So the training  
23 budget, for example, would sit with the training team, the costs of the scheme would sit  
24 with those that deal with the operational and technical side, etc, so I am really -- the only  
25 budget I have is in relation to a small marketing budget.

26 THE PRESIDENT: So there is a separate budget that would go to the training to prepare -- they  
27 are not presumably given a blank cheque?

28 A. No, I am sure they are not.

29 THE PRESIDENT: I think Mr. Smithers said it is quite bureaucratic, the organisation, as member  
30 organisations often are. So it is not surprising it is, but your understanding is that the  
31 training team are given a budget that is approved by some committee? Is that how it works?

32 A. I would presume so, yes, but obviously that would be in relation to the content development  
33 and --

1 THE PRESIDENT: Yes. Was there a budget for the restructuring?

2 A. No. Not that I am aware of. The restructuring that I undertook, no, because it was all  
3 internal changes that we -- primarily it was our staff time and communications out to our  
4 CQS members and stakeholders.

5 THE PRESIDENT: Yes. If you are concerned with marketing do you make for whatever the  
6 relevant committee is a forecast of what the likely income is?

7 A. I do not know. There are forecasts made, but not by myself.

8 THE PRESIDENT: So you say there are forecasts made?

9 A. The forecasts that I am given are in relation to the number that we expect to join the  
10 scheme.

11 THE PRESIDENT: Yes.

12 A. It is not in relation to the actual finances in terms of the revenue that we would derive from  
13 that membership.

14 THE PRESIDENT: Yes, that would be done by which area, which department or division would  
15 do that?

16 A. In terms of forecasting numbers?

17 THE PRESIDENT: No, forecasting revenue?

18 A. Revenue, I presume that that would come from the finance team.

19 THE PRESIDENT: Yes.

20 MR. ALLAN: If I could follow that up for the moment. It is the case then that there is no  
21 business plan for the CQS as such?

22 A. There is. It is not a formally written down plan, it is an ongoing process that we develop the  
23 scheme in conjunction with the technical panel. We have -- we understand what our  
24 numbers may be in terms of new firms joining. We make forecasts on that.

25 PROFESSOR WILKS: So there is some sort of annual process of evaluating a business  
26 plan?

27 A. Yes.

28 PROFESSOR WILKS: That would be with whom, not with you?

29 A. I am not the author of those plans, no.

30 PROFESSOR WILKS: It is an observation perhaps rather than a question, perhaps to flag  
31 for tomorrow, but we have consistently been told that the CQS is loss-making and I would  
32 like to know on what basis those assumptions can be drawn and presumably it would be  
33 drawn from the material produced in the business plan?

1 A. I cannot answer that. I am not in a position to answer that.  
2 PROFESSOR WILKS: No, it is probably not a fair question, but it is something that we  
3 might be interested in.  
4 THE PRESIDENT: Is there anything arising from that?  
5 MS. SMITH: No, thank you, sir.  
6 THE PRESIDENT: Thank you very much, Mr. Murphy. You are now released.  
7 A. Thank you.  
8 MR. BERNARD GEORGE (still under oath)  
9 THE PRESIDENT: Do sit down, Mr. George. You are still under your oath.  
10 Cross-examination by MS. SMITH (continued)  
11 MS. SMITH: Right, Mr. George. Can we start by going back to your subscriber analysis, which  
12 is now revised. I hope you will find it in bundle B, tab 4.  
13 MR. WOOLFE: Mr. George, can I just check, do you have the revised one behind that?  
14 A. It does not appear so, but I have a copy here, if it that is all right?  
15 MR. WOOLFE: If I just check it is clean.  
16 MS. SMITH: Do you have one with the amendments marked, a sort of red-line version is  
17 probably easier. I do not know if the Tribunal are working from that.  
18 THE PRESIDENT: I am.  
19 MS. SMITH: You have a red-lined version?  
20 THE PRESIDENT: We do.  
21 MS. SMITH: Showing the previous deletions and in you additions. It is better to see it that way.  
22 MR. WOOLFE: Shall I just check that -- yes, that is fine.  
23 MS. SMITH: If we can get that put it in the bundle then. (Handed).  
24 If I could ask you to turn in that revised report -- hopefully we have the same page numbers  
25 if we are both working from red-lined versions -- page 5. In the middle of page 5 you have  
26 figure 1, which is unchanged, is that correct?  
27 A. Yes.  
28 Q. We talked about that, so I do not think we need to talk about that again. The commentary  
29 that you give on that figure 1 in sub-paragraph (b) remains unchanged, that is correct, is it  
30 not, in sub-paragraph (b)?  
31 A. Yes, you can draw some conclusions from this, but it is not the optimal way of looking at  
32 the figures.

1 Q. Yes, I just asked you a simple question: there have been no changes to sub-paragraph (b),  
2 have there?

3 A. No. That is my case.

4 Q. What you have changed though is what was in sub-paragraph (c). Originally you make two  
5 adjustments to the figures, you now have made one adjustment, that is correct?

6 A. That is right, yes.

7 Q. So you have --

8 THE PRESIDENT: Sorry, you said sub-paragraph (c)?

9 MS. SMITH: Yes, there is a crossing through sub-paragraph (c) at the bottom of page 5, if you  
10 have the red-lined version.

11 THE PRESIDENT: I thought I did.

12 MS. SMITH: The paragraph that starts "Hence to obtain more meaningful figures I did the same  
13 analysis with ..."

14 THE PRESIDENT: I have it but it is not crossed out.

15 MR. WOOLFE: I believe it may be the case that in Word different things can show up as -- and  
16 when you print it out different selections of what are track changed may show up.  
17 Sometimes you show formatting and sometimes you do not, so it may be the case that yours  
18 shows the paragraph being crossed out and yours does not.

19 THE PRESIDENT: What should I do?

20 MS. SMITH: All I need to make the point --

21 THE PRESIDENT: Is the paragraph starting at the bottom of page 5 starting "Hence to obtain  
22 more meaningful figures"?

23 MS. SMITH: Yes.

24 THE PRESIDENT: Is that crossed out?

25 MS. SMITH: No. The bit that is crossed out -- it should say -- it does not matter about whether it  
26 is (c) or not, I was just trying to identify where it was on the page. The sentence says  
27 "Hence to obtain more meaningful figures I did the same analysis with ...", and then the  
28 following text is crossed through, "...~two adjustments".

29 THE PRESIDENT: I do not have that. Sorry, my colleagues have it. It looks as though --

30 MS. SMITH: This one looks as though it has all the text red-lined as well.

31 THE PRESIDENT: I do not -- for some bizarre reason the copy I have is not the same as my  
32 colleagues'.

1 MS. SMITH: I think it is quite important to see what has been removed and what has been put  
2 back in.

3 THE PRESIDENT: No, I've got some of it removed -- I seem to have a rogue copy.

4 MR. WOOLFE: I am looking at it, and it is just purely on the basis of what has happened --

5 THE PRESIDENT: Do not worry about what happened. Can I just be given the right copy.

6 MR. WOOLFE: I am concerned that the version that Mr. George has in his bundle now is the  
7 version you have in front of you.

8 MS. SMITH: That is the one I am working from, that is the one the President is working from --

9 THE PRESIDENT: Can we just check we have the same one?

10 MS. SMITH: -- and I hope that is one that Professor Wilks is working from.  
11 I have two more of exactly the same ones for the wing members, if that helps.

12 THE PRESIDENT: No, I think Mr. Allan and Professor Wilks have the right one.

13 MS. SMITH: Okay, just in case they are here if we need them.

14 THE PRESIDENT: Yes, I am all right now.

15 MS. SMITH: We should go back to the old process of getting coloured pencils out and  
16 underlining them.

17 THE PRESIDENT: Page 5, I am with you now, Ms. Smith, I am sorry.

18 MS. SMITH: Instead of two adjustments, Mr. George, can you just confirm you have now made  
19 just the one adjustment?

20 A. That is right.

21 Q. So the one adjustment that remains is what we have discussed previously, so I am not going  
22 to go over it again, but it is about the definition of CQS firms, that is right, is it not?

23 A. Exactly.

24 Q. So now looking on the opposite page, you have provided us with a revised figure 2. Do  
25 you have that?

26 A. Yes.

27 Q. It is on my page 7, I hope it is on your page 7.

28 A. Yes.

29 Q. That gives us data for each of the years between 2009 and 2016, the total number of firms  
30 cancelling, CQS firms as you define it cancelled and non-CQS firms cancelled.  
31 Sorry, yes, I will just -- now, you have provided this data on cancellations to The Law  
32 Society on 22 July, following the Tribunal's order. That is correct, is it not?

33 A. I am sure you are right as to the date, as part of the disclosure process.

1 Q. You provided the data in a form of spreadsheet files --  
2 A. Yes.  
3 Q. -- we discussed this a bit last time when you were in the box.  
4 A. Yes.  
5 Q. You provided a spreadsheet file for each year, is that correct?  
6 A. That is right.  
7 Q. That had been put together by your database consultant.  
8 A. Exactly.  
9 Q. Each spreadsheet file was entitled "AML not renewed 2010", 2011, 2012, is that correct?  
10 A. That is right.  
11 Q. So let us just focus on the figures. In the spreadsheet file, and this is where some confusion  
12 seems to have occurred between the parties, you provided say a spreadsheet file entitled  
13 "AML not renewed 2010" --  
14 A. Yes.  
15 Q. -- and that spreadsheet file identified 125 firms that were on your customer list at some  
16 point during 2009, but not during 2010 and, as I understand it, that is the figure of 125 that  
17 you have included in this table under the column for 2009, is that correct?  
18 A. I think that is right. Sorry, can you just say that again?  
19 Q. So the figure of 125 signifies, or records firms that were on your training customer list in  
20 2009, but not in 2010, which you therefore included in 2009 because you said "Well, they  
21 will have cancelled in 2009 because they are not on our 2010 list"?  
22 A. I think it is a year earlier than that in fact. Looking at it consistently across the whole range  
23 my understanding of the way this data -- and I have done some checks to verify this,  
24 looking at individual firms and checking it against our actual database -- I think what we  
25 were looking at there was firms which had, if you like, disappeared in 2009, so they did not  
26 have a Socrates AML subscription in 2009, though they had done to some degree at some  
27 point in the earlier year. That is certainly the case for -- it is definitely the case for the 2016  
28 figures and I am sure, because I have checked this, it is the case for all the figures.  
29 Just to labour the point, this was made inevitable by the way the database consultant  
30 produced the figures, he said it was the only way it could be done, or he could do it, and that  
31 is to identify a lapsed subscriber by saying -- let us take 2016, by saying did this firm have  
32 an AML subscription in 2016? No. Did it have an AML subscription at any point in 2015,  
33 albeit it may have expired during that year, earlier in that year? Yes. So we will call it a

1 2016 lapsed subscriber, non-renewal. So therefore in each year it is the firms, if you like,  
2 who have dropped off the shelf in that year.

3 Q. I am sorry, obviously I am not sure how we are going to get with this because that does not  
4 seem to be the explanation you gave when we asked you -- my solicitors asked you about  
5 this in September 2016. I can take you to the correspondence if necessary. Norton Rose  
6 wrote to you on 28 September 2016 trying to work out how these spreadsheets worked.

7 THE PRESIDENT: What I am struggling with, based on your explanation, Mr. George, is that  
8 spreadsheet, which I have not seen but I am told you produced, is headed "AML not  
9 renewed 2010".

10 A. Yes.

11 THE PRESIDENT: On your explanation that would be, it seems, people who were subscribers at  
12 any time in 2009 --

13 A. That is right.

14 THE PRESIDENT: -- but do not appear in 2010.

15 A. That is right.

16 THE PRESIDENT: Is that right?

17 A. That is right.

18 THE PRESIDENT: Pausing there, then if that spreadsheet lists 125 firms, looking at your figure  
19 2 you have put that 125 under 2009, so do we understand that to mean that 125 firms who  
20 were subscribers at any time in 2009 did not renew in 2010?

21 A. No, because it would be impossible -- because we have done this consistently for all years  
22 and it would be impossible for there to be a 2016 figure if that were the case.

23 THE PRESIDENT: Well, 2016 is done in a slightly different way, is it not?

24 A. Yes, but it is the same basic point.

25 THE PRESIDENT: So 2009 is -- what you are saying is there were 125 subscribers in this 2008  
26 --

27 A. That is right.

28 THE PRESIDENT: -- who do not appear --

29 A. They disappeared from our register in 2009, as it were.

30 THE PRESIDENT: Yes. Then I think what is being said is that does not square with the heading,  
31 is that right, Ms. Smith?

32 MS. SMITH: It also begs the question there that there is a rogue column there that does not  
33 actually relate to any column at all, because if 2008/2009 should be 2008 --

1 THE PRESIDENT: No, it is people who dropped off in 2009.

2 A. Yes.

3 MS. SMITH: Had cancelled in 2008.

4 A. This can easily be resolved because we provided the actual list, including -- we provided the  
5 underlying data from which these figures were generated so you can look it up firm by firm  
6 and see the -- that is what I did, I double-checked this and looked it up firm by firm and -- I  
7 did this a couple of nights ago -- and that is what we are looking at. But you have exactly  
8 the same data from the database analysis that I have and it is all attached.

9 Q. It may be something this can be explored with Dr. Majumdar as well but our problem is that  
10 we cannot reconcile the figure for 2011 with any of the spreadsheets. It does appear that  
11 2009 is those people who actually cancelled in 2008 then did not appear on the 2009 list,  
12 people in 2010 --

13 A. I have not checked for every single year. I checked a sample.

14 THE PRESIDENT: Just let Ms. Smith finish. So 2009 fits with the explanation.

15 MS. SMITH: Yes.

16 THE PRESIDENT: You say 2011 does not --

17 MS. SMITH: Is unexplained from our point of view.

18 THE PRESIDENT: On looking at the figures, yes.

19 MS. SMITH: Then it sort of switches back again for 2012 through to 2016.

20 THE PRESIDENT: So the others you can work out, it is 2011 which is the rogue year?

21 MS. SMITH: Yes.

22 THE PRESIDENT: I see.

23 MS. SMITH: Obviously 2016 is on a completely different basis from all the rest of them.

24 A. I should say I did do this double checking to make sure I knew which year was referring to  
25 which, I checked with individual firms and I only checked in the most recent years, so I can  
26 only apologise -- if I have messed up again, I can only abjectly apologise, but all I am  
27 saying is I have double-checked that is the current basis for the recent years.

28 THE PRESIDENT: Perhaps that is something that can be looked at afterwards and dealt with, it  
29 is a difficult thing to take up in correspondence because you will have to pore over --

30 MS. SMITH: In cross it is and it may be something that Dr. Majumdar can explain perhaps more  
31 easily directly than through me.

32 THE PRESIDENT: Yes, and Mr. George has said he did not recheck the earlier years, it is  
33 possible there is a mistake, so ...

1 MS. SMITH: Fine, okay. So I think then I can move from the figures just to ask you a question  
2 about the hypothesis that you are testing here.

3 A. Yes.

4 Q. Which is on page 4. This is your hypothesis that:  
5 "CQS firms ..."  
6 I assume that is firms who are members of the CQS at the time they decide whether or not  
7 to renew their subscription, is that correct?

8 A. Yes.

9 Q. So the question is whether CQS firms, that is the hypothesis you are seeking to test:  
10 "... will become less likely to renew their subscription with Socrates when the  
11 requirement to purchase tied training is introduced."  
12 Can I suggest that another more direct way to test that hypothesis is simply to see if renewal  
13 rates for firms that hold CQS accreditation at the date of renewal are materially different  
14 after 2013 or not?

15 A. Absolutely.

16 Q. Yes, okay.

17 A. Can I explain why I did not use that methodology? I was struggling very much with the  
18 data and there was a limit to how many variables I was able to take into account at one time  
19 and I think there are techniques for doing this, in fact I know there are techniques for doing  
20 this, but I could not work out a way in which I could cross-refer when a firm was in the  
21 CQS and -- so I just thought I will keep it simple, I will have an "ever in the CQS" thing  
22 because if there is a pattern there it will be enough to reveal it. But I agree it is not the best  
23 way of doing it.

24 Q. That is helpful, that is clearer.  
25 Can I just move on then to your second hypothesis, which is on page 8, and the hypothesis  
26 you are seeking to test on page 8 is that:  
27 "CQS firms will be less likely to take up a new subscription with Socrates if they have  
28 been required to buy AML training from The Law Society."  
29 You have done two analyses here, that is correct, one that is in figure 3 and one that is in  
30 figure 4?

31 A. Yes.

32 Q. Figure 3, you look at new Socrates subscribers -- this is in the table itself -- who ever joined  
33 the CQS.

1 A. Yes.

2 Q. So that is on a similar basis to before?

3 A. Exactly.

4 THE PRESIDENT: Can I just check, when you say "new Socrates subscribers", is that shorthand  
5 for subscribers to the AML for law firms course?

6 A. Absolutely, yes.

7 MS. SMITH: Yes, I think the focus was only -- for the purposes of this data, the data that was  
8 obtained pursuant to the disclosure orders by the Tribunal, it was only AML.

9 A. Just to clarify that, just occasionally they may have had other services prior to that that they  
10 were taking up, an anti-money laundering service with us, not having had such a service at  
11 any point in the previous year.

12 Q. So that is your figure 3.

13 A. Yes.

14 Q. In figure 4, which is explained in paragraph 9, you can confirm you looked at firms who at  
15 the time they took up this AML subscription with Socrates were at that time in the CQS, is  
16 that correct?

17 A. Yes, and by the time I generated this data I had the assistance of somebody who knew a lot  
18 more about Excel than I do.

19 Q. You are here saying you are looking at the figures because -- just to summarise -- you  
20 would expect the share of CQS firms joining Socrates to be roughly in line with the take-up  
21 of the CQS, the number of members of the CQS?

22 A. It would be affected by two factors, of which that is a huge one and there is another smaller  
23 factor. Yes, you are right, there is this, for some years, huge growth in the CQS, so  
24 therefore you would expect to see in 2012, 2013, to some degree into 2014, a very sharp  
25 rise, and because there is a huge rise in the CQS population, inevitably you would expect to  
26 see a huge rise in the number of our joiners who are in the CQS. That must follow.  
27 There is another much smaller effect and that is the decline in the general population of law  
28 firms. It seems to be declining at around 2.3, 2.4 per cent a year, mainly through mergers,  
29 firms are getting bigger.

30 Now, when you put that together the share of law firms which are not in the CQS is getting  
31 a double whammy, it is being squeezed from both sides. Just as the total population of law  
32 firms is going down by 2 point something per cent a year and the population of CQS firms  
33 is going up by about 2 per cent a year, you get a particularly large effect, so therefore the

1 share -- even after 2014 when the CQS is growing more gently, you still would continue to  
2 see this rise of CQS firms as a very significant rise in the CQS firms as a share of the  
3 general market, albeit the CQS is no longer growing as strongly as it was.

4 Q. So you --

5 THE PRESIDENT: Sorry to interrupt you, just again so I can understand the nomenclature, "non-  
6 CQS joined" and "CQS firms joined", this is joined as a new subscriber to Socrates AML --  
7 the law firms.

8 MS. SMITH: Yes, I found the use of the word "joined" slightly confusing.

9 A. Yes, it does mean joined in that sense.

10 THE PRESIDENT: It is the same sense as new Socrates subscribers in figure 3?

11 A. Exactly. Also just to labour the point, because it is actually I think quite significant, a firm  
12 that had a subscription for example that expired in January 2014 and then cancelled with us  
13 and rejoined in 2015 would not appear on that list because they would have had a  
14 subscription at some point in 2014 and at some point in 2015, even though they may have  
15 lapsed their subscription for all two years, but they would -- the way the data was compiled  
16 they were in 2014, they were in 2015, they neither left nor joined. In fact they did leave and  
17 they did join.

18 THE PRESIDENT: Yes, you mention that somewhere.

19 MS. SMITH: Sorry, Mr. George, I do not want to cut you off, but we have a limited amount of  
20 time and we need to get to expert evidence this afternoon and I am trying to keep my  
21 questions brief and if you could try and keep your answers brief as well that would be --

22 A. Sorry, I do apologise.

23 Q. So you put these figures in front of the Tribunal because you say it is significant that instead  
24 of an increase in the number of CQS firms who are your new subscribers, post 2014 you see  
25 a decrease in those figures?

26 A. Yes.

27 Q. So we see 2014, 40 -- perhaps if you look at the percentages, 57.97 per cent of joiners,  
28 2015, 52.05 per cent, 2016, 44 per cent. Those figures are quite substantially different from  
29 the figures in the figure 4 that you have crossed out --

30 A. Yes.

31 Q. -- on the previous page.

32 A. Yes.

33 Q. Is that just because of the fact that you now include firms that no longer exist, or ..?

1 A. No, I do not think there is any difference in that respect.

2 Q. It is just a better job on the figures, or what?

3 A. I do not think we ever did any analysis on this to take out firms that no longer exist.

4 Q. Do you have any explanation as to why the figures are so different?

5 A. It would be extraordinarily tedious and painful. I am virtually certain this was because my  
6 wife and I took a few days away in France and I got into the habit every night from working  
7 at about 10 o'clock at night until 2 in the morning on this data and I was on a laptop --

8 Q. I bet she appreciated that while you were on holiday.

9 A. Yes, it was fantastic, I cannot tell you.  
10 I was trying to save the spreadsheets to Dropbox and I didn't realise it was -- anyway, I got  
11 into a complete confusion as to which was my last up-to-date version of what and it was just  
12 hideous, I cannot -- I would rather not talk about it to be honest.

13 Q. Okay, well, rather than trying to work out the figures let us just look at this --

14 A. Can I just say very very quickly: and then I came back and I got the assistance of this  
15 person who knows how Excel works and it was just so much easier from that point on, and  
16 she was able to work from the original data.

17 THE PRESIDENT: We need not go into the whole history, Mr. George.

18 MS. SMITH: You are putting these figures before the Tribunal because you say significance  
19 should be attached to the fact that the number of CQS firms as a proportion of your new  
20 subscribers after 2014 declined, is that effectively what you are saying?

21 A. Yes, that is right.

22 Q. Let us just explore the reason why there may be a lower incidence of CQS accredited firms  
23 in the share of new subscribers to Socrates after 2014.

24 A. Yes.

25 Q. I can take you to his tables if you need to, but you have probably pored over Dr. Majumdar's  
26 subscriber analysis. He finds that a large number of firms taking Socrates AML training are  
27 already CQS members. That is his table 3 if you want to --

28 A. Yes, that will often be the case.

29 Q. He also finds, his table 4, that CQS firms have a higher renewal rate for Socrates AML  
30 training than non-CQS firms.

31 A. They have always tended to have quite a substantially higher renewal rate, and you would  
32 expect that.

1 Q. Right. So another reason for the decline that you see on your figure 4 could be due to the  
2 fact that firms with a desire to take AML training from Socrates are already CQS  
3 accredited?  
4 A. Sorry, I do not follow. I am awfully sorry.  
5 Q. Those who want to take AML training from you, as I think we have discussed, the figures  
6 sort of plateau at around 2013/2014, the number of members in the CQS. Those new  
7 subscribers are more non-CQS than CQS because all the CQS accredited firms have already  
8 taken training from you, they are already CQS accredited?  
9 A. No, I just do not see why that would be the case. We do not have that big a share of the  
10 market.  
11 Q. Okay. Another reason for the decline could be because, as you have explained in your  
12 witness statement, you cut back on your marketing generally.  
13 A. Well, we spent more on marketing in 2015, particularly mail shots, than we ever had before,  
14 it just became much less effective.  
15 Q. Overall you say, what, it became much less effective overall? Because your total number of  
16 --  
17 A. It was mail shots.  
18 Q. -- new subscribers is pretty much the same, in fact more I think in 2015?  
19 A. Yes, you are right. We spent --  
20 Q. So that did not become less effective?  
21 A. No, no, it did, it was the mail shots that became dramatically less effective and we were  
22 spending a lot more money, as I explained the other day, perversely because it was not  
23 working and we were not getting so many subscribers in we kind of redoubled our efforts  
24 which meant -- when I looked back I was horrified, we were spending dramatically more on  
25 mail shots in 2015 than we ever had before because we were struggling to get firms in the  
26 door. We then also started looking at our Google AdWords account and advertising and  
27 other things to do.  
28 Q. But on your figures, in 2014 you had 69 new subscribers in total. In 2015 you had 73 new  
29 subscribers in total.  
30 A. Yes, very very similar.  
31 Q. Yes.  
32 A. It was the mail shots. Despite roughly doubling the number of mail shots we were not  
33 getting double the results, or anything like it, and it was just obvious, you just see -- when

1 you do a mail shot you wait with baited breath in the next two or three days, is the phone  
2 going to ring, are the inquiries going to come in, and in the past they always had done and  
3 that was the year that just did not seem to happen any more.

4 Q. Well, just one final question, if I can, on figure 4. You have compared ratios, or you have  
5 produced ratios in the very last row, of 1.38:1.

6 A. Yes.

7 Q. Which is a ratio between what, 40:29?

8 A. The ratio is -- yes, exactly, 40:29, so --

9 Q. The ratio that you have calculated -- I do not know what the 10.30 figure is for 2015?

10 A. It is the -- sorry, do we not have -- sorry, I do apologise. Yes, that is what the left box is  
11 referring to, that is a calculation of how many extra joiners Socrates would have had if it  
12 had maintained that ratio whereby for every non-CQS firm that signed up we had got on  
13 average 1.38 CQS firms. Now, we did not, suddenly the number of CQS firms we were  
14 signing up dropped, and so --

15 Q. So that is a comparison between the 2014 figure and the 2015 figure?

16 A. Exactly.

17 Q. Just let me clarify, the 2016 figures that you put in the column for 2016, these are based on  
18 your 7 October snapshot, are they?

19 A. That is right and therefore it will include any firm that did not have an AML subscription  
20 with us at any point in 2015, but did on that one date in August.

21 Q. Fine. I just wanted to clarify what that is.

22 Thank you very much, you can put away B -- Questions from THE TRIBUNAL

23 THE PRESIDENT: I think while we are on these figures it would be sensible for us to just ask  
24 some questions on it and then you can conclude.

25 The figure you have not been taken to I think is figure 5.

26 A. Yes.

27 THE PRESIDENT: Just so I understand that, by "CQS accredited firms", is that who were at any  
28 time in the CQS?

29 A. Let me just -- sorry, I keep -- let me just double check.

30 THE PRESIDENT: No, no, take your time. I just need to understand.

31 A. Hang on, I will -- I just do not want to get this wrong, sorry. I think it is firms who were at  
32 the time CQS accredited. I am virtually certain that is the case but let me just be absolutely  
33 sure. Yes, it is.

1 THE PRESIDENT: At the time of renewal with you?

2 A. Yes.

3 THE PRESIDENT: So the renewal rate, namely, to take 2012, 89 per cent, of the CQS accredited  
4 firms who renewed -- this is what I am just -- I do not quite follow what the percentages  
5 are?

6 A. In each case it is the percentage of firms -- let us take the first two columns, if I may, and  
7 the first two rows. If a firm had an AML subscription with us at any point in 2012 and at  
8 any point in 2013, they would show as a 2013 renewal. Now, I am sorry to overcomplicate  
9 this, but there is a slight distorting factor here because you can imagine a firm that  
10 subscribed with us for one year only, in other words they subscribed in 2012 and the  
11 subscription came to an end in this 2013, they would count as having renewed because they  
12 would be in both years. I know that is ridiculous but that is just how the data works out. So  
13 that tends to exaggerate our renewal rate, but it is the same for every year and it is the same  
14 for CQS and non-CQS, so although it is a distortion, I don't think it is a distortion --

15 THE PRESIDENT: Yes, but are you saying that of the CQS accredited firms who were with you  
16 in 2011, 89 per cent renewed? Is that what you are saying?

17 A. Yes, that is right, on the basis of that.

18 THE PRESIDENT: So that is the non-CQS accredited firms who were with you in 2011, 72 per  
19 cent renewed?

20 A. Exactly, that is the point Ms. Smith made.

21 THE PRESIDENT: You are showing that a greater proportion of CQS accredited firms renew  
22 than of non-CQS accredited firms?

23 A. That is right and I think I make the point in my statement that is exactly what we have  
24 always found and what you would expect, in the sense that a conveyancing firm is by far at  
25 higher risk of an anti-money laundering issue than a non-conveyancing firm, so we have  
26 always found, and we have found in this data, if a firm takes conveyancing seriously, and  
27 therefore by definition is going to be in the CQS, it is much more likely to renew, all else  
28 being equal, than a firm which is for example a personnel injury firm which probably only  
29 ever subscribed by mistake, not realising that personal injury is not regulated by the  
30 regulations.

31 THE PRESIDENT: But what puzzled me about this is this, Mr. George. All firms have to do -- if  
32 they are in the relevant area, not a litigator, but a lot of firms have to do AML training.

33 A. That is right.

1 THE PRESIDENT: Not only conveyancing firms, but a large number of others and you have  
2 different modules for them, and CQS accredited firms at least from about 2013 onwards  
3 have to take AML training as part of the CQS from The Law Society. That is what you are  
4 complaining about.

5 A. Yes.

6 THE PRESIDENT: So would one not expect, given that they have to get and are paying for and  
7 getting AML training from The Law Society, which the non-CQS firms are not, it would be  
8 a lower proportion of CQS firms that would be renewing with you if the fact that they are  
9 tied to The Law Society is having an effect on their decisions? That is the problem.

10 A. There are two explanations there. One is it has been actually really quite touching how  
11 loyal some firms have been. A firm like A V Rillo features on the CQS marketing but they  
12 are long-standing subscribers to Socrates. They have stuck with us because they really like  
13 us, we have a fantastic relationship, so they simply say "Well we have to buy two lots of  
14 training", which they were not happy about, but that is great, they stuck with us.  
15 Bear in mind another factor which I refer to in this analysis, which is by only checking a  
16 relatively small number of firms, starting with G&H, I found no end of firms who were in  
17 the CQS and who had cancelled for a year or so, which is exactly what you would expect.  
18 They've only had to do The Law Society's training for one year, so they cancel for a year or  
19 so, so they never feature in this non-renewal data. They appear to have renewed because  
20 they for example cancel in January 2014, they come back to us some time the following  
21 year and they do not feature as a firm that did not renew. They did not, we missed a year or  
22 18 months' revenue but they were in both years and again it is just because this data is  
23 rubbish unfortunately.

24 THE PRESIDENT: Well, you could say we cannot draw any conclusions from this at all because  
25 of the feature you have mentioned, but insofar as it is relevant, this table suggests that being  
26 in the CQS, just looking at this table, does not mean a firm is less likely to renew, in fact  
27 they are just as likely to renew as if they are not in the CQS and the feature that you  
28 mention about dropping out and coming back and therefore not appearing would apply as  
29 much to the non-CQS as it does to the CQS?

30 A. No. Well, it would, but the phenomenon would not arise. The reason why a CQS firm is  
31 likely to cancel for a year is because for a year they have been forced to switch to an  
32 alternative provider. So that is not a factor which applies to a non-CQS firm.

1 If I may say so, if you look at the data for say 2012/2013, there was no Law Society tied  
2 training. It would not affect the data in either of those years at all. So what is it that made  
3 CQS firms particularly likely to renew, dramatically more likely than other firms? Well, it  
4 was because they were conveyancing firms, they were high risk firms. Suddenly you find  
5 in 2016 that differential has almost disappeared. Although they are conveyancing firms,  
6 although they are high risk, suddenly their renewal rate has dropped to about the same level  
7 as everybody else.

8 THE PRESIDENT: But in the two previous years it was still higher?

9 A. That is right, and bear in mind the 2016 figure is recording what happened in 2015, that  
10 firms had their subscription come up for renewal in 2015, which is why we have always  
11 said we found the effect in 2015, so therefore they were not on the shelf in 2016.

12 MR. ALLAN: Can I --

13 MS. SMITH: Just while we are on that point can I just confirm the 2016 figure you confirmed to  
14 me earlier, the figure that you have explained in paragraph 1(b) of your report --

15 A. Yes.

16 Q. -- is necessarily going to be lower than the figures for 2015 to 2016?

17 A. Yes exactly.

18 Q. So that could explain why both your CQS accredited firm percentage and your non-CQS  
19 accredited firm percentage have dropped in 2016.

20 A. That is right.

21 MR. ALLAN: Can I ask a related question and, Ms. Smith, you may be able to help with this as  
22 well, but I am reading your figure 5 with Dr. Majumdar's table 4 and in principle, if I have  
23 understood the bases upon which the two tables have been put together, the numbers should  
24 be identical, or nearly identical.

25 A. That is right.

26 MR. ALLAN: Indeed if we look at 2013, 2014 and 2015, within a small tolerance they are.

27 There is one or two percentage points difference. There seems to be a bit of a rogue number  
28 for non-CQS accredited firms in 2012, 72 per cent against 79 per cent, but when we come to  
29 2015/2016 there is a significant difference --

30 A. Because for that year he does not produce any data, Dr. Majumdar's figures only go up to  
31 2015, so when he has there in 2015 --

32 MS. SMITH: Perhaps Dr. Majumdar is better placed to answer this question.

33 A. I have checked against his data.

1 MR. ALLAN: I wanted to have Mr. George's view and then Dr. Majumdar's view, so maybe we  
2 can come back to that later.

3 A. I realised this was an issue and I checked against his data and ... maybe I am wrong about  
4 that, sorry. No, sorry, I was thinking of something else, I was wrong about that.

5 MR. ALLAN: You say in your introductory text "my figures are not the same", I assume you are  
6 talking about 2016, "and I have not had time to work out the reason for the discrepancy".

7 A. That is right.

8 MR. ALLAN: Do you have any further thoughts on this?

9 A. I have -- again we have done some analysis and there is a lot of firms where it is almost an  
10 art and not a science deciding how you classify a firm because, for example a merger, do  
11 you treat the new firm as the same as the old firm?

12 MR. ALLAN: I am sorry to interrupt you but if we were talking about an art rather than a science  
13 we might expect to see a similar order of magnitude discrepancy in 2013, 2014 and 2015, so  
14 to me this suggests something about the unreliability or quirks in the data for 2016.

15 A. As far as I am aware Dr. Majumdar's percentages reflect his data and I certainly know our  
16 percentages reflect our data and the difference I think comes from whether you say Coole  
17 Bevis post merger is the same as the firm that merged into Coole Bevis.

18 MR. ALLAN: But is he not drawing your data from your data?

19 MS. SMITH: But not the snapshot, it is a different set of data.

20 A. You have exactly the same data for 2016 as us, but it is a question of do you classify a firm  
21 as CQS or non-CQS, for example, and do you classify a firm that -- if, for example, a firm  
22 merges and therefore -- you could say that firm disappeared. Two CQS firms may merge,  
23 say a CQS and a non-CQS firm may merge, do you regard that as the CQS firm that closed  
24 down or the non-CQS firm that closed down, what do you regard as -- I am sorry to be so  
25 boring about this, there is also simple naming issues, is Knights 1759 the same as Knights  
26 LLP and sometimes it is hard to identify which firm is which.

27 There is a manageable number of those discrepancies. I have a spreadsheet of those  
28 discrepancies and it is just you have to go through and search against each firm and try to  
29 work out what is the best approach.

30 THE PRESIDENT: Are these calendar years that you have used?

31 A. For me I have used calendar years, yes. Dr. Majumdar -- yes, it is all calendar years, sorry,  
32 it is.

1 MR. ALLAN: That is actually one of the questions for Dr. Majumdar about his report, is when he  
2 speaks of 2015/2016, what is the year to which he is referring.

3 MS. SMITH: I will let him explain, but as I understand it he is carrying out the comparison, the  
4 notes to the table 4, he is carrying out a comparison between -- as I was trying to explore  
5 with Mr. George at the very beginning -- a comparison between lists for 2016 and 2015, so  
6 that is why there is the reference in his tables to 2015, 2016. But I think the questions are  
7 probably better put directly to Dr. Majumdar.

8 THE PRESIDENT: Yes.

9 Can I just ask one thing on this figure 5. On page 12 you make a comment in (a), 18(a), and  
10 you explain this point about a firm having renewed once because it runs over even if -- and  
11 so on.

12 A. Yes.

13 THE PRESIDENT: In your last sentence you say:

14 "I estimate the true average renewal rate is around 80 per cent."

15 I am not sure, average renewal rate for what? What is that referring to, this 80 per cent?

16 A. The true rate where a firm's one year subscription comes to an end and they either do or  
17 they do not take up a new subscription immediately following, so that would be the true  
18 renewal and that is I know something like 80 per cent because that is something we  
19 monitor.

20 THE PRESIDENT: What, 80 per cent for CQS/non-CQS?

21 A. Overall. Overall.

22 THE PRESIDENT: Unchanged over this period of five years -- what are you referring to?

23 A. A typical rate over the last couple of years. It has not varied that much over the years. It  
24 has varied a bit.

25 THE PRESIDENT: Yes, that is all I -- so typical rate overall in last couple of years.

26 A. Can I explain one more thing just -- because there are such weird factors that come up from  
27 this data, can I just explain one more thing?

28 THE PRESIDENT: Yes.

29 A. It is something I noticed last night. I just happened to look at a firm called BBH which was  
30 in the data and I was using it just to check did all the years match up correctly as I have  
31 been asked to confirm today and I noticed something really quite extraordinary, because  
32 that was a firm which had been a loyal subscriber to Socrates, it has taken our anti-money  
33 laundering service for many years, then when it came up for renewal in March 2015 it did

1 not renew and I do not think it was because they were upset with us because at the same  
2 time they took up a new subscription for accounts rules training and they said something  
3 about "Oh, we are getting webinars from an alternative provider", well, people use  
4 webinars and e-learning, I do not know.

5 I then checked and they had actually had to join CQS just a few months before. So this is  
6 exactly the sort of firm that you would expect to be featuring as part of our case: they joined  
7 the CQS, a few months later they failed to renew. But of course they appear in the 2015  
8 data as a renewal firm. They had a CQS subscription in 2015, so therefore in Dr.  
9 Majumdar's table they are a renewed CQS firm and in fact they inflated our proportion of  
10 CQS subscribers because apparently in 2014 we gained a CQS firm, but we did not. They  
11 joined the CQS and left us. So a firm that should have been on our side of the equation was  
12 actually put into the figures on their side of the equation. It is just -- I am sorry, but this  
13 data is -- if I was starting again we could do this so much better.

14 THE PRESIDENT: Yes.

15 MR. ALLAN: Can I just ask you a question about the other anomaly that you have concentrated  
16 on which is the person who drops out and then renews. Would you expect this to be a  
17 persistent feature, or is it one that will effectively drop away once CQS reaches full maturity  
18 and has a more or less stable number of continuing members?

19 A. That particular feature will be less -- will be considerably less dramatic as time goes by. I  
20 mean there will still be an anti-competitive effect for the reasons I have described in my  
21 statement, so the new firms joining the CQS and the people who joined the firm being  
22 required to take The Law Society product, but that particular feature of tending to lose a  
23 firm for a year or 18 months probably is largely transient.

24 MR. ALLAN: But in relation to the scale of that effect, firms of that kind, by your description,  
25 firms who drop out but then come back to you, so the issue we have to think about there is  
26 whether the dropout, for one year or thereabouts, is itself a sufficient anti-competitive  
27 effect?

28 A. Well, it is pretty anti-competitive on my bank balance.

29 MR. ALLAN: But the reason I am asking is viewing that from the future when it is a feature that  
30 is going to be diminish.

31 A. If they all came back -- the trouble is once you break that easy pattern of renewal where  
32 they have got their username, they have got their password, they have got the relationship,  
33 they have come up for their renewal, once you break that relationship the chances of getting

1       them back is always going to be dramatically reduced. I think I have found quite a large  
2       number of firms who nonetheless did come back, which is fantastic, it makes you just  
3       happy that they would do that and I now realise I need to go out and try and market to the  
4       other firms who didn't come back and see if we can get them back. But we have suffered at  
5       the very least a financial hit for the last year, 18 months and we have suffered a dramatically  
6       reduced chance of maintaining their subscription because when they come back they may  
7       say "Let us try a different subscriber", we do not have the inertia effect in our favour that we  
8       used to have.

9       MR. ALLAN: I understand the picture, thank you.

10      THE PRESIDENT: Have we finished?

11      MR. ALLAN: Can we just very briefly, I am sorry, look at revised figure 4 at the top of page 10.  
12         If we look at the row of non-CQS joined one of the issues about that row is that it seems to  
13         be quite volatile.

14      A.    Yes.

15      MR. ALLAN: You suffered a, relatively speaking, sharp drop in 2013, a further sharp drop in  
16         2014, then an increase relatively speaking, quite significant, in 2015. On what basis can we  
17         make some reliable prediction about a steady state ratio in relation to the 2014 figures?

18      MR. WOOLFE: Sorry, I am just rising because it again goes to the status of these documents.

19         They were supposed to be produced as factual analyses which then we would make  
20         submissions on and Dr. Majumdar has various qualifications and so on and gives evidence  
21         on --

22      A.    I have a really good answer.

23      MR. WOOLFE: It may well be the case, but I just wanted to check -- it will be a matter for the  
24         Tribunal, but I am just concerned that the whole tenor of doing this, these may be matters  
25         that will be better for submission when it has been prepared for submission and so on.

26      MR. ALLAN: My only problem with that, Mr. Woolfe -- I had not fully understood that, but my  
27         only problem with it is that a ratio is being put forward on a certain basis --

28      MS. SMITH: Submissions are being made in the report on that basis.

29      MR. ALLAN: -- and Mr. George is the man who can explain the basis to me.

30      MR. WOOLFE: Absolutely and I do not mean to interrupt your question, sir, I simply wanted to  
31         explain how I had understand the matter would be dealt with and certainly if there any  
32         questions that you want to clarify what has been done, by all means you should ask.

1 A. I am sorry to override my own barrister but I am really keen to answer this one, which is:  
2 that figure is actually not volatile, what is volatile is firms joining the CQS. If you look at  
3 the total number of firms joining year on year, so you have to add up row 1 and row 2, total  
4 firms joined, that is reasonably consistent. It is not great in 2016 actually but it is  
5 reasonably consistent around the 60/70 mark. So the reason we see non-CQS firms joining  
6 dropping sharply in 2013 is that is when firms were joining the CQS, so suddenly we --

7 MR. ALLAN: So what I need to do is to look at 2013/2014, 23, and compare that with 2014, 29  
8 and 40?

9 A. That is right so in other words what we are seeing --

10 MR. ALLAN: I have to read these two rows as an interactive sort of thing.

11 A. We have a reasonably consistent group of firms joining Socrates every year for our anti-  
12 money laundering service and as the CQS grows so inevitably the proportion of firms in our  
13 intake grows. They were probably all conveyancing firms -- or a lot of them were  
14 conveyancing firms before, they could not be in the CQS, the CQS had not really got going.  
15 Then that is what is so weird: as the CQS continues to grow from 2014 to 2016 our  
16 percentage intake who are in the CQS falls off a cliff.

17 THE PRESIDENT: Any more on this document?

18 MS. SMITH: Not on this document.

19 THE PRESIDENT: I think then we should break.

20 MS. SMITH: It will only be ten minutes on final questions which I would like to put to Mr.  
21 George.

22 THE PRESIDENT: Okay, we will carry on.

23 Cross-examination by MS. SMITH (continued)

24 MS. SMITH: Can I ask you, Mr. George, to move on to a different topic and just two final issues  
25 on your witness statement, which I hope given some various things that Mr. Woolfe said  
26 earlier today we can deal with relatively shortly. Put away bundle B and please take out  
27 bundle C.

28 A. Yes.

29 Q. Your second witness statement is in tab 3. If I could ask you to turn first to paragraph 28 of  
30 your second witness statement, bottom of page 10.

31 A. I have it.

32 Q. You say:

1 "The truth is the CQS is awarded solely on the basis of the firm ...(Reading to the  
2 words)... commitments it made when seeking accreditation."  
3 You have read Mr. Murphy's evidence on the accreditation and reaccreditation process, you  
4 have heard his witness evidence on that yesterday and this morning, you also heard your  
5 counsel say -- and I wrote it down -- it is no part of your case that The Law Society has  
6 been unduly lax in policing the CQS?  
7 A. Sorry, where do I say that?  
8 Q. That is what Mr. Woolfe said on your behalf this morning. He said it is no part of your case  
9 that The Law Society has been unduly lax in policing the CQS.  
10 A. Well, let me disassociate myself from that comment. I certainly would assert The Law  
11 Society has been astonishingly lax in policing the CQS. To an astonishing degree.  
12 THE PRESIDENT: Mr. George, I understand you have that view. It is not part of the case that we  
13 are deciding.  
14 A. No, it is not part of our case, exactly.  
15 THE PRESIDENT: You may adhere to that view but it is not something that is part of your case,  
16 it is not something that we will make a finding on.  
17 MS. SMITH: Fine, that is clear.  
18 Can I just ask you then to turn to paragraph -- the second of the two points -- paragraph 36.  
19 THE PRESIDENT: Paragraph 36 in this witness statement?  
20 MS. SMITH: Sorry, if you give me a moment, it may be that actually given that last indication I  
21 can leave this point, if you give me one minute.  
22 (Pause).  
23 Thank you, that is the end of my questions. Questions from THE TRIBUNAL  
24 THE PRESIDENT: Just two very short questions. One is the AML for law firms product you  
25 have, you say you've got 441 firms I think. Are any of them law firms in Scotland?  
26 A. We do have one or two actually, yes.  
27 THE PRESIDENT: Out of the 441?  
28 A. It will be a tiny handful. We have one or two more estate agents in Scotland where the  
29 jurisdictional issues are different.  
30 THE PRESIDENT: Yes, I am not asking about estate agents.  
31 A. I think the Scottish firms almost always have an English office as well, or do business in  
32 England.

1 THE PRESIDENT: I see. The other thing I just want to ask you, in your statement where you  
2 have just been, if you go to paragraph 59, on page 19, at the bottom of the paragraph:

3 "Socrates' AML for law firms service currently comprises these elements."

4 It is just the word "currently". On the four additional modules that you list at the top of  
5 page 20, the property lawyers module, how long have you had that?

6 A. Several years. I cannot remember. I think around about 2012, 2011. It would certainly  
7 have been one of those two years.

8 THE PRESIDENT: Perhaps that is something you could check and inform -- can you inform  
9 your counsel for tomorrow when it was introduced?

10 A. Yes, I will.

11 THE PRESIDENT: Any questions arising from that?

12 MS. SMITH: No, sir.

13 THE PRESIDENT: We will come back at 2.30 and we will see how late we can sit today.

14 MS. SMITH: Can I just ask the format for the hot-tub. Will we be going straight into the hot-tub  
15 with questions?

16 THE PRESIDENT: Yes. What we will do is we will have both of the experts sworn and in the  
17 box together. The Tribunal will lead the questioning. The themes are fairly obvious from  
18 the scope of their evidence. I will let you and Mr. Woolfe ask any supplementary questions  
19 after we have dealt with the upstream aspect and then we will go to the downstream and ask  
20 any supplementary questions. The questions of Dr. Majumdar on his analysis of the data  
21 will be quite separate, so then the concurrent evidence will cease, Mr. Williams will be  
22 released and Dr. Majumdar can be asked questions about his data, not through any form of  
23 hot-tub. Is that clear?

24 MS. SMITH: Yes.

25 THE PRESIDENT: With normal cross-examination that will not be led by us.

26 MS. SMITH: Yes, I understand that.

27 THE PRESIDENT: Very well, we will say 2.30.

28 Mr. George, you are released. I think you are going to provide a bit of information to your  
29 counsel for tomorrow, but you are released.

30 (1.40 pm) (The short adjournment)

31 (2.30 pm)

32 MS. SMITH: Sir, just one point of clarification before we start the hot-tub. Just to ensure that  
33 you are happy, Dr. Majumdar will have -- and I have checked this with my learned friend --

1 Dr. Majumdar is anticipating having in the witness box with him clean copies of his report  
2 and Mr. Williams' report and also a clean notebook and pencil so if points are made he can  
3 write down notes while he is in the witness box. He is not going to take in any notes that he  
4 previously prepared into the witness box, but just so you are happy with that.

5 THE PRESIDENT: Yes.

6 Can the two experts please go together into the box and both be sworn. DR. ADRIAN  
7 MAJUMDAR (affirmed) MR. SAM WILLIAMS. (affirmed)

8 Questioning of the experts by THE TRIBUNAL

9 THE PRESIDENT: Thank you very much. If you would both sit down and thank you on behalf  
10 of all of us for both your reports, but also your statement of matters on which you are  
11 agreed, which is very helpful. It is not something one can say in every case that I have  
12 done, but in this case it really has been a help and you have made a very conscious effort to  
13 clarify issues and we appreciate that. It means we can be much shorter this afternoon, you  
14 will be pleased to know.

15 The other thing I mention is that you will I am sure appreciate factual findings are for the  
16 Tribunal. It may be it will feed into conclusions or the approach that we derive from your  
17 economic analysis, but you in fact both draw factual conclusions in your reports from the  
18 evidence at various stages, we are not going to ask you about that because ultimately that is  
19 a question for us.

20 What I am proposing to do, with the help of my colleagues who will chip in as they wish, is  
21 to go through first the upstream market; secondly, dominance; and thirdly, the downstream  
22 market. Those are the three areas we are concerned with. There is no suggestion, no  
23 allegation of dominance in the downstream market, as you know, so we do not have to think  
24 about that.

25 I will start on market definition and the purpose of market definition here -- as you know, it  
26 is not an end in itself, you both understand that, it is relevant for the upstream market to  
27 determine whether The Law Society is dominant, which I think as economists you think of  
28 in terms of significant market power, and you are both nodding for the transcript, and for  
29 the downstream market we think it may be relevant so that we can assess any potential  
30 foreclosure effect, that is why we think it may be relevant, so we will look at that, but it  
31 seems to us there is no other reason in this case why we are concerned with market  
32 definition.

33 MR. WILLIAMS: Agreed.

1 DR. MAJUMDAR: Agreed.

2 THE PRESIDENT: You both agree with that.

3 The standard approach to market definition is the hypothetical monopolist test which takes

4 account of demand side substitution and supply side substitution. That is common ground I

5 think.

6 DR. MAJUMDAR: Yes.

7 MR. WILLIAMS: Yes.

8 THE PRESIDENT: So I start with the upstream market. You are agreed that the geographic

9 market is England and Wales, that is right?

10 DR. MAJUMDAR: Yes.

11 MR. WILLIAMS: Yes.

12 THE PRESIDENT: Mr Williams, you say it is the supply of accreditation to law firms providing

13 the residential conveyancing services, and Dr. Majumdar, you say it is a two-sided market,

14 as regards the solicitors' side of that market it is the facilitation of access to mortgage

15 lenders' panels.

16 DR. MAJUMDAR: Yes.

17 THE PRESIDENT: Do you have a copy of -- it is tab 5 of bundle B. Point 4 of your statement of

18 what is agreed is on the value of the CQS to solicitor firms:

19 "Access to mortgage lender panels is a major determinant of the value of the CQS to

20 solicitors firms."

21 So you are both agreed on that.

22 Mr. Williams, I wanted to ask you, even if it is a one-sided market as you define it, would

23 you agree that the question of the power of the lenders vis-a-vis The Law Society is relevant

24 when one is looking at competitive constraints that are important in the valuation of

25 dominance.

26 MR. WILLIAMS: I think not for the purposes of market definition, because I would suggest that

27 from the lenders' perspective that is much more a supply side issue, so from a market

28 definitional perspective I would suggest less so. From the perspective of thinking about

29 dominance then I think it depends. It depends on what you think the substitution options of

30 the lenders are and how quickly they could execute them.

31 THE PRESIDENT: Yes, and their power -- substitution options, but also just as a constraint on

32 what The Law Society can do may be relevant in --

1 MR. WILLIAMS: Arguably to a degree, but I think again that is a question very much more of  
2 supply side rather than of demand side, so again more about dominance rather than market  
3 definition.

4 THE PRESIDENT: Yes. I am saying assuming your market definition is right, the power of  
5 lenders is a still a relevant one to consider when we move on to dominance?

6 MR. WILLIAMS: So I think we are getting straight into here I think actually the important  
7 difference between whether it is a two-sided market or not, because I think really what that  
8 turns on is the extent of the interdependence of demand on both sides of the market. So I  
9 would accept there is some interdependence of demand, but not enough for this to be a two-  
10 sided market effectively, so it is a matter of degree.

11 THE PRESIDENT: I am skipping over whether it is a two-sided -- I am saying assume you are  
12 right, it is not a two-sided market, and take your market definition as the one that is correct,  
13 so we have gone over all that, then we move on to dominance and when we are looking at  
14 dominance, on the market as you have defined it the power of the mortgage lenders towards  
15 The Law Society as a constraint on their power in that market is still relevant --

16 MR. WILLIAMS: I think it is relevant to consider it and I would say from what I have seen it is a  
17 very -- in materiality terms it is a small issue.

18 THE PRESIDENT: Yes.

19 MR. WILLIAMS: That would be my view.

20 THE PRESIDENT: Dr. Majumdar, since the alleged abuse here that we are concerned with is a  
21 restriction on solicitors by requiring them to obtain their AML training and related fraud  
22 training and so on training from The Law Society -- that is the restriction that we have to  
23 consider -- even if it is a two-sided market, as you say it is, and assume you are right about  
24 that, it is not the definition of the -- what we have to look at is the definition of the product  
25 from the solicitors' perspective, because it is in that regard that we have to consider whether  
26 The Law Society has significant market power.

27 DR. MAJUMDAR: So I think we need to take into account the position of lenders as well and I  
28 think there are two reasons. Firstly on the market definitions side, the value of the  
29 accreditation to solicitors will depend, for example, on the degree of take-up by lenders and  
30 that will therefore impact on your definition of the competitive price and hence how one  
31 would conduct the SSNIP. So I think that is the first point on market definition.

1 On the second point on dominance I think if lenders act as a constraint on the ability of The  
2 Law Society to, for example, degrade quality vis-a-vis solicitors, then I do think that lenders  
3 should be taken into account and are important.

4 THE PRESIDENT: Yes. I put to Mr. Williams that lenders should be taken into account and  
5 have to be examined, but we are looking at the exercise of market power towards the  
6 solicitors, whether it exists, it is that side of the market we are focusing on in asking  
7 whether there is market power, is that fair?

8 DR. MAJUMDAR: Yes, I would agree that we should focus on whether The Law Society has  
9 market power over the solicitor side, taking into account the extent to which lenders act as a  
10 constraint.

11 THE PRESIDENT: Yes. So on that basis and where we have got to I am going to park market  
12 definition because we can come back to it, but our feeling is that it may not make a huge  
13 difference whether this is viewed as a two-sided market or not; what is really important is  
14 whether there is dominance and in that we have to take account of the lenders and the role  
15 they play, and one can have a very interesting academic discussion on definitions of two-  
16 sided market, whether this fits it or not, but it really is not going to affect the conclusion we  
17 have to come to on dominance and that is the only purpose of market definition in this case.  
18 You follow what I am putting to you.

19 Do you think that is a fair statement, Mr. Williams?

20 MR. WILLIAMS: I would agree, I would agree entirely with that and I would say with just one  
21 caveat, which is because again this is a continuum, the extent of a competitive constraint,  
22 both in terms of the law firm side and the lenders side. I suppose my view would be yes  
23 you should take the lender power into account, but what we are saying is -- or my view  
24 would be it is certainly not sufficient to claim a market definitional hurdle, but I suppose I  
25 think that is quite an important point to understand, so yes one should take it into account  
26 from a kind of let us say a system profitability type of view for example, but that must be  
27 seen through a lens whereby there are no demand feedback effects here, because lenders do  
28 not pay for the CQS.

29 THE PRESIDENT: Yes. I see that is why you say it affects market definition.

30 Dr. Majumdar, do you see why I am putting the market definition in that perspective, saying  
31 I do not think it is going to really alter the dominance conclusion?

32 DR. MAJUMDAR: I do, sir. I would agree that it makes sense to go straight to the question of to  
33 what extent are there constraints on The Law Society. I would highlight that the market

1 definition element does come into play if one is looking at what market shares are relevant  
2 when we consider constraints faced by The Law Society, so for example take-up by lenders  
3 I think would be a relevant piece of evidence to consider.

4 THE PRESIDENT: I see that, and we will come to that.

5 So I will go to dominance straightaway and dominance as you know, and I think one of you  
6 even cites a bit of one of the judgments in your report -- it may not be exactly the way  
7 economists always look at it, but it is the power to behave to an appreciable extent -- not  
8 completely, but to an appreciable extent -- independently of competitors, customers and  
9 ultimately consumers, and such power can be regarding the quality of the goods or service,  
10 is that right?

11 DR. MAJUMDAR: Yes.

12 THE PRESIDENT: You are both nodding. If you can say yes just for the transcript.

13 MR. WILLIAMS: Yes.

14 DR. MAJUMDAR: Yes.

15 THE PRESIDENT: Or it can be regarding price?

16 MR. WILLIAMS: Yes.

17 DR. MAJUMDAR: Yes.

18 THE PRESIDENT: It may ultimately be a legal question for the Tribunal, but I ask you from an  
19 economic perspective do you think it has to be power over both quality and price, or is it  
20 enough if it is power over one? Dr. Majumdar, do you want to answer that?

21 DR. MAJUMDAR: Okay, so the question is from an economics perspective to come to a finding  
22 of dominance would you expect to see market power over both quality and price, or would  
23 market power over price be sufficient to say there is substantial market power.

24 THE PRESIDENT: That is right.

25 MR. ALLAN: Price or quality, is it not?

26 THE PRESIDENT: Yes, it is price or quality, but it does not have to be both.

27 DR. MAJUMDAR: So my view would be that I would agree that there are a number of  
28 dimensions of competition, quality and price being typically important ones. I think one  
29 would have to take into account, if you like, the relative weights and so, for example, if you  
30 thought that quality was the most important factor for the scheme you might place greater  
31 weight on a finding that said there is no market power over quality than price, for example,  
32 but I think you can take both, I think it makes sense to take both of them into account.

1 MR. WILLIAMS: I would agree. I think it could be either so I do not think you need to find both  
2 to find dominance or market power here, because where there is the presence of substantial  
3 market power what precedents and history tends to tell us is quite how that manifests can  
4 vary from market to market depending on a number of things, so it might vary depending on  
5 which of those two things is more pertinent to driving consumer behaviour clearly in the  
6 relevant market, but also in terms of actually the strategic behaviour of the firm or firms  
7 with significant market power, so they may have some discretion as to whether they capture  
8 that market power through excess profit in the form of higher rents, or whether actually they  
9 choose to exercise that market power through reduced quality and they may have strategic  
10 considerations as to which of those they would rather benefit from. So I think it depends.  
11 So both are relevant but you do not need both to find dominance; it could be either.

12 THE PRESIDENT: Do you want to comment on that at all? Do you think that is a fair  
13 statement?

14 DR. MAJUMDAR: On the point that it could be either? Yes, I think if you -- as I said before, I  
15 think it is important to take into account both dimensions to work out which dimension is  
16 more important. If price was considered to be sufficiently important by the Tribunal then  
17 market power over only price would be sufficient to find substantial market power.

18 THE PRESIDENT: Yes. Of course it is the power to behave, the ability to behave to an  
19 appreciable extent, it does not have to be exercised.

20 MR. WILLIAMS: Agreed.

21 THE PRESIDENT: That is well established.

22 DR. MAJUMDAR: I would look at incentive as well, sir. I would say that any firm has the ability  
23 to raise price above competitive levels, the question would be, sir, whether it has the  
24 incentive to do so.

25 THE PRESIDENT: You say any firm has the ability to raise price above -- in a competitive  
26 market I had always understood the reason you cannot raise it above competitive levels is  
27 that customers would switch.

28 DR. MAJUMDAR: Exactly, so my point would be they would have the ability in the sense that  
29 they could increase the price if they wanted to, but they would not have the incentive to do  
30 so for the reason that you say, that they would switch.

31 THE PRESIDENT: Anything? You do not have to comment.

32 MR. WILLIAMS: No, that is fine.

1 THE PRESIDENT: So, Mr. Williams, sometimes of course dominance is carried out on the basis  
2 of a presumption from market share, but this case it seemed to me is a bit different because  
3 if the market was the way you defined it, of course The Law Society has 100 per cent of the  
4 market, and even if the market is as Dr. Majumdar defines it, unless we regard Lender  
5 Exchange and LMS as really competing in the two-sided market -- and that will be a matter  
6 for us, although it seems to me rather doubtful that they are direct competitors -- then  
7 equally as a two-sided product, CQS is the only product, so again you have the 100 per cent  
8 market share, but in neither case, it seems to me, would it be right simply to say "Well,  
9 therefore there is a presumption The Law Society is dominant" because someone could  
10 create a new product which is in a market all by itself, but if no one is interested in having  
11 that product it would be absurd to say they have significant market power. So --

12 MR. WILLIAMS: No, although I think -- sorry, sir. I think in this case actually I would disagree  
13 because the context here is the product and the service does already exist and a group of  
14 firms have been in my view compelled to acquire that product, and the 100 per cent market  
15 share, which is the position that I take, really turns on the point at which the CQS does  
16 become essential. So, yes, I am taking the view that under the status quo within the world  
17 we find ourselves in today it is essential from the point of view of law firms because as The  
18 Law Society there are seven quite big lenders mandating it and I in fact identify more, but I  
19 suppose my position is it would still be essential with less; that does not mean that The Law  
20 Society would always have a 100 per cent market share, so if you reached a point at which  
21 it was no longer essential and there might be competing services, then that would not be the  
22 case. Equally if the market functioned in a different way and if lenders said, when setting  
23 the conditions of their panel, that "You may have CQS or something else", then clearly you  
24 would not have a 100 per cent market share, it would be something lower than that because  
25 there would be a degree of choice, but that is not how the market functions today and I think  
26 that is the relevant reserves point here.

27 So I think the comparison to creating a brand new product in a brand new market for which  
28 there might not be demand, I would suggest here is not the right point of comparison, the  
29 reference point is where we are today, and the Law Society need not have 100 per cent  
30 market share, but the way it has designed and implemented this scheme means that in fact it  
31 does.

1 THE PRESIDENT: Yes. I suppose I was just taking a rather simplistic point that if say no lender  
2 had made it a condition for qualification for your panel for The Law Society's product, they  
3 would still have 100 per cent market share --

4 MR. WILLIAMS: I think they would have a zero --

5 THE PRESIDENT: -- but I think you would agree it would be somewhat absurd to say they had  
6 significant market power because probably no solicitor, very few would be interested in  
7 having it.

8 MR. WILLIAMS: So in that case, sir, I would say they would have a zero per cent market share.  
9 There would be no customers, there would be nothing to share. It is quite a binary -- I am  
10 not quite sure I agree with the characterisation in this case because I think the specifics of  
11 this context really matter here, so I think just comparing it to creating a new product that  
12 nobody chooses to buy -- well, you would not be before the CAT having a competition  
13 related inquiry in such an instance in any case.

14 THE PRESIDENT: I suppose what I am really getting at is that if one is going to -- in the context  
15 of what is happening in this market, when looking at dominance the question of to what  
16 degree the product is a condition for entry onto panels by mortgage lenders, or as you put it  
17 a moment ago, to what degree it is an essential product for a significant number of solicitors  
18 carrying out/active in residential conveyancing is the important starting point and not  
19 simply share of the market. That is really what you are suggesting, that that is the right way  
20 to approach it here, given the nature of --

21 MR. WILLIAMS: Yes, agreed, and I suppose what I am saying is in my view the evidence  
22 suggests that that is really quite binary, because once a lender as big as HSBC has signed up  
23 for this in my view it is implausible that any credible law firm offering a conveyancing  
24 service cannot take the CQS and therefore the market share becomes 100 per cent.

25 THE PRESIDENT: Well, that is the next step of saying when, but I am just trying as a technique,  
26 as a methodology, saying it is looking at when it becomes --

27 MR. WILLIAMS: Essential, yes, and I suppose to clarify my view would be that you cannot -- in  
28 Dr. Majumdar's report he shows for example the time series of the share of lenders over  
29 time --

30 THE PRESIDENT: I do not want to get to that point yet, I am just saying is that the right  
31 question for us to ask : "is it a must-have for solicitors and, if it is not initially, when does it  
32 become a must-have?" You may have different views about that, but is that the right  
33 question we should look at?

1 MR. WILLIAMS: I agree entirely and I suppose all I am saying is that the point at which market  
2 share becomes 100 per cent and dominance would be presumed, that would be the logic, but  
3 yes, that is the right question.

4 THE PRESIDENT: Would you agree that is a relevant question? Now, we have got to look at  
5 other things as well, but that that is a very relevant question for us to ask?

6 DR. MAJUMDAR: Yes. If I may repeat the original question, sir, I believe you said that it  
7 would not be appropriate to say that The Law Society has 100 per cent market share  
8 because it could be the case that one very small lender is the only lender that requires CQS  
9 accreditation, so I very much agree with that point. I think you are then suggesting that as a  
10 framework it makes sense to consider the extent to which there is a take-up of this scheme  
11 by lenders and then ask the question at what point does take-up become so great that one  
12 might term the scheme a must-have, but further we would still then consider constraints on  
13 The Law Society. I very much agree with that.

14 THE PRESIDENT: Yes. That is the approach that I want to take and ask that now: is it a must-  
15 have and if so when? Dr. Majumdar, in your report, which you have got I think loose but we  
16 have I think at tab 2 of bundle B, on page 20, at paragraph 62 and 63, you are asking that  
17 question, when is it essential, and you say, having set out the share of lending:

18 "In 2015/2016 the situation is more finely balanced. By the end of 2015 CQS  
19 coverage of residential lending nearly doubled compared to 2014 ..."

20 Your table a few pages back shows that it is 38 per cent and I think Mr. Williams has a very  
21 similar figure of 40 per cent, so same figure essentially:

22 "... and therefore being part of the scheme is likely to be more important at the end  
23 than during 2011 to 2014."

24 So you say it is more finely balanced and then you go on to say:

25 "But it may not be nonetheless an indication of market power."

26 I did not quite understand the explanation that you give in paragraph 63 as to why, even if it  
27 had then become -- and that would be a factual question for us -- a must-have, that does not  
28 point to market power. Can you explain that?

29 DR. MAJUMDAR: Yes, of course. So my thinking was in many respects I was trying to apply  
30 the framework that we have just discussed, so I asked myself the question at what point  
31 might it be that a conveyancing solicitors' firm really feels that to be credible they should  
32 have CQS accreditation. That to my mind, in and of itself, does not create substantial  
33 market power. I then asked myself the question once we have reached that point, to what

1 extent would there be constraint on The Law Society to exercise market power and I argued  
2 that I thought that lenders would be an important constraint on the exercise of market power  
3 with respect to quality over solicitors, and then I said as regards The Law Society's  
4 incentive to sustain prices above competitive levels, I did not see any evidence to suggest  
5 that that is something that they were actually doing.

6 THE PRESIDENT: So have I understood it correctly, you are saying that you can see that by the  
7 end of 2015 this can sensibly be viewed as a must-have product, but when you look at  
8 constraints it means it does not point to market power; is that right?

9 DR. MAJUMDAR: Almost. The term "must-have", if I may -- I do not quite like the term. I  
10 appreciate I used the term here. Certainly I think at that stage a solicitor firm would find it  
11 very important to be CQS accredited, given the percentage of lending that requires CQS  
12 accreditation. So that is what I meant, so one could not very quickly just dismiss  
13 dominance, one would then have to think very carefully about the constraints, which is  
14 what I went on to do.

15 THE PRESIDENT: Yes, it moves on to the constraints at that point.

16 DR. MAJUMDAR: Exactly, yes.

17 THE PRESIDENT: Mr. Williams, you have a sort of equivalent table to Dr. Majumdar's table 2  
18 and that is I think your table -- your figure rather.

19 MR. WILLIAMS: Figure 4, page 12?

20 THE PRESIDENT: Yes, figure 4, thank you. In your statement you have helpfully clarified why  
21 the difference is there, it is point 11 of your statement, and it is essentially that you have  
22 included Nationwide and Yorkshire, who, as one can see and I think you acknowledge, only  
23 made the CQS compulsory in the course of 2015.

24 MR. WILLIAMS: Agreed.

25 THE PRESIDENT: So would it be -- there are also cash buyers, but they are perhaps not so  
26 significant. So if -- and looking at the position in 2014 and asking is the relevant percentage  
27 that we should look at, would you accept it is Dr. Majumdar's percentage, namely what was  
28 the proportion in 2014?

29 MR. WILLIAMS: Yes. I think there are a couple of things to be really clear on. So I suppose the  
30 purpose of which I was presenting these numbers was slightly different to that of Dr.  
31 Majumdar's, which explains the different approaches. I hope that is clear.

32 THE PRESIDENT: Yes.

1 MR. WILLIAMS: So I accept that if you were trying to track shares of lending over time then it  
2 is correct to exclude those lenders.

3 Two important points to make I suppose. One is that again I would emphasise that focusing  
4 on these shares is not alone the measure of dominance for market power, I think it is far  
5 more relevant to think about what law firms are missing out on by not signing up and  
6 thereby my foregone conveyancing revenue analysis. The other point I would make on is in  
7 event is are these shares the correct one. Obviously you will see in my report that I identify  
8 a number of smaller lenders not listed in The Law Society's defence, as I understand it, and  
9 then I further go on using the Bank of England data to identify how big the long tail of  
10 smaller lenders might be.

11 Now, in order to be conservative in my analysis I have not taken is that into account but I  
12 note that it could be up to 11 per cent. In preparing for today's proceedings I did have a  
13 further moment of internet research just to see how easy it would be to identify further  
14 small lenders. I was quickly able to identify a further ten in addition to the four that I list  
15 below. That does not strongly change my views, by the way, other than to say it makes it a  
16 somewhat more likely that the long tail is relevant, but again my overall view is these shares  
17 are not the measure of when it is must-have; the relevant measure of when it is must-have is  
18 when you cannot afford to do without the accreditation and that is a much lower number  
19 than any of these would imply.

20 THE PRESIDENT: Yes, so we will break that down, starting first of all on what share of lending  
21 one uses. As I understand it you accept it would be the share in 2014 --

22 MR. WILLIAMS: (Nods).

23 THE PRESIDENT: -- and of course I appreciate you put it in this figure for a different purpose.  
24 So Nationwide and Yorkshire would come out on what you are saying. As you said in your  
25 report there are some smaller lenders that come in, we do not know the precise figure, but  
26 there is a certain number and they might cumulatively add up to a bit and is that -- that is a  
27 particular point about the small lenders, you would add them on, is that correct, to get the  
28 most accurate figure?

29 DR. MAJUMDAR: Well, I think if it is established that there are small lenders that I have not  
30 taken into account that require CQS accreditation, I would add them in. Equally I would  
31 note that my figures do not take into account the cash transactions that Mr. Williams rightly  
32 identified which would bring them down by 3 to 5 percentage points, so I would imagine  
33 we would probably end up somewhere similar to my 38 per cent figure.

1 MR. WILLIAMS: One further point of detail, if I may, sir, just on that. While I agree with the  
2 principle that one must take into account when lenders started to mandate the CQS, again it  
3 seemed to me from some research that Nationwide, although they would come out from  
4 2014, there was evidence in the public domain that they were already taking CQS  
5 accreditation into account by that point, as to whether to allow -- so they might not have  
6 been mandating it, but it was already -- this is in the public domain -- it was already a factor  
7 they were taking into consideration. I have not checked to see whether other lenders were  
8 doing similar things.

9 THE PRESIDENT: I do not think you, with respect, can give that evidence now, but we did hear  
10 evidence that even when it is not a mandatory requirement it is something that other lenders  
11 take into account, along with a whole lot of other factors. It is not completely irrelevant.

12 DR. MAJUMDAR: Sir, if I --

13 THE PRESIDENT: Just one moment. So one would take those out, you might put some other  
14 things in, you yourself acknowledge there were the cash buyers.

15 Now, can I ask you, if it is only 23 or 25 per cent in 2014 of the lending market, but  
16 includes some big lenders, I was just trying to understand, Dr. Majumdar, why you say it  
17 would not be something that most firms active in residential conveyancing would feel they  
18 need to have?

19 DR. MAJUMDAR: So I think --

20 THE PRESIDENT: Leave out the forgone revenue point, we will come back to that, just on your  
21 approach, which is look at share of lending, why does it have to be up towards 40 per cent?

22 DR. MAJUMDAR: I was thinking about really industries in general, so for example if I was a  
23 retailer of training shoes I could be a credible retailer of training shoes without having  
24 access to the entirety of the market. I think you can remain a credible supplier without  
25 saying "I can sell every single product on the market". I think then there must be come a  
26 point when the balance tips and you start not to look credible. So to my mind I think at 20,  
27 25 per cent then that did not seem to my mind a large enough coverage to call the scheme a  
28 must-have.

29 I think I would also add that when we think about market power, market power is the ability  
30 to sustain prices above competitive levels and I would argue that the price is probably  
31 substantially below the competitive level at the moment, so the fact that we have a high  
32 take-up and we have firms thinking "this is excellent value for money" does not suggest to

1 me that the scheme is a must-have, it just says to me that the scheme is offered at a very low  
2 price relative to the benefits that it offers.

3 THE PRESIDENT: We will come back to price.

4 DR. MAJUMDAR: Okay.

5 THE PRESIDENT: I struggle with the analogy between a shoe retailer and a solicitor, because a  
6 shoe retailer is selling shoes and you go to a shoe shop, you know they carry certain lines, if  
7 you want other brands you might go to another shop. No one expects every shoe shop to  
8 carry all the brands. But a solicitor is not selling mortgages, a solicitor is doing the service  
9 of conveyancing houses and is there not perhaps a difference that a consumer goes to the  
10 solicitor to handle the sale or purchase of their house and if it is a purchase does not expect  
11 to be told "Well, we can only do it if you have your mortgage from one of these people, but  
12 if your mortgage is from those people we cannot act for you"? Is there not a difference in  
13 those markets of a rather fundamental kind?

14 DR. MAJUMDAR: Not necessarily, in the sense that if you had a very strong preference for that  
15 solicitor you would for sure be disappointed if the solicitor said "I am sorry, I cannot deal  
16 with you with respect to the HSBC mortgage or you will have to pay us a second fee and  
17 then I can deal with you for just part". But I do not think that necessarily makes it a must-  
18 have. I would acknowledge and I would accept that not being able to deal with mortgages  
19 of a certain lender would mean that that solicitor would disappoint certain customers, I  
20 would certainly acknowledge that point.

21 THE PRESIDENT: Yes. Do you want to comment Mr. Williams?

22 MR. WILLIAMS: Sir, if I may. I think when you think about the process of (a) purchasing a  
23 mortgage in the first place and then procuring conveyancing services as I am sure many of  
24 us in this room will have done, the process of choosing a mortgage in the first place is itself  
25 quite a long process that requires consumers to invest a considerable amount of time and  
26 effort, so the idea that having for example an agreement in principle that you might go to a  
27 solicitor to procure conveyancing services only to be told that they cannot serve you in  
28 relation to that mortgage provider, the idea that that would cause you not to purchase  
29 conveyancing from that solicitor seems to me to be fairly unlikely. I am not saying it would  
30 never happen and perhaps if you were particularly loyal to that solicitor and your family had  
31 used them for a long time you may indeed switch mortgage providers as a result of that  
32 conversation, but I will have thought that would be the minority of instances and a small  
33 minority at that.

1 THE PRESIDENT: Well, we have evidence in fact from two solicitors, so we can consider the  
2 situation there.

3 You take the view I think, Mr. Williams, that even one significant lender -- I do not know if  
4 you say it is the case of someone like Aldermore Mortgages, but in fact one of the early  
5 ones was I think Santander -- Dr. Majumdar has helpfully set out the dates on which they  
6 did all this, page 15. So HSBC was, of the bigger ones, one of the first, in 2012; Santander  
7 early 2013.

8 Is it your view, Mr. Williams, that when that happened that made this an essential, or highly  
9 -- an important product for a solicitor to have from that point?

10 MR. WILLIAMS: My view is yes, it almost made the CQS becoming a must-have inevitable and  
11 I believe that Dr. Majumdar's report, paragraph 60, page 18, and particularly the first bullet  
12 immediately following that, more or less makes this point. So he says obviously at  
13 paragraph 60:

14 "I note that high take-up amongst lenders does not in and of itself indicate substantial  
15 market power. In line with the view that the Law Society has maintained a high take-  
16 up rate amongst solicitors by offering a good scheme as opposed to a must-take  
17 scheme is the following evidence ..."

18 Then bullet 1 reads:

19 "Take-up was relatively high, above 50 per cent, even when The Law Society's  
20 coverage of residential lending was low."

21 So from that I would infer that in fact you do not need a high coverage for it to become a  
22 must-have, in fact he was saying that it was at 50 per cent, "it already was must have in my  
23 view", so I think that point is well made in his report.

24 MR. ALLAN: But is it logical to infer from the fact that solicitors choose to take a particular  
25 product that they are only doing so under constraint?

26 MR. WILLIAMS: Sir, I think I would answer that question differently if the way in which the  
27 CQS works and the way in which lenders engaged with it was much more along the lines  
28 of: to be on our panel you may have CQS accreditation or one of the following. In a world  
29 where that is not the way that it functions then I think it is hard to characterise it as a  
30 fantastic product for solicitors, rather than simply something that you have -- if you want to  
31 be on HSBC's panel, clearly there is no alternative, so I think it is quite hard to characterise  
32 it as a good product when seen through that lens.

1 MR. ALLAN: Can I also think about the position with HSBC. Is there a danger that our view of  
2 the importance of HSBC is coloured by the fact that we know that the number of lenders  
3 mandating CQS expanded? If the steady state world was that HSBC was the only lender  
4 that mandated CQS, would we in that circumstances think it should be characterised as a  
5 must-have product for solicitors generally?

6 MR. WILLIAMS: Sir, I think that is a good question, I think that goes to a more fundamental  
7 issue about at what point solicitors exercise constraint and I suppose in my view to exercise  
8 the constraint one would more or less have to totally usurp the CQS. So to your point, so  
9 imagine that is how it played out and nobody else signed up after HSBC, then clearly the  
10 scheme at some point would probably most likely fail if you did not get some kind of  
11 momentum behind it, but almost the way I would characterise that is it is quite an all or  
12 nothing type arrangement that The Law Society has constructed here by definition.  
13 So again, yes, I might imagine that the scheme would not necessarily persist with just one  
14 lender, albeit with HSBC it would appear to be so valuable to solicitors, I still think that is a  
15 matter of degree and conjecture, so I cannot really comment. But I think it turns on -- again  
16 it just really illustrates I think the binary nature of the scheme that has been created, so I  
17 think one would have to usurp the CQS really to replace it and that might require a high  
18 degree of coordination amongst lenders, just as there was coordination here between The  
19 Law Society and lenders in the first place to establish the scheme.

20 DR. MAJUMDAR: If I may comment? I disagree with the idea that simply because you offer  
21 substantial value relative to the price, that that makes a product a must-have. If one  
22 proceeded on that basis then any time a firm offered a product at a value greater than the  
23 price we would say "Oh, it is a must take product", so I strongly disagree with that  
24 approach.

25 I think that is a very important point: we need to -- and the interesting thing about lender  
26 take-up, when it grows, if we think about what the competitive price would be, but we are  
27 raising the quality of the scheme and actually that means that even in a competitive market  
28 the price would be substantially greater. So actually thinking about this question of how  
29 would solicitors react if prices went up yet further I think is a very difficult question. I  
30 appreciate I have probably gone on to the next point on constraints there, but I just want to  
31 really emphasise the point that simply offering a value that is greater than the price does not  
32 make a product a must-have product.

1 THE PRESIDENT: It might make it popular but it does not make it must have, that is the point  
2 you are making.

3 DR. MAJUMDAR: Absolutely.

4 THE PRESIDENT: Can we move on to the forgone revenue argument which you advance, Mr.  
5 Williams, which is I think how you characterise it as must have, which is in your report at --  
6 we have already gone to paragraph 54 and following and you explain how you make your  
7 calculations and say on that basis you think it is something that became inevitable that a  
8 solicitor has to get. Would you like to -- we have read the argument, but Dr. Majumdar  
9 would you like to comment on that approach?

10 DR. MAJUMDAR: On the approach of calculating forgone revenue?

11 THE PRESIDENT: Yes.

12 DR. MAJUMDAR: So I understand that Mr. Williams has identified a typical amount per firm  
13 of, if you like, the value of the entire market and essentially said if you have seven major  
14 lenders that equates to about £36,000 worth of value, whereas with one major lender the  
15 value is about £11,000 in the case of Santander. As an approach to estimating forgone  
16 revenues I think that is a reasonable approach, sir.

17 THE PRESIDENT: I think Mr. Williams then uses that to say that if the forgone revenue is such  
18 that it makes commercial sense to buy it, or to subscribe -- or seek accreditation is perhaps  
19 the more accurate term -- then it becomes an essential product, is that a fair summary of  
20 what you say?

21 MR. WILLIAMS: Yes, so I have used it here through the lens of market definition of course, so I  
22 am comparing the forgone to -- but effectively yes, you can also think about it as being an  
23 important piece of evidence for the assessment of dominance, clearly.

24 There are a number of conservative assumptions within the analysis that I have intentionally  
25 made, some of which I have alluded to. So of course this does not take into account the  
26 small tail -- the long tail rather of smaller lenders. As I think we have heard earlier, there  
27 may of course be related ancillary revenues that firms get from selling follow on work.  
28 Nor does it take into the fact that even lenders who do not mandate the CQS may at least  
29 consider it as a requirement. Finally we heard earlier there was some discussion about  
30 whether as a matter of fact insurance premia might be lower for CQS firms. I cannot  
31 comment on that because obviously it is not a feature of my analysis.

32 The final conservative assumption I have made in that is when undertaking the SSNIP  
33 analysis I report the 10 per cent price increase as being £85, which is what I am comparing

1 it to. That is based on the initial accreditation charges that The Law Society levies. If you  
2 look at the reaccreditation price, actually when you are thinking about substitutability as of  
3 now for firms that have already subscribed, probably it is more relevant, then the number  
4 would be lower at £47 I think or is something like that, but all I am really attempting to  
5 demonstrate is I have attempted to be conservative where I have had some discretion.

6 THE PRESIDENT: Yes. I know you used it here for market definition, but when I was asking  
7 you about dominance you said you would say even if one lender mandated it, it would be  
8 essential because of the forgone revenue approach. It is a reference to this, is it?

9 MR. WILLIAMS: Yes, it is, I agree with that, and I suppose what I am emphasising is that what  
10 matters is the world we face today, so at the moment there are seven big ones, plus  
11 potentially some more. So the extent to which -- when I structure my argument it is around  
12 these three questions in turn: the extent to which the substitutability of law firms increases  
13 as the number of lenders mandating CQS reduces is secondary to the first question. The  
14 first question is do they have choice as of now and I suppose what I am saying is no they do  
15 not, ergo The Law Society is dominant. This is then essentially a thought exercise  
16 supported with factual evidence and analysis to illustrate what would happen if you  
17 believed there was, as Dr. Majumdar argues, a constraint from lenders, and what this tends  
18 to show is it would not make very much difference at all.

19 THE PRESIDENT: Yes. I have to tell you we are not, unfortunately, simply concerned with the  
20 position now, would that we are, but even if we were to find, as Socrates submits, that The  
21 Law Society was dominant now, we have to consider at what point did it become dominant,  
22 so we have to look back at the history going back to about 2013 I think is when this product  
23 got underway. So we have to look at 2014 and indeed probably a year before, so that is  
24 why the earlier years are important.

25 So Dr. Majumdar, do you think that forgone revenue approach an appropriate when asking  
26 was it an essential product -- by essential I mean that commercially no sensible  
27 conveyancing specialist would do without -- even though only 23 per cent of lending was  
28 covered by it?

29 DR. MAJUMDAR: The short answer is no and it relates to the point that I made before that I  
30 think that simply because a scheme offers what I would say on this basis is excellent value  
31 for money, yes that will drive take-up by solicitors but it does not mean that the scheme is a  
32 must-take, because otherwise we are in a world where we say any time a firm offers a very  
33 good deal and gets a large take-up as a result of it, there is a risk it could be found dominant.

1 I think this is interesting evidence and it suggests, for example, that The Law Society is  
2 arguably pricing below competitive levels and certainly very keenly. So Mr. Williams'  
3 evidence indicates that the average law firm, average conveyancing solicitor firm pays £850  
4 for a product that is worth £36,000, more than 40 times as much, so yes it is good evidence  
5 that this is very good value for money, but it does not strike me that it is evidence that this  
6 means it is a must-have product.

7 MR. WILLIAMS: If I may, I think he just misrepresented that point slightly. So obviously this is  
8 the revenue that a law firm earns on average over a course of a year from all conveyancing  
9 work, so I suppose the context is it is kind of -- I am not sure that I would characterise that  
10 as good value once you have effectively given the firm no choice because the counterfactual  
11 to the firm is simply not having that money at all, which is, for example, why monopoly  
12 markets in regulated utilities, the regulator sets the price because they do not believe that the  
13 firm will provide good value without that.

14 THE PRESIDENT: Yes, you are not saying the cost is £850, the revenue is £36,000, difference is  
15 the profit, those are all the costs of the firm, you are saying that it is the revenue you will  
16 attract.

17 MR. WILLIAMS: Agreed.

18 THE PRESIDENT: Do you want to respond to the other point that was made about showing that  
19 it shows it is worth having because it is a good deal, but not that it is a must-have?

20 MR. WILLIAMS: There is very little evidence that I have seen to say really very much about that  
21 at all. So Dr. Majumdar has asserted that he believes the price is below the competitive  
22 level. I do not see any evidence that tells me what the competitive level would be  
23 particularly, or therefore any evidence on which I could reasonably draw a view that it is  
24 below the competitive level. Equally nor am I arguing that it is above the competitive level,  
25 I am simply saying I have nothing before me that I could particularly draw any strong  
26 conclusions from. The only thing remotely of relevance to that is the profit schedule that  
27 The Law Society has provided. In my view there are many problems with the costs  
28 information provided within that, although in theory the revenue schedule should be  
29 accurate.

30 There is enough, if you piece together the various bits of evidence that you do have access  
31 to, in my view to form a view that it is more likely than not that this has been quite a  
32 lucrative proposition of The Law Society and I would be happy to point to that.

33 THE PRESIDENT: That is a different point I think.

1 MR. WILLIAMS: But I think it is related to the question of whether it is good value or not,  
2 because to make that point Dr. Majumdar is asserting that price is below the competitive  
3 level and I am saying that there is no evidence on which you could form that view in my  
4 opinion.

5 PROFESSOR WILKS: Prices have actually fallen over the period, have they not, from 60  
6 to 40 to 35?

7 MR. WILLIAMS: For the CQS? Yes, that is my understanding.

8 MR. WOOLFE: Sorry, 60, 40 to 35, that is training --

9 PROFESSOR WILKS: That is for the particular training module, not the total sequence.

10 DR. MAJUMDAR: Sorry, may I make a comment on the competitive level point?

11 THE PRESIDENT: Yes.

12 DR. MAJUMDAR: Thank you.

13 I think there are two pieces of evidence that are relevant to the competitive level. The first  
14 is the profitability schedule. I acknowledge that that is not something I have analysed  
15 forensically. That indicates that The Law Society is not profitable, as Mr. Smithers seemed  
16 to confirm yesterday.

17 The second perhaps more important evidence is that when quality goes up the competitive  
18 price goes up as well and what happens when more and more lenders join the scheme is that  
19 quality goes up, the quality from the perspective of solicitors goes up, and the price has not  
20 moved, so we have seen quality go up very substantially as more lenders have taken up the  
21 scheme, joined the scheme, but the price has not moved, which suggests to me it probably is  
22 below the competitive level.

23 THE PRESIDENT: Yes. If a firm is pricing above the competitive level that can be of course an  
24 indicator of dominance, but it does not have to price -- the contrary does not apply, namely  
25 the fact that it is not pricing above the competitive level does not establish that it is not  
26 dominant.

27 MR. WILLIAMS: Agreed, so it is back to what we were talking about earlier in terms of --

28 THE PRESIDENT: It depends whether it is going to be seeking maximum profit or not.

29 DR. MAJUMDAR: Yes. It is a question to me, so on that point two comments. In principle I  
30 agree with you that simply because you price below the competitive level does not, in and  
31 of itself, mean you could not be dominant. That said, I think it indicates that there are  
32 incentives that the firm faces that must be preventing it, or certainly substantially deterring

1 it from exercising market power over price and I think those would be important  
2 considerations in a dominance assessment.

3 MR. ALLAN: But are those considerations rather particular in this instance where the  
4 undertaking setting prices is a members association, so that there are a different range of  
5 incentives from the ordinary self-standing commercial undertaking?

6 DR. MAJUMDAR: So I think there are three incentives -- sir, let me pick up on that point. So I  
7 think the first is -- sorry, three factors that feed into the incentive discussion. I think the  
8 first would be the extent to which lenders care about price. There I would acknowledge  
9 they probably care more about quality, but I would say that there is a point at which they  
10 would be concerned about prices going up and I think Mr. Smithers indicated that that  
11 partly could be an issue of trust or equally it could be that take-up of the scheme started to  
12 fall.

13 My second point would be -- and I think this picks up on your point, sir -- that the -- if I  
14 understand one of the aims of the scheme was to allow high street and smaller  
15 conveyancing firms to access -- or facilitate their access to panels and therefore I think in  
16 terms of affordability I would expect The Law Society takes into account the smaller firms,  
17 the high street solicitors and hence that is a constraint on, if you like, their incentive to  
18 increase the price.

19 Thirdly, I would acknowledge there is probably something about The Law Society not  
20 being a profit maximising firm which would also deter it from increasing prices, I would  
21 accept that point.

22 MR. ALLAN: Thank you.

23 THE PRESIDENT: In fact the evidence of The Law Society is that they are subsidising the price  
24 from other parts of their operations, the practising certificate fee. That is the evidence we  
25 have been given. The fact that the lenders at a certain point might be concerned about  
26 price, but they have not -- as we have heard the evidence they have not been involved at all  
27 in pricing or seemingly expressed any interest in all these discussions on pricing, does that  
28 suggest that they are not acting from a price perspective as a significant constraint?

29 DR. MAJUMDAR: I would -- well, to the best of my knowledge they are actively engaged in and  
30 having regular discussions with Mr. Murphy, certainly as regards quality, so I would  
31 acknowledge that they are more focused on constraining quality than on price. I do not  
32 know the extent to which they are focused on price, but, as I say, I would acknowledge they  
33 are more quality focused.

1 THE PRESIDENT: Yes, well, we will have the evidence which we can assess.

2 If we then turn to their constraint on a separate point, on quality, which is the point that you  
3 make, Dr. Majumdar, you say because they are a strong constraint on quality that displaces  
4 market power, even at the 50 per cent level. I think you said 50 per cent here does not  
5 indicate significant market power. Would you like to comment on the quality of the  
6 constraint point, Mr. Williams?

7 MR. WILLIAMS: Yes, I would. So it seems to me that the quality constraint from the  
8 perspective of lenders is relatively weak, so I think the outside options for lenders that The  
9 Law Society has cited appear to me to be far more complements than they do substitutes, so  
10 that is the first thing I would say.

11 In relation to the Lender Exchange, I obviously reviewed its website and refer to it --

12 THE PRESIDENT: You do not have to go into the facts. You say the outside element are --

13 MR. WILLIAMS: They appear to be more as complements to me and therefore the quality  
14 constraint is low.

15 I think that is further evidence -- in fact there was some discussion of this piece of evidence  
16 earlier in proceedings today, so from the HSBC meeting that I think we were -- there was  
17 some discussion as to what the date was. There is some relevant evidence within that. So  
18 in fact the date of that is May 2012, that is Smithers 58. Smithers 57 provides us with  
19 information as to the date. The reason that is relevant is that HSBC made a specific request  
20 of The Law Society that they would have liked the CQS to have had as a feature annual  
21 visits to every site and The Law Society said no. So in terms of a quality constraint, so that  
22 is a major lender, the first lender that you are attempting to sign up and apparently HSBC  
23 did not in that particular instance, for example, have sufficient influence over The Law  
24 Society to persuade it to make site visits a core part of the CQS.

25 THE PRESIDENT: Is there not a different kind of quality constraint, not switching to a  
26 substitute, but saying "Well, if you degrade the quality we will not use this criterion for  
27 panel membership"?

28 MR. WILLIAMS: Agreed, but you need something else instead of the CQS to allow you to do  
29 that, so therefore you do as a lender -- for that threat to be credible, for you to have  
30 bargaining power in that situation over The Law Society, what is your outside option? They  
31 do not appear to have very good ones.

32 THE PRESIDENT: Except we know some lenders still today do not adopt it as a criteria.

1 MR. WILLIAMS: Agreed, but I suppose my interpretation of that is there appear to be varying  
2 needs -- so you see that in any market, so people just prefer to buy different things, it does  
3 not necessarily mean they are regarding them as substitutes. So the fact that the Lender  
4 Exchange, for example, offers discounts to people that buy the CQS strongly points to that  
5 being a complement. So Arsenal would not offer discounted tickets to Spurs fans, for  
6 example, but you might for a complementary good, such as the purchase of a meal on  
7 match day with something else for example, but you would not offer discounted prices for  
8 things that you were competing against.

9 MR. ALLAN: I am sure competition between lenders is intense, but to analogise it to Arsenal and  
10 Spurs is probably stretching the point.

11 MR. WILLIAMS: Yes, sorry.

12 But just to illustrate that you just would not typically expect to see that kind of behaviour,  
13 and indeed The Law Society has, as I referred to in my report again, explicitly made it clear  
14 that it sees the Lender Exchange as a different service. It is not a competitor, it is an  
15 inferior service that does not fulfil the needs of CQS. That appears to be the position of The  
16 Law Society taken in the past.

17 THE PRESIDENT: Dr. Majumdar, do you want to comment?

18 DR. MAJUMDAR: Yes, I do. I disagree with Mr. Williams. My understanding from the witness  
19 statements, in particular Mr. Smithers, is that a main reason for this scheme is to provide  
20 quality assurance to lenders following a period when lenders had lost confidence in  
21 solicitors. So given that there is regular discussions with lenders and given that actually a  
22 main aim of the scheme was to provide lenders with quality assurance, it strikes me that  
23 lenders would have it very much in their interest to make sure that the scheme is doing that  
24 and hence they would monitor the quality side closely and they would have the incentive  
25 indeed to do so.

26 Secondly, Mr. Williams is talking about alternatives. My understanding is really that  
27 lenders control access to their panels, so one does not need to talk about bringing in LMS,  
28 or the other panel managers, lenders control access to their panels. The point is prior to this  
29 scheme they decided access to their panels could be based on the number of prior  
30 transactions, or size of firm, or some other characteristic. If they decide that the scheme is  
31 not relevant to them, it does not provide quality assurance to them, my understanding from  
32 Mr. Murphy's and Mr. Smithers' witness statements is that lenders then would say "Well,  
33 we will drop the scheme, we are not interested, we will develop our own criteria for access

1 to our panels", and that seems to me an important constraint because as soon as lenders stop  
2 finding the scheme valuable then one would imagine that solicitors stop wanting to be  
3 reaccredited.

4 MR. WILLIAMS: Can I -- may I come in?

5 THE PRESIDENT: Yes.

6 MR. WILLIAMS: So I would agree that clearly they have an incentive, as Dr. Majumdar says,  
7 the lenders, to ensure that it is a high quality scheme and therefore that might have a degree  
8 of constraint. What he is describing though which is then effectively reinstating their own  
9 criteria, they could do, but I would characterise that again as a form of supply side  
10 constraint and therefore it would take time to do.

11 So if you have your own criteria in place, so that is number of firms, number of  
12 transactions, complaints against the firm that have been made, etc, and you choose to switch  
13 to the CQS, clearly turning those criteria off and all the processes around evaluating them is  
14 quite an easy thing to do, but switching back the other way, you would then have to go  
15 through the process presumably of deciding what the criteria are, if you had a team that  
16 were in place within your bank or organisation that were applying those criteria and running  
17 that process, that would need to be put back in and I think I make a reference to a  
18 presentation by the mortgage fraud control manager at Lloyds Banking Group that I was  
19 able to find that kind of set all of that out, so yes it might be a constraint, but it is a supply  
20 side constraint that would take some time to put in place and therefore in my view a weak  
21 constraint.

22 THE PRESIDENT: Yes. Any comment on that before we move on?

23 DR. MAJUMDAR: Yes. Briefly, access to panels is not only about CQS, there are a number of  
24 criteria that solicitors need to meet, so lenders already have processes in place, I would not  
25 expect it to be a major investment for a lender to say "I will not use CQS, I will use  
26 alternative criteria".

27 THE PRESIDENT: Yes. On the question of new entry, Mr. Williams, you say in your report,  
28 paragraph 78, which is on page 28, and again this is in the context of market definition, but  
29 halfway down the paragraph:

30 "In order to provide an effective competitive constraint ..."

31 Then you say:

1 " ... sufficient to affect one's views on market definition, such entry or expansion  
2 would need to be able to occur within a short time, typically less than a year, and  
3 would need to be substantial in terms of its impact."

4 You say that here in your section on market definition. Would you say it is the same test if  
5 one is looking at it in terms of a constraint to preclude significant market power?

6 MR. WILLIAMS: So typically when thinking about these things I think the distinction between  
7 that issue for market definition and that issue for dominance and market power is really the  
8 time constraint issue, so my comment here is specifically about typically being less than a  
9 year, so I definitely do not think that it could access a constraint that quickly.

10 The extent to which it could be a constraint when thinking about the issue of market power  
11 and dominance and how quickly is a bit more speculative, but I come back to I suppose as a  
12 point of reference the time that it took to establish and set up the CQS in the first place.

13 Again that --

14 THE PRESIDENT: Sorry, can I interrupt you. I am just trying to -- before looking at the answer,  
15 I want to make sure what the question is. So what is the test -- that is your test when you  
16 are looking at market --

17 MR. WILLIAMS: Sure.

18 THE PRESIDENT: What would you say is the test when you are looking at competitive  
19 constraint, sufficient to rebut dominance?

20 MR. WILLIAMS: So I think it would have to be sufficient for them not to be able to exercise  
21 their market power and kind of the -- you might think about -- I suppose what I am saying is  
22 the time constraint, ie to be able to do it quickly, is perhaps less important when thinking  
23 about the dominance and market power issue and that would be the distinction. There is a  
24 matter of judgment to apply in terms of how quickly you would want that supply side entry  
25 and expansion to occur for you to feel satisfied that any dominance concern was allayed.  
26 That is kind of a matter of degree, but it is more the time --

27 THE PRESIDENT: Yes. What sort of time should we be thinking about, in broad terms?

28 MR. WILLIAMS: In my view in this type of market, because I think demand side constraints are  
29 more important, I think I would want to feel quite confident that it would be considerable  
30 supply side constraints still within maybe a couple of years to avoid doing undue damage  
31 and detriment to the supply base of trainers and ergo in turn law firms.

32 THE PRESIDENT: Yes. Again just on the question, Dr.Majumdar, would you agree that is a fair  
33 way of putting the test?

1 DR. MAJUMDAR: Yes, I would argue that the standard test applies. One would consider a  
2 sustained price rise above competitive levels or quality reduction below competitive levels  
3 and ask the question would that cause entry to occur within a two year timeframe.

4 THE PRESIDENT: Yes. I think then the answer to that question is really an analysis of the facts,  
5 which is I think for us. But in considering the question of likely entry as a rival to the CQS,  
6 would it be relevant for us to take into account the fact that The Law Society is cross-  
7 subsidising the price of the CQS to solicitors?

8 DR. MAJUMDAR: I see. I think it very much depends on what sort of alternative one is talking  
9 about. So I consider the product being supplied to lenders is not accreditation but  
10 facilitation of access to lender panels and therefore I would argue that one does not  
11 necessarily need to have another accreditation scheme, for example if one major lender or  
12 several major lenders decided they were not happy with the scheme they could say "We are  
13 pulling out of the scheme and we will adopt alternative criteria for access to our panels",  
14 and in that situation you have a constraint without needing a new accreditation scheme to be  
15 set up.

16 If you were considering the need for a new accreditation scheme then yes, I think it would  
17 be relevant to consider the extent to which the current scheme is profitable or not.

18 MR. ALLAN: But even in relation to lender sponsored entry would it be relevant to consider the  
19 fact that at the moment they pay a zero price to The Law Society for what is presumably a  
20 valuable product to them? So they are getting complete cross-subsidy at the moment in a  
21 sense?

22 DR. MAJUMDAR: Yes, I mean in terms of incentive I think that is relevant, but I would argue  
23 that what lenders want from the scheme is quality assurance and that -- my understanding is,  
24 as I say, that is a main reason why the scheme was developed and so if the scheme failed on  
25 that point, even though it is free, I would imagine that they would have the incentive to look  
26 for an alternative form of quality assurance.

27 MR. ALLAN: There is going to be a trade-off. To the extent that they have to invest, that will  
28 influence the degree of quality degradation that would be required to incentivise, justify the  
29 alternative investment.

30 DR. MAJUMDAR: Yes, I would agree with that.

31 PROFESSOR WILKS: Moving on from cross-subsidy, what about the argument that The  
32 Law Society would have a certain authenticity in that it is both highly regarded, universally

1 recognised, and there would be an assumption that it would have influence over solicitors in  
2 a number of ways?

3 DR. MAJUMDAR: So I think that would play a role, but I do not think the role would be  
4 particularly great, so I think to my mind the -- it has been said in the evidence that it is  
5 really the lenders that control access to their panels and from what I understand therefore  
6 from the evidence I do not think that, in and of itself, just because it is The Law Society that  
7 necessarily means that lenders place some premium on it being The Law Society. Lenders  
8 can satisfy themselves with, for example, other panel managers, I do not think on the lender  
9 side the brand is important.

10 On the solicitor side I think there is an interesting test one can do by comparing the take-up  
11 of the WIQS scheme that Mr. Murphy mentioned this morning, which is about 5 per cent,  
12 versus the take-up of CQS which is substantially higher. WIQS, my understanding is it is  
13 focused on the consumer side, so this is, if you like -- lenders are not stakeholders there, so  
14 that suggests to me that the brand in and of itself does not guarantee a high take-up. WIQS  
15 only has a 5 per cent take-up, this scheme has a much higher take-up, which is presumably  
16 because of the role of lenders. So those pieces of evidence suggest to me that the brand has  
17 some value, but is not a major determinant of take-up here.

18 PROFESSOR WILKS: Mr. Williams?

19 MR. WILLIAMS: Yes, if I may come in. I agree it is clearly more relevant on the law firms' end  
20 of the market vis-a-vis consumers, but obviously in terms of The Law Society's own  
21 marketing and description of this product which I have referred to in my report and given  
22 some examples, it does seem to emphasise that point and it would seem to me that from the  
23 perspective of consumers purchasing conveyancing services it is hard to imagine that you  
24 would attach as much weight or as much value to an accreditation from a service that was  
25 not in fact the industry body, so in my view that need for that to be seen as objective and  
26 reasonable as a measure -- because the CQS is not only about improving quality, it is in fact  
27 a measure of quality and a signal to the marketplace -- it is hard to imagine another service  
28 really being able to carry the same degree of brand value because of that role that it plays  
29 and in my view that therefore makes it a relatively material barrier to a rival scheme.

30 MR. ALLAN: But do you think there is a difference with a relatively sophisticated acquiring  
31 base, if you like, on the lending side compared with a consumer market?

1 MR. WILLIAMS: Yes, I agree, I think the brand value is much more relevant to the consumer  
2 side of the market than on the lender side, because I think it is serving slightly different  
3 functions, I would agree with that.

4 THE PRESIDENT: The discussion that we have had over the past whatever, 50 minutes, about  
5 significant market power, has that affected all the answers you have given about market  
6 definition, because it seems to me your answers would have been exactly the same which  
7 ever market definition we used?

8 MR. WILLIAMS: I would agree with that. So I am aware of --

9 THE PRESIDENT: The arguments are the same.

10 MR. WILLIAMS: Yes -- of many cases, even where a two-sided market is found, like for  
11 example classified directories, only one side was relevant to the assessment of market  
12 power, so yes I would agree.

13 THE PRESIDENT: Because we have been looking at lender power, lender influence.

14 MR. WILLIAMS: Agreed.

15 DR. MAJUMDAR: In terms of the framework that we set out at the beginning I agree this -- even  
16 40 minutes later -- that it is still a sensible framework, yes.

17 THE PRESIDENT: Do either of you have any follow-up questions on the upstream market and  
18 dominance?

19 MR. WOOLFE: I did just have one question actually for Dr. Majumdar.  
20 You said on a number of occasions that when quality goes up the competitive price goes up  
21 too. I just want to check because also I think you say in -- I think at point 7 actually of your  
22 agreed points -- points of agreement and difference, so that is in tab 5 if you have it there,  
23 point 7. You say, at the end of the first paragraph in the column on the right-hand side:  
24 "Dr. Majumdar considers there is a fundamental difference between a must-have  
25 product and one that is priced to be very attractive to purchase."  
26 Just now you said on a number of occasions that when quality goes up the competitive price  
27 goes up too, but in a regulatory context you would normally take either marginal cost or  
28 long-running incremental cost as the measure of a competitive price and if the cost stays the  
29 same the fact that it may become more attractive to consumers for some other reason does  
30 not mean that the price has gone up, does it?

31 DR. MAJUMDAR: To my mind the competitive price will be related to the quality that is  
32 delivered. In some sense you can think of a range and the minimum for the competitive  
33 price will have to be a price that permits break even, but in a market where firms are vying

1 for a market share offering, competing on quality, a firm that offers a greater quality, even  
2 when it is competing with many others, will be able to sustain a higher price because of the  
3 quality differential, so I consider that having a greater quality would permit a higher price  
4 even in a competitive setting.

5 MR. ALLAN: Is it not also the case that the what you might describe as the standard cost-price  
6 relationship tends to break down in a two-sided market context?

7 DR. MAJUMDAR: I would agree with that.

8 THE PRESIDENT: Any other questions? There is no pressure on you to ask questions.

9 MS. SMITH: No, I think there were a couple of points I was going to ask Dr. Majumdar to go  
10 back to but I think they have all been canvassed.

11 THE PRESIDENT: Then I will move on. I know we need to take a break, I have that in mind,  
12 but we have very little on the downstream market.

13 The purpose of exploring the downstream market is really so we have a base from which we  
14 can then consider is there any foreclosure, what extent, how much of the market is affected  
15 and so on. That is why we are interested in this.

16 I think that, Dr. Majumdar, you say -- it is point 18 of the points agreed and disagreed, that  
17 it is the supply of AML and related training to all who require it for the money laundering  
18 regulations to estate agents and accountants. Mr. Williams, there is an issue of whether it is  
19 three separate markets or all together, it is probably not important, as you acknowledge, but  
20 you say it is just to law firms and as I understand it, Dr. Majumdar, the reason you have  
21 taken the broader definition is because of the potential for supply side substitutions, is that  
22 right?

23 DR. MAJUMDAR: That is right.

24 THE PRESIDENT: You have discussed that in paragraph 75 and following of your report, and  
25 you set out the figures you have been given, and basically what you are saying, as I  
26 understand it, is if there was the hypothetical monopolist supplying AML training to law  
27 firms and increased its price by a SSNIP then someone supplying AML training to  
28 accountants would then develop a product for lawyers fairly easily --

29 DR. MAJUMDAR: Yes.

30 THE PRESIDENT: -- and come into the market -- is that a summary?

31 DR. MAJUMDAR: Yes, sir.

32 THE PRESIDENT: Can you comment on that argument, Mr. Williams.

1 MR. WILLIAMS: So I have given the downstream market, as you will see, less consideration  
2 than the upstream for a variety of reasons. I think the available evidence is just less within  
3 the downstream market, so my conclusions on it are more balanced and more measured than  
4 in relation to the upstream.

5 What I would say in relation to that specific point though is I suppose it depends to me on  
6 the extent to which the expertise and knowledge required to provide the training are  
7 identical across these different groups of customers or not. So, for example, the numbers  
8 that Dr. Majumdar quotes there in paragraph 77 on his SSNIP analysis, that all seems  
9 logical and reasonable in terms of the development of the training course and that seems  
10 kind of pertinent, but I suppose it does depend somewhat on the degree on the overlap in  
11 knowledge, and I guess more from the demand side from the evidence that I was able to  
12 observe I looked at the way that the existing providers of training were marketing their  
13 services. They did appear to target them at particular groups. So, for example, some were  
14 very much aimed at law firms and that would lead me to believe that there would be a  
15 reason for that, presumably related to some of those supply side considerations.

16 I do not think in the end of terms of thinking about the issue of harm and effect on which  
17 you will ultimately have to reach judgment for yourselves it matters all that much in the  
18 sense that there may be -- even if you decided that the market was broader than the one I  
19 described here, so it is not just law firms, it is a wider setting to do with accountancy, etc,  
20 who might buy this training, that does not mean that detriment has not occurred, that you  
21 should not be concerned with that as a point of principle --

22 THE PRESIDENT: I understand that point.

23 MR. WILLIAMS: But I think it is a more finely balanced issue in the downstream market.

24 THE PRESIDENT: Are there any follow-up questions on the downstream market definition?

25 MR. WOOLFE: No.

26 MS. SMITH: I do not know if there is anything that Dr. Majumdar wants to add in light of what  
27 has just been said about --

28 THE PRESIDENT: Yes, well, we are not going to get into what degree of effect is relevant, so it  
29 is just a question of how it is defined.

30 DR. MAJUMDAR: Nothing to add.

31 THE PRESIDENT: No. Well I think that from our perspective concludes what is colloquially  
32 referred to as a hot-tub -- I hope it was not too hot -- and it is a sensible moment to take a  
33 five minute break.

1 We can sit until 5 o'clock so that we can complete Dr. Majumdar's evidence, I hope, on the  
2 table.

3 MS. SMITH: I should hope so. I told Mr. Woolfe yesterday that Dr. Majumdar is not available  
4 tomorrow, so we do need to --

5 THE PRESIDENT: Well, I think we need a day for submissions.

6 MR. WOOLFE: I think we should get through that.

7 THE PRESIDENT: It is really so we can understand and have any questions to clarify what has  
8 been done and whether a discrepancy exists and so on.

9 MR. WOOLFE: I am going to confine myself to alternative basis and Dr. Majumdar has shown  
10 himself to be quite good at answering concisely, so I am optimistic we can get it done.

11 THE PRESIDENT: Mr. Williams, Dr. Majumdar, thank you again for your help. That has been a  
12 very useful exercise for us, we appreciate it. Mr. Williams, you are released. Dr. Majumdar  
13 you can have a break but we need you back.

14 (4.00 pm) (A short break)

15 (4.06 pm) DR. ADRIAN MAJUMDAR (still under affirmation) Cross-examination by

16 MR. WOOLFE

17 MR. WOOLFE: Dr. Majumdar, if you have in front of you your factual analysis, if you look at it  
18 in tab 3 of the file. The first thing I want to do is just to clarify the data you were working  
19 from. You say at paragraph 1 you have been provided with the subscriber data disclosed by  
20 Socrates pursuant to the order of the Tribunal and a list of CQS accredited firms, and the  
21 subscriber data disclosed by Socrates was a list of firms by year, that is right, is it not?

22 A. The subscriber data from Socrates was a list of firms for each year, so for 2011 taking AML  
23 training, 2012 taking AML training and so on. I also used data from Socrates' work sheets  
24 which were titled "AML not renewed" as well.

25 Q. But in respect of the list that said a subscriber in a given year, we heard from Mr. George  
26 this morning that -- just to establish -- that those were lists of firms who had an AML  
27 subscription at any point during that year. Is that your understanding as well when you  
28 were looking at it and using the data?

29 A. Yes.

30 Q. Thank you. Then can I get you to turn to table 2, which is on page 4. What I want to do is  
31 work through line by line this table to understand what each of the figures actually relate to.  
32 You have set out and I just make sure we all understand.

33 So take the first line:

1 "CQS accredited firm which failed to renew with Socrates."

2 You have a formal definition but essentially these are those firms -- take 2011/2012 as an  
3 example, it is one of the easiest -- I know you talk about T and T plus 1, but sometimes it is  
4 easier to see a concrete year. So 2011/2012, that line, 35 firms, that is firms who are  
5 Socrates subscribers as identified on the list for 2011 --

6 A. Yes.

7 Q. -- but did not appear in the 2012 list?

8 A. Yes. Sorry, just to clarify, these are firms that are also CQS accredited.

9 Q. I am going to come to the CQS accreditation condition in a moment, if I may, but just  
10 focusing on the renewal point.

11 So their subscription may have run from any point in the year, that is right, is it not?

12 A. Yes, I understand so.

13 Q. So to take 2011/2012 as an example, you could have had a firm with a subscription date of  
14 1 January 2011, expiring on 31 December 2011 and then did not renew, take that as an  
15 example, and that in your example would show up as a failure to renew in this 2011/2012  
16 because they would have a subscription during 2011 but not in 2012 and they would be a  
17 failure to renew under your criteria?

18 A. Yes. If a firm appeared on the customer list in 2011 that did not appear on the customer list  
19 in 2012, it would be a failure to renew over the period 2011/2012.

20 Q. So in fact in that case the actual lapse of the subscription would have been on the very end  
21 of 2011, that is right?

22 MR. ALLAN: Can I just ask, I am sorry to interrupt you, but when you say 2011/2012, what  
23 precisely in terms of calendar dates does that period mean?

24 A. This is for the calendar years. Now, the reason why I have mentioned 2011/2012 is because  
25 what we are doing here is we are looking at a firm that was present in one year but not  
26 present in the next year, so what I am trying, hopefully, to do is to add clarity. So when we  
27 talk about 2011/2012 and we are talking about failure to renew, we mean present in 2011 on  
28 the customer list, but not present in 2012. So similarly if we looked at 2012/2013 and it was  
29 a failure to renew in that year, it would mean that they were present in 2012 on Socrates'  
30 AML list but not present in 2013.

31 MR. ALLAN: So would you regard the termination as being effective in 2012 at some point?

32 A. The --

1 MR. WOOLFE: I am going to ask some questions about that. It may be helpful if I go through  
2 this.

3 MR. ALLAN: Sorry.

4 MR. WOOLFE: So in this example of a firm I have given you of a firm whose subscription dates  
5 starts on 1 January 2011 and expires on 31 December 2011, that is the last day, it would  
6 appear on the subscription list in 2011, it would not in 2012 and you would count it as a  
7 failure to renew under the column heading 2011/2012; that is right, is it not?

8 A. Yes, that is right.

9 Q. But if a firm had a different start date, say it had a start date of 1 June 2011 and it ran to 31  
10 May 2012, it would appear in both the 2011 and 2012 customer lists and hence it would not  
11 show up as a failure to renew in your 2011/2012 column?

12 A. That is correct. If it appeared at any point in time on the customer list in 2011 and in 2012,  
13 it would not be a failure to renew over that 2011/2012 period.

14 Q. So in fact in order to show up as a failure to renew under 2011/2012, your subscription  
15 needs to have lapsed on or before 31 December 2011?

16 A. Well, in order to show up you have to be present on the customer list in 2011 and not  
17 present on the customer list throughout the year, throughout the calendar year 2012.

18 Q. But if your subscription carried on to some point in 2012, 2 or 3 January 2012, you would  
19 show up in both the 2011 and 2012 customer lists and you would not therefore show up as a  
20 failure to renew under 2011/2012, if you failed to renew on 3 January 2012 you would show  
21 up in the 2012/2013 failure to renew column?

22 A. That is correct, if you appeared at any point in time in 2012, such as 3 January 2012, if the  
23 firm then did not take AML training from Socrates thereafter it would not appear in 2013  
24 and so it would appear as a --

25 MR. ALLAN: Sorry, can I just ask: what is it that causes a firm to be on a particular spreadsheet?  
26 So to take your example of the 1 June to 31 May subscription, what facts about that  
27 subscriber needed to be on one or both of the spreadsheets?

28 MR. WOOLFE: I understand -- I will be corrected by Mr. George if I am wrong -- I understand  
29 that the fact that a subscription covered some of 2011 and some of 2012, means that it  
30 would have appeared in both the customer lists of 2011 and 2012. So although its  
31 subscription terminated in 2012, it just appears as a customer in both 2011 and 2012, and  
32 say it did terminate at some point in 2012, it then would not appear in the 2013 customer  
33 list.

1 MR. ALLAN: Okay.

2 MR. WOOLFE: The point I was trying to explore with Dr. Majumdar is this: so again 2011/2012,  
3 you identify 35 failures to renew. What we know is that those 35 failures to renew were  
4 subscriptions that lapsed in 2011.

5 A. The last time that they would have taken AML training from Socrates would have been at  
6 some point in 2011, yes.

7 Q. The process this works is by people -- they have a subscription, it comes to an end, they  
8 either renew or they do not, but the termination date for their subscription would have been  
9 in 2011?

10 A. Yes.

11 Q. Can I just check, the same thing also applies -- can you go back to table 1 for a moment,  
12 your renewal note.

13 MR. ALLAN: Sorry, can I just interrupt on table 2. So the significance of that is that the last  
14 information that we have from your analysis relates to customers who terminated at some  
15 point in 2014?

16 A. That is correct, because if they -- if we are talking about a failure to renew in 2014/2015,  
17 that is correct because they would be on the customer list in 2014, but they would not  
18 appear on the list at all in 2015.

19 MR. ALLAN: So we would only know about 2015 terminations once we have got to the end of  
20 2016 and have a complete 2016?

21 A. That is exactly right and that is why we have been talking about whether or not like for like  
22 comparisons can be made with the year 2016, we have to wait until the year end, that is  
23 exactly right.

24 MR. WOOLFE: I am going to come back to table 2 because we are going to move through the  
25 remaining rows, but just to finish off this point.

26 If you go back to table 1, which had renewal rates of firms taking AML training, and again  
27 you have renewal rates of 2011, 2012 and so on, I just wanted to check that those renewal  
28 rates have essentially been compiled on the same -- perhaps it -- no, I will deal with this  
29 point in relation to table 4, sorry.

30 Can I just explore with you for a moment this condition about the CQS accreditation,  
31 because I think you say at page 8 of your document, in annex A2 -- you actually -- this is  
32 the formal definition of how you have allocated the cancellation fee and you explain this at

1 paragraph 29 and then at the end of paragraph 29 you define whether or not they counted as  
2 a CQS accredited firm which failed to renew and you say:

3 "What is necessary is that they are CQS accredited in year T plus 1, irrespective of  
4 whether they were CQS accredited in the prior year."

5 So if you turn back to table 2 for a moment to check I have understood, in respect of  
6 2011/2012 firms would only qualify to go into the first row, first column 2011/2012, if they  
7 were CQS accredited in 2012 and they may have been CQS accredited in 2011, or they may  
8 not have been CQS accredited in 2011; what matters is they were CQS accredited in 2012,  
9 is that correct?

10 A. That is correct.

11 Q. The same is then true for the remaining columns?

12 A. Sorry, I missed that question.

13 Q. Sorry, the same is then true for the remaining columns. So the next column over we have 45  
14 CQS accredited firms who failed to renew and just to check on that figure, that is firms who  
15 under 2012/2013 whose subscriptions lapsed at some point in 2012 and who we know were  
16 CQS accredited in 2013, is that correct?

17 A. That is correct, yes.

18 Q. Now if we can look down at the next row please, so that is CQS accredited firms who  
19 joined or rejoined, and effectively to qualify for this, as I understand it -- so perhaps to take  
20 2011 and 2012 again as an example, these would be firms who appear on a 2012 customer  
21 list, but do not appear on the 2011 customer list, is that right?

22 A. Yes, if we are looking at joiners that is right, they are not there for the first period given but  
23 they are there for the second. So if you are talking about 2011/2012 the firm was not  
24 present in 2011 but was present in 2012.

25 Q. So they would have had a subscription -- in 2011/2012, the 11 CQS accredited firms, they  
26 would have had a subscription that started on or after 1 January 2012?

27 A. Yes, they would appear on Socrates' customer list in 2012 and therefore -- but not 2011, so  
28 therefore they would have taken training for the first time in 2012.

29 Q. So there is a difference between the first row and second row in this respect, because we  
30 know that, to take 2012, we have 35 firms whose subscription lapsed on or before 31  
31 December 2011 and we have 11 firms whose subscription started on or after 1 January  
32 2012; that is correct, is it not?

33 A. Sorry, would you mind just saying that again so I can write the dates down.

1 Q. Yes, so to take 2011/2012, that column, the figures there, you have 35 and 11, having run  
2 through what we have actually done. We know that we have 35 firms whose subscription  
3 came to an end on or before 31 December 2011 and then we have 11 firms whose  
4 subscription with Socrates began on or after 1 January 2012. Is that a correct understanding  
5 of what those figures mean?

6 A. Yes.

7 Q. Can I just ask you as well, you have a -- you apply a slightly different CQS accreditation  
8 condition to joiners, so can I take you to paragraph 30 on page 8, so again in your annex A  
9 2. It begins with:

10 "For example if a firm was CQS accredited in 2013 and 2014 and subscribed to  
11 Socrates for the first time in 2014, it would be described as a joiner for the period  
12 2013/2014."

13 Then you go on to give the formal definition, that "it needs to have been CQS accredited in  
14 both years, T and T plus 1".

15 So if we turn back to the table on page 4, the meaning of CQS accredited is slightly  
16 different between the two rows as well, because the 35 firms we have in the first line may  
17 have been -- we know they were CQS accredited at some point in 2012 -- I am using  
18 2011/2012 an example -- we know they were CQS accredited in 2012 but they may or may  
19 not have been CQS accredited in 2011; that is right, for the first row?

20 A. That is correct, although given that the renewal rates are 97 per cent, if they were around in  
21 2011 they are probably CQS accredited as well.

22 Q. Well, no, I will pick you up on that --

23 A. Not in 2011 actually, but for later years.

24 Q. For later years, because there is a significant pattern of growth in the CQS, is there not,  
25 across the period of 2011 to 2013? That is right, is it not?

26 A. There is, yes.

27 Q. In fact you can see that just over the page. You have your table 3 and there is a growth in  
28 the CQS across the country, but you can see in the second line of your table overleaf there is  
29 a very large growth in the number of Socrates subscribers who are CQS accredited from  
30 168 to 415 from 2011 to 2013, because the numbers who are CQS accredited across the  
31 country is going up very rapidly, is it not?

32 A. Yes, there is an increase in the number of CQS accredited firms, that is correct.

33 MR. ALLAN: Sorry to interrupt you, but in table 3 are we talking about calendar years?

1 A. Yes, in table 3 those are calendar years, that is right, and --  
2 PROFESSOR WILKS: The first number, which calendar year?  
3 A. So 2011, this will be for the calendar year 2011.  
4 PROFESSOR WILKS: Yes, okay.  
5 MR. WOOLFE: Just to be clear, on the first -- well, 31 December 2010 there were no CQS  
6 accredited firms, were there?  
7 A. Not to my knowledge.  
8 Q. So it is going from a zero base.  
9 So we have established what CQS accredited means in the first row, but in the second row -  
10 - so in the first row, take 2011/2012, these are firms who are CQS accredited in 2012 who  
11 may or may not have been CQS accredited in 2011, but in the second row --  
12 THE PRESIDENT: Sorry, you are back in table 2?  
13 MR. WOOLFE: I am back in table 2 now, sir.  
14 Just to repeat, in the first row, first column, these 35 firms were CQS accredited in 2012,  
15 they may have been CQS accredited in 2011, they may not have been, is that correct?  
16 A. That is correct.  
17 Q. But then in your second row, CQS accredited firms which joined or rejoined Socrates, you  
18 have 11 firms. You have imposed a condition which means they would have had to have  
19 been CQS accredited both in 2011 and 2012, that is right, is it not?  
20 A. That is right, yes, that is correct.  
21 Q. In fact if the CQS is undergoing a period of very rapid growth -- well, there may be other  
22 firms who were CQS accredited in 2012 and joined Socrates in 2012 at the time they were  
23 CQS accredited, but who were not CQS accredited in 2011 and they would not appear in  
24 your row 2, would they?  
25 A. I am sorry, would you mind just repeating that again please.  
26 Q. I will. There may have been firms who were CQS accredited in 2012 but who were not  
27 CQS accredited in 2011, who joined Socrates in 2012, but who would not show up in your  
28 row 2?  
29 A. Okay, so you are saying CQS accredited in 2012, not CQS accredited in 2011, joined  
30 Socrates in 2012, they would not therefore show up in row 2; that is correct.  
31 Q. So in fact if you applied the same CQS accreditation condition to row 2 as you do to row 1,  
32 you may end up with a different figure in row 2 than you actually do?  
33 A. Yes, as I explained in the footnotes to the table, that is correct.

- 1 Q. In fact when the CQS is undergoing a period of rapid growth you might expect there to be  
2 quite a number of firms who are CQS accredited in 2012 out there in the market who are not  
3 CQS accredited in 2011?
- 4 A. Yes, when the CQS is growing you would expect -- well, by definition if the CQS is  
5 growing you will have more firms CQS -- you are likely to have more firms accredited in  
6 2011 -- sorry, in 2012 than 2011.
- 7 Q. So in fact the effect of having a different CQS accreditation condition for the second row  
8 would tend to push down the numbers in your second row in the early part of the period,  
9 would it not?
- 10 A. It may you push down the joiners in the second ... let me think this through.  
11 Yes, it is designed to be conservative. Let me explain the reason for doing this was it was  
12 designed to be conservative in terms of joiners so that one did not overstate those coming  
13 back to Socrates and equally designed to be conservative, ie to increase the number of those  
14 leaving, if you like, to try and create some sort of bounds on those coming in and bounds  
15 on those going out, so it is designed to be conservative, so you will tend to push down the  
16 number of joiners in the second row and possibly push up those failing to renew in the top  
17 row.
- 18 Q. Sorry, just to pause there, Dr. Majumdar, because you are not applying the same CQS  
19 accreditation condition to both row 2 and row 1, so I am just focusing on what you are  
20 doing to row 2 for the moment and because it is not applied equally to row 2 and row 1 it  
21 will not necessarily have the same effect.  
22 What I am putting to you is that by choosing to apply the CQS accreditation condition that  
23 it has to be CQS accredited in both years, both 2011 and 2012, that will have a marked  
24 effect of pushing down the number of joiners in the early years, but would not have the  
25 same effect later on when the growth rate of the CQS has stabilised?
- 26 A. That is possible.
- 27 Q. I put it to you it is likely.
- 28 A. I have not run the analysis. I mean it is certainly possible. As I said before, the aim was to  
29 be conservative so as to not overstate joiners and to be more likely to overstate those  
30 leaving, so it is possible. That is it.
- 31 Q. Can I turn to line 3 in the table now, because what you do there is calculate net outflow and  
32 you effectively -- even lawyers can manage this -- you have subtracted the second figure  
33 from the first and produced a number. But just again to look at 2011/2012, what you have

1 done is subtract a number of joiners who joined in 2012 from a number of leavers whose  
2 subscription lapsed at some point in 2011 and you have come up with the number of 24, is  
3 that right?

4 A. Well, what has happened is I have identified firms that were not present in 2012 because  
5 they left and identified the extent to which they have been "replaced" in 2012 because those  
6 firms appeared on the customer lists, so that is what I have done.

7 Q. But you have not -- net outflow, normally an outflow, or net outflow, you would -- I  
8 appreciate you are working with the data you have, but normally you have a stock at the  
9 start of the period and a stock at the end of the period and then you look at the flow in-  
10 between and then you might say you have inflows and outflows and a net outflow, but what  
11 you have done is just take a flow of people leaving in 2011 and a flow of people coming in  
12 in 2012 and turned it into net outflow for 2011 and 2012.

13 A. No, what I have done is I have identified firms that were not present in 2012 and I have  
14 firms that appeared in 2012 and then identified the difference to identify hence the net flow  
15 or the net change in if 2012.

16 Q. I suggest you have -- the net outflow, subtracting one from the other does not -- you can  
17 look at the two flows if you want, but subtracting one from the other does not give you a  
18 meaningful figure. That is my suggestion.

19 A. Well, I disagree that subtracting one from the other does not give you -- sorry, let me  
20 rephrase that. I disagree that this is meaningless.

21 Q. Then going to line 4 you then have the number of CQS accredited firms taking AML  
22 training with Socrates and you say "at period end" and just to be clear about that, so in  
23 respect of 2011/2012, 319 CQS accredited subscribers, that means -- am I right in thinking  
24 that that is those firms who appeared on the customer list for 2012?

25 A. CQS accredited firms taking AML training with Socrates at period end, so the end of the  
26 period is 2012, so that is 319 firms taking -- which you can see on table 3 on the next page.

27 Q. Yes, exactly, we can see the CQS accredited subscribers. The figure for 2011 is 168, you  
28 have 319 for 2012 in table 3 and you have taken the 319 figure as being the period end  
29 figure for 2011/2012 in the table, that is right, is it not?

30 A. That is right. I am looking -- when I talk about 2011/2012 and I have CQS accredited firms,  
31 the fourth line down, that 319 is to be found in the 2012 column on table 3.

32 Q. Just to take 2011/2012 as an example, if you were indeed looking at the number of CQS  
33 accredited firms at the mid-point, that would be end of 2011, you have the figure of 168

1 CQS accredited subscribers one could take from the table on the next page, if you wanted to  
2 do that exercise?

3 A. Well, if you wanted to divide through by a 2011 figure you would use 168, if you wanted to  
4 divide through by a 2012 figure you would divide through by 319.

5 Q. Similarly for 2011 it would be -- if you chose a period start figure it of course would be  
6 zero, would it not?

7 A. Well, no, the period end just means -- it does not mean 31 December, it means that we are  
8 giving 2011 and 2012, so the figure there is a 2012 figure. That is what "end" means, it  
9 means of the two years it is the second year, because we are looking at those that are not  
10 present in 2012, those that come in in 2012, so it is logical therefore to divide through by  
11 the 2012 figure.

12 Q. Then you use a percentage -- and I am not going to asking you about the meaning of the  
13 percentage but just to understand how it is calculated -- you have taken the net outflow,  
14 which is a product of people leaving in 2011 and arriving in 2012 and divided that by the  
15 number of CQS subscribers Socrates had in 2012 and you arrive then at the percentage?

16 A. That is right, you find the ones that are not present in 2012, the ones that arrive in 2012 and  
17 then you divide through by the 2012 base, yes.

18 Q. Then just to confirm, if you go to your table 4, which contains your renewal rates, it is  
19 simply a point I was exploring with you at the start. Perhaps we can see how these have  
20 been calculated if you go to page 10 of your report we have -- it is explained in table 5 and  
21 you produced the renewal rates, you have two lines, A and B, and the percentage which is  
22 one divided by the other. I can see that.

23 In the first line -- in all of these you are looking at whether or not they are CQS accredited  
24 in the second year, that is the condition you are applying, so for 2011/2012 what matters is  
25 whether they are CQS accredited in 2012, irrespective of whether they are CQS accredited  
26 in 2011?

27 A. That is correct, yes.

28 Q. You are looking at firms who appear on Socrates subscriber lists, in the first line, 299, both  
29 on the 2011 subscriber list and on the 2012 subscriber list. That is what the first line  
30 means?

31 A. Yes, that is right. If you were renewing that means you will appear on Socrates list in 2011  
32 and you will also appear in 2012, that is correct.

1 Q. Then the second line down, you apply in case the same CQS accreditation conditions, the  
2 one you apply generally to leavers, and here you identify those firms who appear on  
3 Socrates subscriber lists in the first year, year T, so 2011 in the case of the first column, that  
4 is right?

5 A. Yes, that is right. That has to be the basis of the fraction, yes.

6 Q. Thank you, I think that is clear.  
7 I do not have any more questions, Dr. Majumdar. I do not know if my learned friend does.

8 MS. SMITH: No, I have no further questions. Questions from THE TRIBUNAL

9 MR. ALLAN: I am afraid I just want to take you back to table 2 and the question that Mr. Woolfe  
10 was exploring with you.

11 A. Yes.

12 MR. ALLAN: If you were operating in a world with perfect data and you knew the precise date  
13 on which a customer left Socrates and the precise date on which a customer joined Socrates  
14 and let us suppose we have a leaver on 1 June 2011 and you have got a joiner on 1 June  
15 2011, how would you do the outflow calculations seeking to measure the effect of what is  
16 happening in 2011 in those circumstances?

17 A. Let me just check I have got the question. So we have a firm that subscribes to Socrates  
18 until ...

19 MR. ALLAN: Until 1 June 2011.

20 A. Yes, until 1 June, and then --

21 MR. ALLAN: Does not renew, yes.

22 A. Yes. Then a firm that arrives on 1 June, yes.

23 MR. ALLAN: Yes, new subscriber.

24 A. So I would argue then that -- let us take the second half of 2011, to break it into six month  
25 periods, we would say we lose someone in the second half of the year and we gain someone  
26 that, if you like, replaces the lost firm and so I would then identify those, if you like,  
27 missing from the second half of the year and net those off against those that appeared in the  
28 second half of the year and then you find out, if you like, the net outcome for that.

29 MR. ALLAN: If those are in fact the only two customer movements in that year you would have  
30 a zero outflow for 2011.

31 A. That is correct yes.

32 MR. ALLAN: That leads me to think that -- I suppose I am slightly trying to follow Mr. Woolfe's  
33 point that we should be -- because what you are doing in table 2, and I recognise it is a

1 valient effort to grapple with really difficult data problems, but you are in a sense assigning  
2 the customer who resigns in 2011 to the 2012 figures and matching him against the  
3 customer who joins in 2012, as a result of which we get a slightly distorted picture of what  
4 is actually happening in each individual year.

5 A. So the logic of what I am doing, given the data is actually the same as we have just  
6 discussed when we had that half year example, what I am saying is the data tell us that a  
7 firm was there in 2011, missing in 2012, the data says that there was a firm that was not  
8 present in 2011 but appears in 2012, so that is why I am focusing on the 2012-year, I am  
9 saying "These are the firms that are missing, these are the firms that reappeared, let us take  
10 the net number". I acknowledge that with more finer data one might do that on maybe a  
11 narrower time period, be that quarterly or half-yearly, I am not sure. With more granular  
12 data I probably would not choose an annual period.

13 MR. ALLAN: Okay. We probably just need a bit of a cold towel to wrestle with all this.

14 PROFESSOR WILKS: Two last questions if I can. The first one is contextual. We have  
15 looked a lot at firms who have joined and left Socrates. As you went through the data did  
16 you get any perception -- maybe it is only an impression -- of how many firms join and  
17 leave CQS? We know how many join in a sense, but do people come and go with more or  
18 less loyalty than with Socrates?

19 A. So my understanding from a statement that Mr. Murphy made this morning is that there is a  
20 higher degree of loyalty with the CQS in the sense -- I believe he said it was roughly a 97  
21 per cent renewal rate such that once a firm has -- if you like, for every 100 firms that takes  
22 CQS accreditation, 97 would reaccredit.

23 PROFESSOR WILKS: One or two of those may be bankruptcies anyway.

24 A. Yes. So certainly -- and I have not precisely done this analysis, but impressionistically from  
25 looking at the CQS data, yes, it seems that once a firm has started they typically reaccredit.  
26 However, there are some examples -- there was a database provided by The Law Society of  
27 around 400 firms I think that had not been with the CQS throughout the entire period. I  
28 would have to go back and double check the extent to which that would effect the 97 per  
29 cent number that I have just given you, but I think it is reasonable to say that there is a  
30 much higher renewal among CQS firms.

31 PROFESSOR WILKS: Right, thank you.

32 The other question was really about updating, and your data deals only up to 2015, but if I  
33 look at your table 3, the third line down is the total number of firms who are accredited with

1 Socrates AML training and it is reassuring to see that the line of the total number of firms  
2 who take Socrates AML training is exactly the same as figure 1 in Mr. George's paper that  
3 we looked at earlier today. I do not know whether you want to look at that or --

4 A. Sorry, sir, may I just double check I am in the right place?

5 PROFESSOR WILKS: You are looking at page 4, table 3, which is your table of CQS  
6 accredited, non-CQS accredited and then line 3 is a total number of firms that are taking  
7 AML from Socrates.

8 A. Right, okay, so in 2011 we have 770 firms that are taking Socrates AML training, yes, okay,  
9 got it. Sorry, and the --

10 PROFESSOR WILKS: If you turn to Mr. George's paper, the figure 1, which was actually  
11 unchanged by his amendments, you will see that the numbers, certainly 2014/2015, are  
12 identical, 629 then 621.

13 A. Yes.

14 PROFESSOR WILKS: He has an updated figure for 2016 which is 508.

15 A. Yes.

16 PROFESSOR WILKS: Did you look at that, or are you able to form a view on whether  
17 that is a figure that is credible and consistent with the earlier figures that you have used?

18 A. My understanding is that is a snapshot and therefore will reflect the number of firms  
19 subscribing on that particular day. That is my understanding. I therefore do not consider it  
20 to be consistent with the earlier figures. I think you would have to have a look at the whole  
21 -- I think the 2016 data throughout the analysis is unfortunately not something that we can  
22 compare with earlier years on a like for like basis because one has to have a complete year  
23 to identify firms that have appeared at any time in that year.

24 PROFESSOR WILKS: So it was not part of the dataset that you used to compile this  
25 material?

26 A. No, I did not have that, no, that is correct.

27 PROFESSOR WILKS: Okay, thank you very much. Re-examination by MS. SMITH

28 MS. SMITH: Just arising out of that can I ask you then, Dr. Majumdar, to look at table 4 in your  
29 report.

30 A. Yes.

31 Q. The last column has a figure for 2015/2016.

32 A. Yes.

33 Q. Now, you did not use the 7 October snapshot data --

1 A. That is correct.

2 Q. -- that Mr. George used and I explored with him. Can you just explain what you did for that  
3 column? There is some explanation in the note, but perhaps it might assist the Tribunal just  
4 to explain what you did for that column, 2015/2016?

5 A. Yes, Mr. George provided some data to The Law Society towards the end of September --

6 Q. Sorry, can you hold on for a second, I think we are just trying to find ...

7 PROFESSOR WILKS: Can you redirect us? Which table are we talking about?

8 MS. SMITH: We are in Dr. Majumdar's report, page 5, table 4, "Renewal rates for CQS and non-  
9 CQS accredited firm taking training from Socrates", this is where he breaks down the  
10 renewal rates between --

11 MR. ALLAN: I think it is page 6.

12 MS. SMITH: Is it page 6 on yours?

13 He has been asked by Mr. Woolfe about how he worked out the figures for 2011, 2012, etc,  
14 but on the back of Professor Wilks' question about 2016 and the use of 2016 data and Dr.  
15 Majumdar's confirmation he had not used the 7 October snapshot that was used by Mr.  
16 George, I just was going to give him the opportunity to explain what that column that says  
17 2015/2016, what data that uses, what that does.

18 A. Yes, so Mr. George provided a spreadsheet which was entitled "AML not renewed 2015"  
19 based on 2016 data, so this means that, if I understand correctly, these would be firms that  
20 were present in 2015 at any point in time on the Socrates AML training list, but that were  
21 not -- had not been present up to that point in 2016. Obviously it is not a full year and so it  
22 is not a like for like comparison with earlier years because if a firm took training in  
23 November or December of that year then to compare figures on a like for like basis, that  
24 should not have been counted as a failure to renew. That is where the figures are from and,  
25 as I say, it is not a like for like comparison.

26 One would imagine once we get to the end of 2016 the level of the renewal rate will go up  
27 because some firms will reappear in 2016.

28 MR. ALLAN: What was the cut-off date for the 2016 data?

29 A. We received that around about the end of September.

30 THE PRESIDENT: The data went up to when?

31 A. Let me see if I have that to hand.

32 MS. SMITH: I think paragraph 1 of your report might be there you talk about revised data being  
33 received from Socrates on 28 September 2016.

1 A. Thank you.

2 MR. ALLAN: But it does not say what the run -- maybe Socrates can help with that.

3 MS. SMITH: I think it has been implicit in a lot of the questioning, but it might also be helpful to  
4 the Tribunal if you could just describe what these spreadsheets that you got from Socrates,  
5 the customer lists, looked like. I am assuming from the questions and the evidence that they  
6 did not identify any dates of subscription, they were simply a list of names, but I may be  
7 wrong, perhaps you can just explain --

8 THE PRESIDENT: Have we not got the spreadsheets? We have got them here, have we not?

9 MR. WOOLFE: I think you have Dr. Majumdar's spreadsheets which are -- what he has done is  
10 netted off one spreadsheet against another to produce those who were or were not around.

11 THE PRESIDENT: I see.

12 MR. WOOLFE: The ones from Mr. George are slightly different, but they were lists of firms.

13 MR. ALLAN: We do not have the raw data.

14 MS. SMITH: No. Just to make it absolutely clear that there were no -- the question that Mr.  
15 Allan put about if you could identify the date and what would happen, that data was not  
16 there in the raw data.

17 MR. ALLAN: Yes, I am all too aware of that.

18 THE PRESIDENT: So you do not know how many months of 2016 the --

19 A. I do not have that information to hand, sir. I am very happy to check for you though.

20 MR. ALLAN: Then perhaps inform Norton Rose Fulbright overnight.

21 THE PRESIDENT: That concludes Dr. Majumdar's evidence. Thank you very much. You are  
22 released.

23 A. Thank you. Housekeeping

24 THE PRESIDENT: Can I just say then regarding tomorrow, we thought we would sit at 10  
25 o'clock so we do not get in difficulties at the end. We hope we can have a proper lunch  
26 adjournment at the normal time for once.

27 I think, Mr. Woolfe, your client was going to check the date when the property module  
28 came into the AML for lawyers product and also it was possibly going to look at his revised  
29 figure 2, the 2011 figure which Ms. Smith pointed out was not consistent with other things  
30 and might be a rogue figure and whether that needs correction.

31 MR. WOOLFE: That is right, sir.

32 THE PRESIDENT: Also I think, Ms. Smith, you were going to explain to us on instructions from  
33 someone who can answer any further questions, the sheet of revenue and costs.

1 MS. SMITH: I assume you would like me to do that before Mr. Woolfe starts his closing so that  
2 he can take it into account.

3 THE PRESIDENT: I think that would be helpful. We heard Mr. Murphy this morning saying  
4 that there were budget forecasts, not done by him, but it would be the finance team for the  
5 training, or the CQS, which is what one would expect, but I am somewhat surprised that  
6 was not disclosed, or the figures were not disclosed, because I think my order back on 16  
7 May said that forecasts should be disclosed, whether in a schedule, or with the raw data, so  
8 can you check that with the finance team and --

9 MS. SMITH: I will and I will find out just how specific those budget forecasts were. I will  
10 clarify that.

11 THE PRESIDENT: We will see how we go, you can give us instructions on the finance. It may  
12 be we will ask the individual to answer questions from the Tribunal directly, but we will  
13 see, but we would like them in court.

14 MS. SMITH: Yes, they will be in court.

15 THE PRESIDENT: In your closings, Ms. Smith, can you perhaps help us on what significance, if  
16 any, the Tribunal should attach to the fact that The Law Society has not adduced evidence  
17 from any mortgage lender about their concerns and could you both please consider what is  
18 an appreciable effect on competition for the purpose of chapter 1, or, indeed assuming that  
19 that test applies, under chapter 2, Ms. Smith's submission on the *Google* case, I know you  
20 said it does not if there is not a pro competitive -- but assuming against you it does, but I  
21 imagine "appreciable" is the same for chapter 1 and chapter 2, so what does "appreciable"  
22 amount to?

23 MS. SMITH: Sorry, in the context of chapter 1?

24 THE PRESIDENT: Well, I think it is probably the same, subject to this, that I think Mr. Woolfe  
25 says there is not an appreciable threshold for chapter 2, but assuming there is I imagine  
26 "appreciable" has the same meaning in both respects. It would be very odd if it was  
27 different. You may say it is different, but there will not be very much authority on chapter 2  
28 because I think the *Google* case was the first one to take that view, but there certainly is on  
29 chapter 1, Article 101, so if you can think about that.  
30 So 10 o'clock tomorrow morning. Thank you.

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