

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1249/5/7/16

Victoria House,
Bloomsbury Place,
London WC1A 2EB

16 May 2016

Before:

THE HON. MR. JUSTICE PETER ROTH
(The President)

(Sitting as a Tribunal in England and Wales)

BETWEEN:

SOCRATES TRAINING LIMITED

Claimant

- and -

THE LAW SOCIETY OF ENGLAND AND WALES

Defendant

*Transcribed by BEVERLEY F NUNNERY & CO.
(a trading name of Opus 2 International Limited)
Official Court Reporters and Audio Transcribers
25 Southampton Buildings, London WC2A 1AL
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

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

Miss Kassie Smith QC (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Defendant.

CASE MANAGEMENT CONFERENCE

1 THE PRESIDENT: Both parties have had the agenda, the draft agenda, because at that point we
2 did not have the defence, but I think we can use that as a working document. If we go to
3 item 1, as I understand it, observations from both sides are that the forum for the purpose of
4 the Rules should be England and Wales, no one seems to suggest otherwise and that seems
5 to me clearly right. I shall make that order.

6 Perhaps we should go next to item 3, you raise the question about the jurisdiction to grant a
7 declaration and Mr. Woolfe, as I understand it, now that your client has had the benefit of
8 your advice, you are not going to seek to argue that the Tribunal has jurisdiction.

9 MR. WOOLFE: Sir, no, the Tribunal does not have that jurisdiction.

10 THE PRESIDENT: So can we record that you are not pursuing the claim for a declaration or
11 declarations?

12 MR. WOOLFE: Perhaps it could say that on the issue of relief it might be open to us – I think it
13 is very doubtful it would be appropriate – but we might ask for a transfer to a jurisdiction
14 where we could seek such relief.

15 THE PRESIDENT: If you were to seek to argue it here that would be quite a complicated legal
16 argument.

17 MR. WOOLFE: We are not intending to do that.

18 THE PRESIDENT: I think that is clear; it is not formally abandoned, but it is not being pursued
19 certainly at initial hearing, and need not be addressed. I also saw, Mr. Woolfe, what you
20 say in your skeleton, and we are grateful for both skeletons having been produced under
21 some time pressure, you have made some case management suggestions about the split
22 hearing, but looking at those made me wonder to what extent the Chapter I case is being
23 pursued, because those focus entirely on the Chapter II case.

24 MR. WOOLFE: Sir, we do maintain the Chapter I case, however, in substance it does not really
25 involve looking at any more or any fewer issues.

26 THE PRESIDENT: The issues on what used to be called ‘exemption’, the para. 3 issues, may be
27 different from objective justification, and might involve evidence and argument of a
28 different kind.

29 MR. WOOLFE: In principle that is right, however, if you actually look at the nature of the
30 objective justification as being pursued in the defence, which is, I think, at para. 38, that is
31 objective justification in relation to the Chapter II case, and then para. 43 of the defence is
32 where exemption is pleaded.

33 Perhaps if we begin at 38(b) which says:

1 "Moreover, uniformity of training is a key element of the CQS and is essential for
2 mortgage lenders (and consumers) to have confidence in the quality of the CQS."

3 Essentially, that is part of the objective justification, and that is more or less picked up at
4 43(a). Then 43(b) is the indispensability criterion, but that is more or less the same thing.

5 Then there is the non-foreclosure of competition in the absolute sense that----

6 THE PRESIDENT: Anyway, it is a matter for you not for me, it is being pursued, you want to
7 run the Chapter I as well as the Chapter II?

8 MR. WOOLFE: Sir, yes, although the focus of our case is on Chapter II, and we think, in
9 practice, very little else factually gets added as a result of Chapter I.

10 THE PRESIDENT: Yes, thank you. Irrespective of fast-track, we suggested that quantum might
11 be separated from the first hearing because if there is no liability one does not have to go
12 into calculations of the loss. Loss would be loss of profit which always gives rise to
13 difficult questions and argument. I note the claimant is saying it is not just the initial loss,
14 but there is an inertia effect so there is an ongoing loss, and all of that has to be explored. It
15 did seem to me that this is a case, like many others, where quantum issues can be separated.
16 As I understand it, from your skeleton, Mr. Woolfe, you do not object to that. You suggest
17 some other separations, but you do not object to that one.

18 MR. WOOLFE: No, Sir.

19 THE PRESIDENT: Miss Smith, do you want to say anything on that question?

20 MISS SMITH: We did address point, Sir, in paras.3 through to 6 of our skeleton argument. Our
21 main concern was, obviously, at the moment the claimant's quantum claim is not worked up
22 at all in the claim form, so we are a little bit in the dark as to exactly what that is going to
23 be. We were concerned that there may be an overlap, at least on the evidence, between the
24 foreclosure issues and the quantum issues. Essentially, the claimant says we have been
25 foreclosed from the tied market, however that is defined. What they plead in that regard is,
26 subscribers have been coming to us and cancelling their subscriptions.

27 There is not much more than that at the moment, but the subscribers coming and cancelling
28 the subscriptions, the evidence of that, seems to go to foreclosure and also to quantum, how
29 many subscribers, what reasons did they give, what did they cancel, what were they
30 previously taking?

31 THE PRESIDENT: I see that the evidence that they have lost subscribers and that has had an
32 effect is important, but exactly how profitable each of those subscribers would have been
33 and over what period they would have remained subscribers, that seems to me quite

1 separate. In any negligence case you have to show there has been damage, but you do not
2 have to quantify it. I take your point that is made there that one has to show it has an effect,
3 but if it is established that subscribers have been lost then the value of those subscribers,
4 and some will be worth more than others and so on, and what sort of profit would have been
5 made, and looking at the accounts of Socrates in detail seems to me something that could be
6 postponed, could it not?

7 MISS SMITH: Yes, the initial evidence. I think we will need to know, in order to establish the
8 effect and the foreclosure effect, we need to know not just that some subscribers have
9 cancelled but how many, to the extent, etc.

10 THE PRESIDENT: Yes.

11 MISS SMITH: Then, yes, the pounds and pence may be something that could be dealt with
12 subsequently but there will be, to some extent, an overlap and that is really our only
13 concern, how efficient is it to start splitting these things up in light of the desire to get this
14 done as quickly as possible.

15 THE PRESIDENT: It is quite normal in negligence cases to split quantification which, if you are
16 successful now arises, and if you are unsuccessful is quite often settled.

17 MISS SMITH: Yes, only subject to that one initial concern we take your point absolutely, Sir.

18 THE PRESIDENT: Mr. Woolfe, you are not suggesting that your client would not then have to
19 give evidence as to the effect this had on---

20 MR. WOOLFE: Absolutely, Sir, there would be some overlap of evidence, clearly, but it is a
21 subset.

22 THE PRESIDENT: I think we will proceed that way, we will separate quantum from liability, but
23 liability includes in this case showing that it has had an effect on the business, but the
24 detailed quantification will be segregated.

25 The next thing I would like to do, please, is to just understand what has happened. We have
26 had, today, the Law Society's response to some questions we raised but, Miss Smith, I am
27 still struggling, if you can help me. These are just factual points, I hope they are common
28 ground, but at least you will know what you say happened.

29 MISS SMITH: I hope so!

30 THE PRESIDENT: In 2011 the CQS was introduced?

31 MISS SMITH: Yes.

32 THE PRESIDENT: Initially, it involved no AML training, as I understand.

1 MISS SMITH: That is right. Initially, para. 12 of the defence, the only online training that had to
2 be carried out in order to become a member of the CQS was that staff of member firms had
3 to complete online training on the Law Society's conveyancing protocol. That was all that
4 was required in 2011.

5 THE PRESIDENT: And no change in 2012, they had additional courses, but it says
6 "understanding mortgage fraud".

7 MISS SMITH: That is slightly different from anti-money laundering. Mortgage fraud would be,
8 for example, putting in a fraudulent application for a mortgage that in some way is
9 misleading or that is actually fraudulent rather than you may have the money in order to get
10 a mortgage, or you may have the money in order to buy a property, but the money is the
11 money of criminal proceedings, and therefore you are trying to launder that money and that
12 is different from mortgage fraud. So the anti-money laundering element training module
13 was introduced in 2013.

14 What happened was this was almost an incremental development of the CQS, which is
15 probably why it was changed in 2015.

16 THE PRESIDENT: What puzzled me is that what is said then on p.13, para. 37(c), the second
17 sentence:

18 "During the initial period of the CQS from 2011 to 2015 AML training only
19 constituted one re-accreditation course in one year, 2013, but formed no part of the
20 training in other years."

21 MISS SMITH: I am sorry; this did not make it absolutely clear. If you are a firm and you
22 became a member of the CQS in 2011 your staff would have to carry out the initial module
23 of training in 2011, your staff would then only have to carry out in 2012 the two additional
24 modules of whatever they were. In 2013, if you were still a member, your staff would only
25 have to carry out the two additional modules, including the AML training in 2013. Your
26 staff would not have to repeat that training. In 2014 your staff would carry out the two
27 additional re-accreditation courses of new build purchase and leasehold which were the two
28 additional courses.

29 THE PRESIDENT: Suppose you have new staff in 2014?

30 MISS SMITH: Those individuals would have to carry out all of the modules that had accrued up
31 to that date.

32 THE PRESIDENT: So it would form part of their training in 2014?

1 MISS SMITH: For those individuals, yes, but not for the staff who had already done it. Or, if
2 you were a firm who joined completely afresh in 2014, all your staff would have to do all
3 the modules that had accrued by that date, but, again, they would only have to carry out the
4 AML training once, or the AML CQS module once.

5 THE PRESIDENT: So under the Regulations there would be no requirement that it has to be
6 repeated?

7 MISS SMITH: It requires regular training and the Law Society's guidance is at least every two
8 years.

9 THE PRESIDENT: But you are continuing staff 2011 to 2014, they do it just the once?

10 MISS SMITH: That is right.

11 THE PRESIDENT: Yes, I think I understand that.

12 MISS SMITH: That is the timing point, the other is, of course, the content point, which was this
13 was a course that was not designed to fulfil statutory anti-money laundering training. It was
14 designed for the purposes solely of the CQS for residential conveyancers, as part of a
15 quality assurance for residential conveyancing. It was only carried out by residential
16 conveyancing staff at these firms. Obviously, a firm which has a residential conveyancing
17 department may have other departments where the staff are not carrying out the training
18 under the CQS because they are, say, family law or commercial, they are not doing the
19 CQS, they are not interested in the CQS; they would have to be trained separately as well,
20 of course, quite apart from firms who do not even do residential conveyancing.

21 THE PRESIDENT: Then something happens in the restructuring, which is para. 13?

22 MISS SMITH: That is right.

23 THE PRESIDENT: All the current modules were withdrawn by February 2016, is that right?

24 MISS SMITH: That is right. I think probably in response to complaints that it had become
25 unwieldy because there was this accreditation over the years of an extra two courses, and
26 then another two courses, and if you were a firm applying to become a member of the CQS
27 in 2014 your staff had to take, I think, nine courses.

28 THE PRESIDENT: That is then the core training----

29 MISS SMITH: Yes.

30 THE PRESIDENT: --which includes a financial crime module, with AML training, one of its
31 elements?

32 MISS SMITH: Yes.

1 THE PRESIDENT: Does that AML training, unlike the previous course that was introduced in
2 2013, is that a broader AML training course?

3 MISS SMITH: No, that is the CQS specific training course. It is part of the financial crimes. I
4 think if you look at annex 1 to the defence, you can see the AML courses offered by the
5 Law Society.

6 THE PRESIDENT: I did not find that terribly clear, because I do not understand how boundary
7 disputes have anything to do with anti-money laundering.

8 MISS SMITH: We will obviously have to put more evidence in on this, but this----

9 THE PRESIDENT: What have boundary disputes got to do with anti-money laundering?

10 MISS SMITH: That is a good question that I will have to take instructions on to answer.

11 THE PRESIDENT: Some of these are free, and so on. Of course there are a lot of other courses
12 because there are lots of other firms that are not interested in CQS. Going back to what is
13 said in para.13, if we could, please, you made the point that the module that was introduced
14 in 2013 was not designed to fulfil the AML statutory requirement.

15 MISS SMITH: That is right.

16 THE PRESIDENT: Is the design of the financial crime element regarded as fulfilling the
17 statutory requirement?

18 MISS SMITH: That was designed for the purposes of the CQS. It was not designed for the
19 purposes of fulfilling the statutory requirement. A judgment as to whether or not it does is a
20 judgment that has to be taken by the relevant officer at the law firm. The Law Society
21 certainly did not design it for that purpose. It was designed for the purpose of the CQS,
22 which is the quality assurance, and was designed specifically for residential conveyancers,
23 and specifically to ensure that they were doing a proper job in their residential
24 conveyancing work. So it was not designed for the purposes of fulfilling a statutory
25 requirement.

26 As to the content, all I can say is that is a matter that the relevant officer has to judge.

27 As to the timing, I can say that we do not take the view that it will fulfil the requirements,
28 because again the core training is only carried out by firms joining the CQS for the first
29 time and new starters joining an existing CQS member firm. So, again, it is only carried out
30 once.

31 So the AML statutory requirement as to regular training and the Law Society's guidance on
32 that being at least every two years will certainly not be fulfilled by the core training.

33 THE PRESIDENT: Then as part of accreditation now you have to do the update training.

1 MISS SMITH: Yes.

2 THE PRESIDENT: That was introduced in September 2015, and on the current update things
3 that are going include risk and compliance, which includes the module covering AML?

4 MISS SMITH: Yes.

5 THE PRESIDENT: So that is a repeat.

6 MISS SMITH: That is, and update training is to be taken every year as part of the CQS, and it
7 will change every year. So this year, the 2015/16 risk and compliance module does include
8 an element covering AML - anti-money laundering. In June 2016 a new update will be
9 introduced and that does not include AML.

10 THE PRESIDENT: Is there a difference, as I saw suggested in the particulars of claim, that you
11 do a different update in your second year from your first year?

12 MISS SMITH: Yes, the updates will change of every year. Instead of there being a sort of
13 accrual of courses that have to be taken, under the new system you will carry out core
14 training, which you carry out when you join the CQS, either as a firm or as a member of
15 staff joining an existing member firm, and then every year staff will undertake one course of
16 update training, and that will be different every year.

17 THE PRESIDENT: So somebody who this year is doing their core training will get the financial
18 crime, but next year they will be doing the new update and that will have no risk and----

19 MISS SMITH: No AML element.

20 THE PRESIDENT: In the risk and compliance module.

21 MISS SMITH: That is right.

22 THE PRESIDENT: Does one know what the following year will have, or is that not yet decided?

23 MISS SMITH: I think that has not yet been decided. It will react to best practice and recent
24 developments and current topics. So the idea is that it will be update training in the real
25 sense. It will react to what has been going on in the last year in the market and linked
26 developments.

27 THE PRESIDENT: I know this will be flushed out in a witness statement in due course, but I am
28 just trying to understand really what the complaint is, what is underlying the case.
29 You have heard that, Mr. Woolfe, and your client, the person who runs your practice,
30 is probably with you, is he, in court. What is your understanding from Mr. George of what
31 actually has happened that is different from what happened? I can see that in 2011 and
32 2012, there was no AML. In 2013 something came in, but from his claim what he is really
33 concerned about is not what happened in 2013, it is what has happened much more recently.

1 MR. WOOLFE: The distinction is not quite as clear cut as that. As I understand it - again this
2 will be a matter for others in due course - essentially in 2015 it began to become apparent - I
3 am not sure of the precise date - that the Law Society's CQS scheme and re-accreditation
4 requirements were having some effect. You can imagine, in a sense, nobody is required to
5 take AML training from the Law Society pre-2013. People who joined in 2011, who are re-
6 accrediting in 2013, have to take it. As the number of members of the scheme has grown,
7 you get a ratcheting up effect as time goes on. That is certainly when we first became
8 aware of it.

9 Then there is a change. Although it says September in the defence that the decision was
10 taken, I think my client only really became aware of it in January with respect to the core
11 training containing AML. Indeed, in respect of the update requirement, it was not until the
12 issue of proceedings.

13 Then there is an issue - to give you an idea of the factual dispute between my learned friend
14 and me on this, she says that the judgment has to be taken by the relevant officer as to
15 whether AML training from the Law Society is sufficient. We say, on the facts, it would
16 seem a bit odd if they say this is sufficient to train conveyancing staff, but it is not sufficient
17 to ensure that the conveyancing staff are sufficiently trained initially by reference to the
18 statutory standard.

19 Then as regards the point about this only applying to new staff, there are two issues really.
20 One is how you actually do the training in practice, and are you really going to take
21 update training from a separate provider; or do you simply re-use the training you have
22 from your initial existing provider.

23 THE PRESIDENT: The update training from 2015/16 will not include AML.

24 MR. WOOLFE: Perhaps I misspoke. When I said "update training", I meant the requirement to
25 regularly train, the statutory requirement to train regularly on AML. You can fulfil that in a
26 variety of ways. You can go off to a different provider and get your update training on a
27 specialist subject, a training module, as my client does in fact provide update training. Or
28 you can go back to your provider who has given you your basic training, so to AML, and re-
29 use their training in some way.

30 THE PRESIDENT: I understand that.

31 MR. WOOLFE: Then in respect of the point about the core training only applies to new starters
32 and the content of their update training, yes, it may be that this year, having only just

1 introduced the requirement in the core training, there is no AML update training, but we do
2 not know what is going to happen in the future.

3 THE PRESIDENT: I can see that. It was really para.16 of Mr. George's claim. He, of course, is
4 very much looking at what is going on. Having described the background to CQS he says:

5 "From some time believed to be in early 2015 to early 2016 the mandatory CQS
6 training included requirements that ..."

7 That is the whole urgency of the matter, because something fairly recently happened. It is
8 not at the moment----

9 MR. WOOLFE: Sir, there does appear to be a mismatch between the change that happened in
10 2015 and 2016 and what is said at para.16.

11 THE PRESIDENT: Yes, there is that, but from what we have heard the change that potentially
12 affects Socrates' business happened in 2013.

13 MR. WOOLFE: Sir, no, the change that happened in 2013 did, in time, begin to affect Socrates'
14 business, but also our case is that the change that the Law Society decided upon in 2015, but
15 effectively, as I understand it, is being implemented in early 2016, which introduces AML
16 training as a mandatory part of core training for any new staff, and all new firms joining the
17 CQS.

18 THE PRESIDENT: But that would have been the case, unless I have misunderstood it, after
19 2013?

20 MR. WOOLFE: No, Sir, it was----

21 THE PRESIDENT: Anyone joining after 2013 would have to do all the modules then in place
22 and it is only a firm that joined before 2013 – 2011 or 2012 – where it was only part of the
23 updating but you would have to do for re-accreditation every year, as I understood it.

24 MR. WOOLFE: As I understood the way my learned friend has explained the requirements, that
25 appears to be correct, those are their requirements not ours, I cannot absolutely verify it, but
26 yes, that appears to be right. From my client's point of view, the effect, as I say, began
27 from 2013, albeit they were not obviously aware of it in 2013, and will continue under the
28 new rules, so it applies to both the old and the new rules.

29 THE PRESIDENT: That is what I am just trying to understand whether the alleged breaches of
30 competition law, whether it only starts with the restructuring and the new Rules, 2015/16,
31 which is what appeared to be the target of the claim, or whether it also covers what
32 happened in 2013.

33 MR. WOOLFE: Sir, it covers both. Can I take instructions, Sir?

1 THE PRESIDENT: Yes, of course.

2 MR. WOOLFE: (After a pause) If I can just expand a little on the chronology? If you go to the
3 exhibit to Mr. George's witness statement – do you have a copy?

4 THE PRESIDENT: Yes.

5 MR. WOOLFE: There is a letter in that, the position at 11th January 2016. As I understand it, this
6 letter was written both before the Law Society published on its website the document in
7 which it sets out the changes to the CQS, which I understand is dated later in January – I do
8 not believe I have a copy of that here, but I understand that to be the case – and certainly
9 before my client was aware of those changes because those changes were only brought to
10 his attention around the time of the filing of the claim form.

11 That gives you an indication of how matters stood. Essentially, he was just asking to be
12 able to provide AML training, it having become apparent there was an issue.

13 Then, on the day of the claim form being issued, Mr. George found the document on the
14 Law Society website which announced the changes, so the concern pre-dates and post-dates
15 the change, and it may be that the claim form is in some respects unclear, but we can clarify
16 that as necessary.

17 THE PRESIDENT: This letter talks about the three requirements, which may have been for
18 people who joined in 2011, they reach year 3 in 2013.

19 MR. WOOLFE: I should also put on record there is one point that has somewhat exercised my
20 client during the correspondence today, that these changes were not actually brought to his
21 attention by the Law Society.

22 THE PRESIDENT: Yes.

23 MR. WOOLFE: Which should have been done.

24 THE PRESIDENT: I think it may be that as one gets greater clarity of actually what has
25 happened, and it is only through the information today and then Miss Smith's further
26 clarification a few moments ago, that it is tolerably clear to me what has happened, that you
27 will need to consider exactly what is alleged to constitute the violations, because it may go
28 back to the 2013 introductions. It seems to me that is what you are saying, that it is the
29 2013 introduction of the mandatory course which would have applied to new joiners, and
30 updating of existing members of the CQS.

31 MR. WOOLFE: Yes, that, but not only----

32 THE PRESIDENT: And then the new----

33 MR. WOOLFE: Yes.

1 THE PRESIDENT: --position now, but that has continued that position. Thank you. You
2 suggested that dominance could be reserved, and one could look at abuse first, and you
3 point out, Mr. Woolfe, that that course has been taken in a number of private actions for
4 abuse of dominance, but there have, I have to say, been cases where the dominance
5 argument appeared to be one that was not at the heart of the case and therefore there was a
6 strong suspicion that if abuse was established, dominance is not going to be seriously in
7 issue. I am not sure that is the case here, and I am also not sure that dominance here will
8 add hugely to the length of trial. It might involve an expert on each side, and therefore
9 increases costs, but I find it hard to think it would take more than a day. It is a question of
10 market definition which we will come to and then barriers to entry, and that is really what it
11 is, is it not?

12 MR. WOOLFE: We certainly do not think dominance would take a long time. We do not think
13 there is much in the dominance argument. The cost of getting experts to opine is not a
14 negligible matter.

15 THE PRESIDENT: No, but it might be necessary if it is resisted here. I have to say I am not
16 attracted by the idea of separating it out. I think that might postpone argument for another
17 day.

18 MR. WOOLFE: In which case may I just develop submissions on one point, which is I have
19 included in my skeleton argument certain criticisms of the way the case is put against us. I
20 appreciate the old adage about glass houses and stone throwing and so on----

21 THE PRESIDENT: No, I will come to those, because we do need to look at how the case is put
22 but I am trying initially to see what sort of shape of trial one might be working towards.
23 Again, we have to consider (a) how it has been pleaded; and (b) what evidence is needed,
24 and what is the most efficient way of providing it.

25 MR. WOOLFE: What concerned us was essentially the time it has taken to get to this point and
26 then the proposal in my learned friend's skeleton that we put everything off for another two
27 months save for some very limited disclosure, and also what was said about this being
28 complex in various respects. So it was with an understanding that the defendant wishes to
29 present the issues of market definition and dominance as being complex that we made our
30 case management proposal. If they can be simplified then we do not necessarily oppose
31 coming into the same trial; I can see some advantages to that.

32 THE PRESIDENT: Sorry to interrupt you, but if you are right on market definition and, subject
33 to barriers to entry, this is a monopoly, and that might have implications to what conduct is

1 objectively justifiable or not. It is not case, is it, where it is 60 per cent or 70 per cent, on
2 the Law Society's own pleading, it was the only source of this accreditation that is currently
3 available. So I think it would be helpful to establish whether it is, indeed, a relevant market,
4 and that it is a monopoly and subject to barriers to entry, whether it is dominant.

5 MR. WOOLFE: Clearly there is an interplay between dominance and abuse. The reason for
6 rising and addressing you on it is not necessarily to dissuade you from the course you are
7 decided upon, but rather to point to the fact that the defendant has pleaded a non-admission
8 to market definition. They are not running a positive case on that.

9 THE PRESIDENT: I have that point.

10 MR. WOOLFE: And, in terms of them being permitted to adduce evidence in relation to it they
11 should be----

12 THE PRESIDENT: Yes, I have got that point, I have read what you said. Miss Smith, you do not
13 want to separate out dominance. It is not suggested, I think, in your skeleton that we should
14 deal with abuse first?

15 MISS SMITH: Sir, you have seen the proposal we make, and if I can just remind you of that, that
16 is at paras. 12 and 13 of our response to the application for fast-track. We have not at this
17 stage said we should go full steam ahead to trial on every issue. What we have said is at the
18 moment there is a number of complex issues, a definite lack of clarity in the claim.

19 THE PRESIDENT: But there is not lack of clarity about market definition, it is very clear in the
20 claim, the lack of clarity is they do not know what your position is.

21 MISS SMITH: Sir, I would come back on that. We say that at the moment there are two markets
22 at issue, obviously, there is the tying market, and the tied market. As regards the tying
23 market, as we have identified in our defence, it is expressed in a number of different ways
24 in the claim form, and we have cited those in para. 28 of our defence.

25 THE PRESIDENT: Let us just look at your para. 28. It is different language, but it is the same
26 definition as far as I can see. Apart from saying they have used slightly different
27 formulation, but the market is the market for the provision of quality accreditation to
28 conveyancing law firms. It is pretty clear, is it not? What do you say the market is? You
29 provide this product, what market do you say you are in, because I do not understand from
30 your pleading what you say?

31 MISS SMITH: Maybe I was expecting too much specificity from the pleading. We had to make
32 certain assumptions as to what the market was defined as, the tying market, and we have
33 sought to do that in para. 29. We have put forward what we think they were trying to get at

1 – a market for the provision of quality assurance services to residential conveyancing law
2 firms in the United Kingdom. Now, if that is what they were trying to get at then they
3 should say that. But we have not admitted that because it is not for us to plead their market
4 definition.

5 THE PRESIDENT: No, but it is for you to plead your market definition.

6 MISS SMITH: Absolutely, and----

7 THE PRESIDENT: You say if that is the market definition you do not admit it?

8 MISS SMITH: We do not admit it.

9 THE PRESIDENT: So what do you say the market is in which you are supplying this product.

10 MISS SMITH: At the moment we have put in a non-admission because they have not put the
11 market down, but we have proceeded on an assumed market, and our positive case is that
12 we are not dominant in that market for the reasons we set out in para. 30.

13 THE PRESIDENT: You say that is the market. Either you deny it, and you said it is the UK, not
14 England and Wales, or you admit it. If you deny it you have to explain what it is you say is
15 the market, and if you do not admit it you have to say why you are not able to admit it. At
16 the moment I do not understand.

17 MISS SMITH: Maybe we should have. We did----

18 THE PRESIDENT: Can you tell me now?

19 MISS SMITH: On my feet now, no, I cannot. If the claimants are saying that that is the market
20 they are pleading - and this is not how it is put exactly in their skeleton, it is not how it is
21 put - if that is what they are saying and if they are writing down in their pleading - we had
22 suggested it could be clarified in their reply - if they nail their colours to the mast then I can
23 probably take instructions and put our position in writing. I cannot, I am afraid, do that on
24 my feet now. But what we have done, and maybe we should have spelt it out more, is said
25 that if this is the market we deny that we are dominant in that market. That is then set out in
26 detail in para.30.

27 THE PRESIDENT: That is essentially because of the barriers to entry - is that right? The rest of
28 it does not seem to me to go to dominance.

29 MISS SMITH: The question of the role of the mortgage lenders is, in our submission, and this
30 may be something that has to be worked up through expert evidence, relevant to the ability
31 of the Law Society to exercise market power, which of course then goes to dominance, the
32 constraints of the Law Society to exercise any market power, because although this product,
33 the CQS, is sold to solicitors firms, it is sold to them for a number of purposes, but one of

1 the primary purposes is for them to be able to prove to mortgage lenders that they are
2 providing a quality service, as well as consumers, but mortgage lenders is one of the
3 audiences that the solicitors firms are trying to prove their quality to. Also we see there that
4 a number of mortgage lenders have mandated the CQS as a condition for their panel
5 membership - not the only condition, but one of the conditions.

6 So the role that the mortgage lenders play, in our submission, in this market is relevant to
7 the market power that the Law Society can exercise, and so is relevant to the question of
8 dominance.

9 So there is that point, and the point was made in the case made against us in correspondence
10 and in pleading that Socrates subscribers prefer the CQS to their training products because
11 the mortgage lenders mandate it as a criterion for membership to their panel. So that role
12 that the mortgage lenders play - it is not a two sided market strictly, but there are things
13 going on in this market from the point of view of the mortgage lenders on one side and the
14 point of the view of the solicitors who buy the product on the other side, which do go, we
15 say, to the market power that can be exercised and to questions of dominance.

16 So that is why the role of the mortgage lenders is pleaded there, and that has to be, I think,
17 understood in order to establish dominance. Then, of course, related to that is the question
18 of barriers to entry as well.

19 THE PRESIDENT: Yes, I see. That is very helpful, thank you. Mr. Woolfe, on this question of
20 market definition - and it seems to me it does not matter whether one calls 'accreditation' or
21 'qualification', and I think the Law Society, themselves, in their letter to your client call it
22 'accreditation', it is obviously not statutory accreditation, nobody is suggesting it is -
23 subject to the residential point I understood you were saying it is the market provision of
24 quality accreditation services to conveyancing law firms - is that right?

25 MR. WOOLFE: Sir, yes, that is right. If you were to substitute assurance for certification and
26 accreditation, it would make not a jot of difference. It may be that is a better use of
27 language. Can I point you, Sir, to para.28 of the claim form?

28 THE PRESIDENT: I think this has picked up bits of the claim form.

29 MR. WOOLFE: This is not one of the bits that is picked up. Perhaps you could go to 27 and 28
30 as a pair. There is a reference at para.27 to:

31 "… a market share of over 60 per cent in the market for the provision of quality
32 certification/accreditation services to law firms that provide conveyancing advice."

1 If I could just pause there, this is how I would put the case, which is that there is a 100 per
2 cent share of supply. The 60 per cent refers to the share of potential demand that has been
3 sucked up. That is clear, because if you go down to the second sentence para.28:

4 "There are no other services in the relevant market that compete with the Law
5 Society."

6 THE PRESIDENT: It says over 60 per cent. The market for the provision of
7 quality/accreditation of services to law firms providing - would it be conveyancing
8 services?

9 MR. WOOLFE: Conveyancing services would be a more accurate statement.

10 THE PRESIDENT: What about the residential point because the CQS, the Law Society says it is
11 residential conveyancing, it is not commercial conveyancing, I think is the point they made?

12 MR. WOOLFE: Sir, that is something we will have to consider, but just before we get there can I
13 point you to the sentence in para.28 that I wanted to take you to, which is the second
14 sentence, which says:

15 "There are no other services in the relevant market that compete with the Law
16 Society."

17 So whatever the precise wording may be, our case is very clearly that there is a single
18 supplier, that is the CQS.

19 Let me just take instructions on the point about residential. (After a pause) Sir, as we
20 understand it, there is not any equivalent product in relation to non-residential
21 conveyancing. Equally, it is marketed only at residential conveyancers.

22 THE PRESIDENT: So it may not matter.

23 MR. WOOLFE: Even if the phrasing of the market definition is drawn more widely so as to
24 exclude residential conveyancing, in practice it is only be provided to residential
25 conveyancers within it. "Residential" would actually make sense as an addition in that
26 context.

27 THE PRESIDENT: The other thing is, and I am not going to ask you to answer this on your feet,
28 but you will need to consider this: what is the geographic market? Is it England and Wales
29 or is it the UK, which is alleged by the Law Society? That is something I think you need to
30 think about. Even if the Law Society only supplies it within its accreditation scheme in
31 England and Wales, it may be that the market is the whole of the UK. I just do not know.

32 MISS SMITH: Sir, that something we may need to take advice on, but I do not think it makes a
33 difference in respect of case management directions.

1 THE PRESIDENT: I do not think so, no. It is now very clear, subject to the geographic market
2 point, which does not affect this. Miss Smith what is the market that is alleged? The fact
3 that there are slight----

4 MISS SMITH: I am sorry, I was not suggesting the residential conveyancing was - I am sorry, we
5 are drafting on our feet, and I do not want to put the claimant in a position----

6 THE PRESIDENT: I know, but Mr. Woolfe is clarifying which of the various formulations,
7 because you have made complaint that there are different ones. Bearing in mind this is a
8 pleading done sort of in person by a director of the client, what is the allegation? It is that it
9 is the market for the provision of quality/accreditation services to law firms provide
10 conveyancing services, or alternatively, law firms providing residential conveyancing
11 services?

12 MISS SMITH: I do not know whether that is the alternative or not. If the claimant was prepared
13 to accept the definition that we have set out at 29, which is written down, and I would
14 submit is clear, then----

15 THE PRESIDENT: I do not know what "rather than residential conveyancing law firms"----

16 MISS SMITH: Law firms providing residential conveyancing services. If he is willing to accept
17 that then there is clarity.

18 MR. WOOLFE: Sir, I was simply trying to clarify where we are coming from. I actually have no
19 trouble with the words that are put in para.29, subject to the point about geographic extent,
20 which we will have to consider. What I was trying to do was clarify that we mean a market
21 in which the CQS is the only supplier.

22 THE PRESIDENT: Yes. We can say that it is residential conveyancing services, and then it is
23 for you to specify fairly soon what you say, whether you admit that, and if you do not then
24 what you say is the market in which your own product is being supplied.

25 MISS SMITH: Subject to receiving confirmation on geographic market, we should be in a
26 position to do that within the week, and to take instructions within a week.

27 THE PRESIDENT: I take your point that on dominance you rely on restraining power of
28 mortgage lenders and barriers to entry.

29 MISS SMITH: Yes, and we also rely upon the innovative nature of the product, para.30 sub-
30 para.(a), the first mover, effectively, nature of what we are producing - this probably goes to
31 barriers to entry - this is an innovative product that we are the first to provide in response to
32 this demand, and that also does go to the question of dominance.

33 THE PRESIDENT: I see. You will no doubt develop that.

1 MISS SMITH: Yes.

2 THE PRESIDENT: It is not then, I have to say, a hugely complicated question that should take
3 up a great deal of time. I do not know what the answer is, but determining the question
4 does not strike one as one of enormous complexity on the scale of arguments about
5 dominance, unless you come up with some radically different market definition, in which
6 case you will have to explain why.

7 MISS SMITH: Yes, I think that is right, Sir.

8 THE PRESIDENT: I think it can be dealt with all together, which is really what I was trying to
9 get to establishing, and that it does not have to be separated out as a matter of trial.

10 MISS SMITH: While we are on clarification, would it be worth dealing now, Sir - obviously I
11 can deal with it later if you wish me to - with the definition of the tied market? Again,
12 Mr. Woolfe may be able to clarify this, but there is, in my submission, a real difference in
13 the way in which that is defined at different points in the claim form, which does have an
14 impact on the question of foreclosure. If we are talking about the market - and this is 31 of
15 my defence - for the provision of AML training, there are a number of different degrees.
16 The market for the provision of AML - which, as I have explained to you, can actually be
17 different from a financial crime - and financial crime training, or, even broader, law firm
18 training services market, if the definition is the very broadest of those, the overlap between
19 the CQS AML training module and the law firm training services market is very, very
20 small. If the market is the provision of AML training services then the overlap may be
21 larger. That is an issue that really does need to be clarified so that we know what we are
22 focusing on for the purposes of the foreclosure arguments.

23 THE PRESIDENT: Yes. Are you able to assist on that at this point, Mr. Woolfe?

24 MR. WOOLFE: To a limited extent, Sir, yes. The first point is our position is that the tied
25 market does not need to be defined in quite the same level of detail as defining the market
26 of dominance. It is not an element of the cause of action. What is necessary is to show a
27 sufficient effect as to warrant it being an abuse. Clearly, if the market were so broad as to
28 include all training for all law firms and all subjects, that is a significantly more difficult
29 task than if the market is confined to AML training only.

30 Sir, it may be that we need to clarify our case to some extent on that. What I would resist is
31 the suggestion that there needs to be a strict market definition trial where the court needs to
32 come to a complete final stark conclusion on, "This is the relevant market".

1 In respect of the effect, the important point in relation to anti-money laundering is that there
2 is a statutory requirement, and that it is different from and, for legal reasons, non-
3 substitutable with other forms of training. If you engage in property transactions you must
4 be trained in respect of anti-money laundering, and thus at a first glance it does seem a
5 pretty good candidate for a separate market for any vendor, or a separate sub-market, part of
6 the market maybe, in respect of which you may get anti-competitive foreclosure. We rely
7 specifically in the claim form on that statutory requirement as being why AML training is
8 distinct.

9 THE PRESIDENT: You say it has a significant effect on competition between Socrates training
10 and the Law Society, because all firms have to have AML training and this gives the Law
11 Society a great advantage in its supply of AML training to those law firms that do
12 residential conveyancing, which is quite a lot of law firms.

13 MR. WOOLFE: Exactly, that is it, because it wants----

14 THE PRESIDENT: That is enough and that makes it clear there is an effect you are not being
15 foreclosed from all training, you are not being foreclosed from all AML training, but it has a
16 significant effect.

17 MR. WOOLFE: Indeed, Sir, and I believe the AML training is my client's biggest seller.

18 THE PRESIDENT: Yes, I think that is sufficiently clear but you can make a request for further
19 information if you want to, Miss Smith, but it seems to me one knows what this case is
20 about, or what is being said.

21 Can I ask then about witnesses? Let me start with you, Mr. Woolfe. There is going to be
22 evidence on what your client does and its courses and the effect which the incorporation of
23 the AML elements, modules, in the Law Society's CQS training has had, that is one area on
24 which you will need to give evidence, and is that one witness, Mr. George, effectively?

25 MR. WOOLFE: Probably. If I can say one or two, but I think it will most likely be one. But
26 they are slightly different in respect of the effect on the company and the customers, and so
27 on. Mr. George, as I understand it, is not the one who sits there day in and day out taking
28 the bookings and keeping track of who has paid on time, who has renewed and who has not,
29 somebody else does that. However, one would imagine probably that evidence could be
30 presented by him, albeit in a sense some of it may be hearsay.

31 THE PRESIDENT: Then, are you going to have another witness who would be, as it were, a
32 customer, or former customer, a conveyancing solicitor on the significance of the CQS?

33 MR. WOOLFE: We have envisaged that that was something that we might do.

1 THE PRESIDENT: Again, that could be one witness explaining how that works, and then might
2 there be an expert dealing with market definition?

3 MR. WOOLFE: Sir, yes, we did include it as an alternative, including an expert on market
4 definition.

5 THE PRESIDENT: An economist, yes.

6 MR. WOOLFE: Yes, however, there may be a further area which must be addressed which may
7 potentially overlap between factual and expert evidence, and I do not think it really matters
8 how it is characterised, but it is defined as an area which is the difference between the
9 training that the Law Society provides as part of the CQS, and the training that my client
10 provides. So it really is the issue that is raised by the defendants at para. 38(a) amongst
11 other places of the defence, their objective justification was essentially saying our training is
12 different, it is a point that Miss Smith was putting on her feet a little earlier, where she was
13 saying this training was not designed to be AML training to----

14 THE PRESIDENT: It would not be sufficient; in other words, it might not meet the statutory
15 requirements for a conveyancing law firm.

16 MR. WOOLFE: Or, indeed, it might be different in terms of how it is integrated into the practice
17 of a conveyancing firm, or something, but as I understand it, the case that is being put
18 against us is that the training that forms part of the CQS is somehow different in type. That
19 is an area which the court, the Tribunal being a legal body, can look at the different forms of
20 training and take a view on but it is something to which witnesses may potentially----

21 THE PRESIDENT: I am not sure they have said they know enough about your client's courses to
22 say how different they are, indeed, they say they do not know the detail of your client's----

23 MR. WOOLFE: As I understand at present, that is right.

24 THE PRESIDENT: And whether they are saying it is appreciably different, as I understand Miss
25 Smith to say, it was not thought that taking the AML element of the CQS would be
26 sufficient to meet the statutory requirement for a conveyancing law firm and, therefore, it
27 may have to take another course as well.

28 MR. WOOLFE: As I understood it, one point that was being put was the regularity point, and I
29 can see that taking a course on one occasion cannot, of itself, fulfil a requirement to take
30 courses regularly, so there is an issue of practice there, that I think would be covered by the
31 same factual witness, where even though the Law Society say that there is a one-off
32 requirement, there is, nevertheless, a real ongoing effect.

33 THE PRESIDENT: Yes, I see that.

1 MR. WOOLFE: But I am talking about a separate issue. There may be an issue as to whether or
2 not the tied product, and the product we say we are selling, are really the same thing. We
3 think they are, but insofar as there is an issue that would need to be deal with.

4 THE PRESIDENT: No, I may have misspoken. I think actually what is said in the answer to
5 questions is that when a firm join the CQS after 2013, and complete the CQS AML module
6 the firm might conclude this was sufficient to satisfy its obligations under the regulations
7 for the residential conveyances within the firm, but not on an ongoing basis, because you
8 have to repeat, and then you say that does not matter because it still has an effect, but that is
9 not suggesting that there is a qualitative difference between that AML training that they got,
10 and the training that your client provides, such that one satisfies the regulations and the
11 other does not.

12 MISS SMITH: I do not think we are in a position yet to say. What we say is that it is a matter for
13 the relevant officer at the law firm in particular to take a view as to whether the content of
14 that particular year is sufficient to fulfil the requirement.

15 THE PRESIDENT: Does the Law Society not have a view about that? You are supplying a
16 product to a law firm, they say: "What is in it?" and if they say: "Have you designed it as
17 such? We are residential conveyancing firm" that this is sufficient for the regulations, "or
18 should we take one of your other courses as well?" What is the answer?

19 MISS SMITH: The answer is that the CQS, which has a number of modules, a large number of
20 modules of which the AML module is only one, was not developed for the purpose of
21 ensuring that law firms fulfilled their statutory requirement to carry out AML training, and
22 it was, as I say, as is pleaded in para. 37(b) of the defence, it was not intended to have the
23 effect of foreclosing the market for AML training services, and that we offer other training
24 courses which are complementary to and different from that.

25 The question as to whether it is the same as, or competes with, the Socrates' products we
26 cannot say.

27 THE PRESIDENT: Of course, it is not intended to foreclose the market for AML training
28 because there are lots of non-conveyancing law firms who will have to get AML training,
29 but if a firm signs up to this and you have just redesigned it, and says: "Do we need to take
30 an additional course" - such as the ones you list at annex 1 - "to comply with the
31 regulations, or will this be enough?" What is the answer they would be given?

32 MISS SMITH: I do not know what the answer is given, and I do not know whether those
33 questions have been asked, that would be a matter for evidence. What I do know, I think I

1 can say, is that the CQS is not marketed to firms as saying do this course and you will also
2 fulfil your statutory requirements for AML training, it is not marketed on that basis to firms.
3 But the question you asked me----

4 THE PRESIDENT: But something designed as an element of the course, and would have had
5 some thought: "What do we put in it?"

6 MISS SMITH: Absolutely, and these are all matters that will have to be developed in evidence,
7 but at the moment the question you put to me was: if a solicitor's firm comes to the Law
8 Society and says: "Is this going to fulfil my statutory requirements?" I cannot tell you the
9 answer to that question because that is something we will have to go back and see whether
10 that question has ever been asked and what the answer to that question was. What I can tell
11 you is that the CQS is not marketed to firms saying: "Do this and you will fulfil your
12 statutory requirement for AML training." It is "Do this and you will reach a certain quality
13 of residential conveyancing services." And one element of the training, which is itself only
14 one element of the whole product, the CQS services, is the AML training for one year.

15 THE PRESIDENT: I would have thought the person who designed the element gave thought to
16 what to put in it and what not to put in it, what is necessary and would have had the
17 requirements, which are very broad in general, and the regulations in mind, and whether
18 someone who pays the fee to take the CQS is also going to be expected to buy from the Law
19 Society or someone else, one of its courses on AML.

20 MISS SMITH: The evidence we have put in, and obviously we will have to put in witness
21 evidence to that extent, of course, sir, the development of the CQS, the various different
22 aspects of it, the development of the training, the nature of the training and how that
23 interacts with the other elements of the CQS. What I have so far put in as an example, in
24 the defence, and we will develop this as well, is that CQS membership does not prevent
25 firms from taking other AML training and this is para. 37(d), just the one example of this
26 year so far the Law Society has held 15 AML training events, a total of 300 delegates
27 attended from 247 firms. Of those 247 firms, 133 firms were CQS members. We are
28 going to have to investigate those sort of figures in more detail, perhaps carry out surveys,
29 because of those firms that are CQS members, are they CQS members who joined back in
30 2011, so only did their last element of training on the AML as part of the CQS in 2013?
31 Have they only just joined? Did they carry out their AML/CQS training this year and also
32 take the other AML training? We do not know, so we have to investigate.

33 THE PRESIDENT: It may not just be residential conveyancing firms.

1 MISS SMITH: The 133 firms that are CQS members would have been.
2 THE PRESIDENT: They might have parts of the firms that are not.
3 MISS SMITH: Exactly, all these matters need to be investigated so that we not only need
4 evidence from our part on what the Law Society was intending to do and trying to do by
5 way of the CQS training, how it was developed, what went into the thinking and the
6 development of those training courses, but we need also to see what the impact has been as
7 far as we can tell on other courses offered by us, but also by other providers, and to do that
8 properly we would want the opportunity not just to put in evidence from within the Law
9 Society, but also, if necessary, carry out, for example, and produce survey evidence.
10 THE PRESIDENT: It should be enough to look at your own courses, because you offer those.
11 MISS SMITH: Of course, survey evidence of the CQS members who we have access to and what
12 the evidence that we can get from our own courses as well.
13 THE PRESIDENT: So you would want: impact on the development of your courses and the
14 AML element of the courses in 2013 and now in the restructuring, and you will explain
15 what is the CQS purpose. How many witnesses is that likely to be?
16 MISS SMITH: I am not exactly sure how many people are involved in this. We have the
17 development of the CQS back in 2011.
18 THE PRESIDENT: Why are you not sure when we have asked you to consider that?
19 MISS SMITH: Sorry, the issues that we will need go through a number of points in time. The
20 development of the CQS back in 2011 and the role of the mortgage lenders and the
21 development of that product do go to dominance. So that is one point in time. It may be
22 that these are the same witnesses. I will have to double-check. There is the development of
23 the training and the re-accreditation courses, particularly 2013, that is the second stage.
24 Then there are the changes in 2015 which are particularly focused on by the claimant. That
25 is the third stage. So potentially three people, but hopefully one person can do it all. So
26 there are potentially three people on those issues.
27 The Law Society's other courses which are developed and offered by other parts of the Law
28 Society is another issue, so that is potentially four witnesses. There is survey evidence and
29 the impact that the other courses might have, the CQS has on those other courses. So up to
30 four witnesses, I would think. One obviously would hope to try and----
31 THE PRESIDENT: I am not sure you can have four witnesses. It seems to me that you can cover
32 this in three witnesses. I would need a lot of explanation as to why you need four witnesses.

1 We are talking about a relatively short period of time, unless somebody has left or radically
2 changed roles in that short period, 2013 to 2016.

3 It is the effect of the mortgage lenders on those changes in 2013 to 2016, not on the initial
4 introduction. Nothing turns on what happened in 2011. It is the changes that were made by
5 bringing in the AML module in 2013, and now the restructuring in 2015 to 2016. That is
6 what the case is about.

7 MISS SMITH: Mr. George has said in email exchanges that he wants the Law Society to give
8 evidence on the profits that it has made as a result of - I think he put it like this, the profits
9 that the Law Society has made.

10 THE PRESIDENT: He might want that, but at the moment I do not think you need give witness
11 evidence on that. Will you want an economist on market definition?

12 MISS SMITH: I think we would like the opportunity to put that evidence in, yes.

13 THE PRESIDENT: Particularly if the claimant does.

14 MISS SMITH: And on the issues dominance.

15 THE PRESIDENT: Yes, market definition and dominance.

16 MR. WOOLFE: Can I just rise on that to say that if Miss Smith comes back and they seek to
17 amend their pleading to plead a positive on market definition, then by all means they should
18 have an expert on that issue. If they maintain a non-admission then----

19 THE PRESIDENT: They will have to put a positive case, but even if they agree with you on the
20 definition on market power and barriers to entry, it seems to me that it might be important.
21 So an economist and then any other witnesses - will there be a mortgage lender, or
22 something like that?

23 MISS SMITH: When I was going through the number of witnesses, we would definitely like the
24 opportunity to put in evidence on the role of the mortgage lenders and the attitude of the
25 mortgage lenders. That may come directly from the mortgage lenders or we may be able to
26 do it internally.

27 THE PRESIDENT: On that issue, yes.

28 MISS SMITH: On that issue - so I am not sure whether, in that case, we would ask for three to
29 four witnesses, because if we do have to get someone in from outside----

30 THE PRESIDENT: Yes, three to four witnesses of fact, and one expert. I think that should cover
31 it.

32 I think, looking at that, and what is involved, from what I have seen today, it does seem to
33 me that this case can be tried in four days. I am not attracted by the suggestion of

1 postponing a decision on fast-track. As the rules make clear, we can take a case out of the
2 fast-track if it is in fast-track. This is an early stage, but it seems to me that this is a case
3 that does qualify for the fast-track procedure.

4 We will come on to disclosure, but I do not think this is a case that should involve massive
5 disclosure on either side. There will be some disclosure, in particular from the Law Society.

6 I think one can realistically think that this case be tried in six months' time. It is probably
7 just over, or might be, over the three day guideline, but that is not fixed in stone. It is

8 reasonable to think about a trial in November. That is not as soon as you had hoped for,

9 Mr. Woolfe, but I think there are a number of issues to be clarified and evidence to be

10 gathered, but I think that November is doable. If, at a further CMC, it looks as this is

11 unrealistic it can be taken out of fast-track, but that is the way I would like to proceed.

12 I think, on that basis, I would like to deal with further directions as follows: I think you

13 said, Miss Smith, that you can, within a week, state your client's case on market definition
14 by way of further information, having clarified what is defined as the relevant market.

15 I think, Mr. Woolfe, perhaps it would be helpful if you could amend the pleading both to

16 deal with the 2013 point, which does not really come out, and then you can delete the claim

17 for the declaration, and so on. I think you could do that within a week, could you not?

18 MR. WOOLFE: Sir, yes. I am on holiday next week, so before that.

19 THE PRESIDENT: Can you manage that?

20 MR. WOOLFE: We can manage that, yes.

21 THE PRESIDENT: Do you want to serve a reply?

22 MR. WOOLFE: Sir, I think if we are doing an amendment, I do not really see the need for a reply

23 in practical terms. I know, strictly speaking, it is not really a reply point, but in so far as we

24 set out our case on objective justification, and so on----

25 THE PRESIDENT: Objective justification is the defendant's case. If you dispute it you do not

26 know if you have a positive case.

27 MR. WOOLFE: We may have something minimal to say in response, but I cannot see why that

28 cannot be incorporated in our----

29 THE PRESIDENT: Because you are going on holiday, when, in fact, is that likely to be? Will it

30 be by the 23rd?

31 MR. WOOLFE: If we say the 23rd, Sir - Friday is my last day, but it may be that Mr. George can

32 serve it on the Monday.

1 THE PRESIDENT: All right, say 23rd May, I think it is sensible to say that. I am not expecting it
2 is going to be radically claimed, your claim. It will clarify the point about 2013 and what
3 has happened given the chronology.

4 MR. WOOLFE: Indeed.

5 THE PRESIDENT: In that case, I think it is more sensible to say that the Law Society should
6 have seven days thereafter to amend its defence to deal with market definition and they will
7 be helped by the greater clarity that will come in the amended particulars of claim. So that
8 will be for the 30th May.

9 MISS SMITH: Sir, the first step is the amended pleading for the claimants, Monday, the 23rd.
10 We then have seven days to respond and particularly a positive case on market definition.

11 THE PRESIDENT: It is the Bank Holiday, it will be Tuesday, 31st May.

12 MISS SMITH: Tuesday, 31st May.

13 THE PRESIDENT: There are two things: one, I think it would be helpful to have witness
14 statements from at least the main witnesses early with any documents relied on attached to
15 the witness statements. Also, there is certain information that each side should give. I
16 think, Mr. Woolfe, as regards your client he can obviously put in other matters as well in his
17 evidence, but I think in particular it should cover the nature of the AML training courses
18 that it provides with specific reference to any courses or modules that are targeted at
19 conveyancing law firms, including any changes since 2011. It should cover competition in
20 the market for training courses, and AML training courses in particular, it should set out for
21 each year since 2011 what it charges or fees are for these courses. Whether initial courses,
22 updating courses, and so on, it will explain what it does. Then it should set out the impact
23 on the Socrates company of the CQS changes in terms of firms cancelling or not renewing
24 their subscriptions and what has been happening, which is referred to in para.41 of your
25 pleading.

26 That is to be covered in a witness statement, but either there or separately by way of further
27 information, I think the number of law firms, or lawyers - I do not know whether it has firm
28 rates and individual rates, however it does it - should be set out for each year since 2011
29 generally for its courses and then specifically within that for AML cases. I think it says it
30 has a property module - there is reference to that in your particulars of claim at para.13. It
31 says:

32 “... additional modules for specialist practitioners including a module for property
33 lawyers, which explains further the AML ...”

1 and so on. So again the numbers, taking that for each year since 2011 to date. That could
2 be done by way of a schedule provided separately. It should identify the law firms that have
3 been referred to in para.22, where it says:

4 “Some firms reaching the second and third years ... having informed the Law
5 Society that they have recently trained all their staff AML ... using Socrates. The
6 Law Society has nonetheless insisted that these firms must still buy the Law
7 Society’s competing products and threatened them that if they fail to do so their
8 CQS accreditation will be revoked.”

9 We need further information of who they are.

10 Thirdly, to provide details and schedules in some convenient form of its subscribers who
11 have been cancelling their subscriptions since, I think we can say, 2013, and identify the
12 one firm that is referred to at para. 41 who kept “the Socrates service (at a reduced fee)”.
13 Some of that can be done in a witness statement, some of it can be done by a separate
14 schedule with some further information. I think that should be done by a date that I would
15 like to set now and I would have thought it could be done by – what is a reasonable time
16 frame?

17 MR. WOOLFE: We think roughly a month would be----

18 THE PRESIDENT: If I say Friday, 1st July, does that seem a reasonable time for that to be done.

19 MR. WOOLFE: That seems reasonable.

20 THE PRESIDENT: Your other evidence, that is to say possibly a conveyancing solicitor, or
21 someone who knows about conveyancing solicitors, or whatever, could come by what –
22 22nd July? So third party witness, as it were – does that seem reasonable?

23 MR. WOOLFE: Sir, that all seems reasonable.

24 THE PRESIDENT: We are not going to deal with the expert at the moment, I will come back to
25 experts. For the Law Society, Miss Smith----

26 MISS SMITH: Are you proposing this witness evidence before or instead of disclosure? You
27 indicated that they should be given witness evidence from at least the main witnesses, with
28 any documents relied on attached, which seems to me to be an absolutely good starting
29 point. As you were identifying what would be useful evidence on the part of the claimants,
30 just one thought on disclosure came to mind, and there maybe others once we have seen
31 their witness evidence, but we would want disclosure, for example of the reasons given by
32 those subscribers who cancel that you have identified in the schedule, and it may be that this
33 can be dealt with by way of applications for specifics disclosure once the evidence has been

1 given, but at least, in our submission, a provision for that opportunity should be in the
2 timetable.

3 THE PRESIDENT: You would be able to come back, absolutely, and seek specific disclosure.

4 What I have said is that the claimant should attach documents they rely on, so if a
5 subscribing firm has sent an email as to why the cancelled one would expect that to be
6 attached or, if there was a telephone conversation when they were rung up and asked: “Why
7 are you leaving us?” that would be covered in a witness statement. That is exactly what I
8 envisage in that disclosure, it may, if necessary, come later though I think we will need
9 some disclosure from the Law Society in any event. At the moment whether disclosure is
10 needed from the claimant I am not sure, we will revisit that at the second CMC, or probably
11 a third CMC.

12 As far as the Law Society is concerned, you have explained the nature of the evidence your
13 client wishes to give, Miss Smith, on the purpose of the CQS, and what is comprised in
14 terms of training, including any elements of AML and really explaining what you have told
15 me in short summary today about how these different modules came in and how many
16 years’ training is involved, and the distinction between people who have been accredited
17 and their updates and so on. But your evidence should also cover, please, how the CQS is
18 promoted to solicitors’ firms and, if at all, to the public – I do not know if it is – and what
19 are the charges or fees for CQS, and updates and the dealings with mortgage lenders and the
20 case on objective justification. Again, that should, I think, cover each year since 2011 as far
21 as what it comprises, and how it changed and developed, and how it is promoted; that may
22 be, you thought, two to three internal witnesses from the Law Society. There is then the
23 possible fourth witness, a mortgage lender.

24 In terms of further information, you may be able to cover some of this in an amended
25 defence, but I think it would be helpful to know, is the CQS provided to law firms based
26 outside England and Wales, or is it only solicitors who are members of the Law Society
27 which, as I understand it, would only be within England and Wales. If so, how many
28 lawyers or law firms outside England and Wales each year from 2011 to date?

29 Then, as regards the defence, if you can explain the distinction, please, that is made in para.
30 30(c) between the 6,000 firms of solicitors who undertake residential conveyancing work,
31 and 4,600 solicitors active in residential conveyancing work, how those figures are
32 compiled, and what the distinction is, what does “active” actually mean? Also, which of the
33 courses listed in annex 1 on AML are directly related to a practice concerned with

1 residential conveyancing in the UK? What I have in mind is if someone from such a firm
2 rings the Law Society and says: "I see you have all these courses, which ones should my
3 firm take and why?" presumably the Law Society, whoever runs the courses, is able to tell
4 them what is most relevant, and what they need to do. There is a long list there and, as you
5 said a moment ago, you will need to check whether they are truly dealing with AML, such
6 as boundary disputes. It might be a good course for a firm doing residential conveyancing,
7 but it may not, in reality, have much to do with AML, we just do not know at the moment.
8 Picking up what you said in the defence that you took me to, para. 37(d), can you for each
9 year since 2013, so that is probably 3 years – 2013, 2014, 2015 I expect – give the number
10 of firms that take the CQS, or have the CQS, who have also taken separate AML courses
11 from the Law Society and, if so, which courses.

12 MR. WOOLFE: Sir, if I might rise to add one point on that? It might be helpful in that case to
13 know the number of people from those law firms who have taken the courses, simply
14 because, of course, if you have a large multi-purpose law firm and some do residential
15 conveyancing, and some do other things - if I understand the point you are getting at.

16 THE PRESIDENT: Yes, I do not know how the numbers are done and, I suspect, it may be the
17 people who know are not here, in terms of numbers who take courses. You have referred to
18 numbers of delegates from different law firms, but that is attending an event.

19 MISS SMITH: Yes, it is.

20 THE PRESIDENT: But signing up for courses, I do not know how it works. If you sign up as a
21 firm for an online course, do you pay the same amount if you are a firm of three fee earners,
22 and a firm of 300, or do you pay more? I do not think I can be over prescriptive, but
23 meaningful numbers so one can see that if it is Linklaters it is not counted in the same way
24 as a small provincial High Street firm, but something about the number of fee earners, if
25 that emerges from the way they are charged for.

26 Finally, I am not going to order any disclosure at this point, as has been suggested in
27 correspondence, of the finances of the Law Society on this, but I think you should set out,
28 particularly in view of the case being run on barriers to entry, the total income and profit
29 from the CQS for each year from 2011 to date, or as close to the present as possible,
30 identifying what contribution each year is made from practising fees, as referred to in para.
31 11 of the defence and any current profit forecasts for the future.

32 MR. WOOLFE: Is your intent that that should cover including revenue from the mandatory
33 training courses?

1 THE PRESIDENT: It is from the CQS?

2 MR. WOOLFE: I may be wrong and the defendants may be able to help you on this more but, as
3 I understand it, as a firm you join the CQS and you pay a fee, and then when you take your
4 training courses you have to pay other fees, and I just want to understand whether or not
5 you are asking the defendants to provide----

6 THE PRESIDENT: I did not understand it is a fee each, I thought there was an initial fee and
7 then there is a fee for the updates, but I did not get the impression that you pay a fee for
8 each module.

9 MR. WOOLFE: If you look at annex 1.

10 MISS SMITH: There is a fee to be paid for the modules, it is para. 19 of the defence.

11 MR. WOOLFE: I just wanted to check what you were asking----

12 THE PRESIDENT: There are other courses, the AML training courses. CQS courses cost £60
13 to---

14 MISS SMITH: Yes, we will give all the information about the revenue from CQS.

15 THE PRESIDENT: Perhaps I did not quite pick that up because I thought the risk and
16 compliance update, that is something you will have to do as part of your update training
17 which has two modules if you are a CQS member; I appreciate you can do it as a non-CQS
18 member, but as a CQS member you have these two modules: Conveyancing Practice and
19 Risk and Compliance, and maybe you pay separately for each module – this is para. 13(b).

20 MR. WOOLFE: Indeed, item 6 of annex 1 is “CQS – Risk and Compliance: 2015 update”,
21 “Learning mode: Online learning, price £60.”

22 THE PRESIDENT: But you can take it as someone who is outside the CQS, you can just say: “I
23 want to take that course”, without having a CQS certification.

24 MR. WOOLFE: I was really wanting to understand when you were asking them to give further
25 information as to their revenue and profit in relation to CQS whether you were intending to
26 include within that revenue and profit from the training fees paid by people who do the
27 CQS?

28 THE PRESIDENT: “No”, is the answer, because there might be all sorts of other training as well.
29 What I was looking at is the income for people who did the mandatory training of the CQS,
30 as set out in paras. 12 and 13.

31 MR. WOOLFE: You want the revenue from the mandatory training to be included?

32 THE PRESIDENT: Yes, which is, I think, what everyone in the CQS has to do, and you have to
33 do your initial training and then you have to do your further updates, that is my

1 understanding. Of course, people in the CQS might do other training courses as well, but I
2 am not including that, so it is really of the CQS, that product for its members. So it is the
3 mandatory training for the CQS, as I understand it. It may be that it has changed how you
4 pay or, although it is two modules you pay a separate fee for each one, I do not know, but
5 there will be a total revenue, and there will be, I suspect, some sense as to whether it is
6 profitable or pays its way, or makes a loss, in which case that is how the fees are adjusted in
7 future.

8 That evidence and further information, this is all internal to the Law Society, can be
9 provided, Miss Smith, when?

10 MISS SMITH: There is potential for one possible mortgage lender witness as well.

11 THE PRESIDENT: Yes, as I say, that may take longer rather like the----

12 MISS SMITH: I think also the further information, which is quite substantial information, for a
13 number of years going back over five years, not just on the content of the course but how it
14 has been marketed and promoted, which I assume will be from a different part of the Law
15 Society, and then from a third different part of the Law Society the financial, which I would
16 anticipate would take quite a lot of work to produce, we would ask that this be produced by
17 22nd July, which coincides with the date for the third party witnesses from the claimant,
18 because there is quite a lot of work that needs to be done going back over a number of
19 years. You have asked for separate information for each year on a number of different
20 points, so I really think we are going to have difficulty producing that before 22nd July.

21 THE PRESIDENT: The incumbent profit figure, which can be done by way of a table or a
22 schedule, I will say 22nd July. Looking at the number of firms who have taken CQS, who
23 have also taken separate AML courses from the defendant, that is the other thing that takes
24 some looking at, and----

25 MISS SMITH: That will, because we may have to drill down into the information that we have.
26 You want for each year, 2013 through to now, the number of firms who have taken the
27 CQS, the other courses from the Law Society and, if so, what other courses.

28 THE PRESIDENT: Yes.

29 MISS SMITH: Obviously, those who have attended events the information may be more readily
30 accessible, those who have obtained online courses for each of those years, there will no
31 doubt be a number of online courses and firms who are also members of the CQS, so there
32 is going to be quite a lot of work to be done there.

1 THE PRESIDENT: I will say 22nd July for that and, again, that is not part of a witness statement,
2 that is information.

3 In terms of the witness statements and what you want to say about the development of the
4 purpose of the CQS, how it has developed over the years, what the fees are, the case on
5 objective justification, why could that not be done, that witness evidence, by 30th June?

6 MISS SMITH: Obviously the evidence on just what the CQS comprises, and how it has been
7 promoted, and how it has changed, but the case on objective justification I would be loath to
8 produce the witness evidence without having done at least the work that goes into the
9 schedules on the numbers of firms taking the CQS and the impact that that has on the other
10 courses offered by the Law Society. I anticipate our witnesses will probably want to
11 comment on that, on the nature of the different courses offered as part of the CQS but also
12 us offered separately for AML and I think there could be difficulties if we have to produce
13 the witness evidence before we have the results of the crunching of the figures for the
14 further information. The danger is we come back again and comment on matters by way of
15 witness evidence and there is always the danger of cutting these things up, that you feel that
16 once further information has been produced you need to come back. I cannot anticipate
17 what is going to be in that, we may need to come back and explain it by way of witness
18 evidence. It might be simpler and, actually, in the end more efficient to get all the witness
19 evidence and the further information in at the same time.

20 THE PRESIDENT: Yes, well in that case if you are getting to 22nd July you will also have to get
21 any third party evidence, not the experts----

22 MISS SMITH: We accept that.

23 THE PRESIDENT: --by 22nd July. In that case I would think it sensible to say all the evidence,
24 claimant's as well, by 22nd July.

25 MR. WOOLFE: All of ours?

26 THE PRESIDENT: Yes.

27 MR. WOOLFE: Okay.

28 THE PRESIDENT: And we have it altogether from both sides.

29 Just to explain to you where I am going, I wanted to say something about disclosure and I
30 want to fix a CMC for late June where we will look at the question of a cost cap because, by
31 then, you can produce cost budgets now that we know what is in this trial and what is not,
32 and how many witnesses, and by then you will know about whether you want an expert of

1 limited scope, I suspect you may, so that will come before the evidence is complete, but you
2 will know what the work is that you are engaged upon.

3 As far as any expert evidence, that will come after the summer, but I will come back to that.

4 MR. WOOLFE: If I might raise one point, it does go to disclosure. I was going to ask for one, I
5 think and I genuinely hope, very, very limited disclosure to be made by the defendant very
6 soon, which is simply in relation to what the rules have been for the CQS and each of the
7 points, 2011, 2013.

8 THE PRESIDENT: You mean the content?

9 MR. WOOLFE: The content as in the document that actually sets out the rules and what the
10 requirements are. Simply because we are supposed to be re-pleading this week. We can re-
11 plead our case based on the clarification that has been given over the weekend by the
12 defendant, but I think it would avoid any messiness if we can be given as soon as possible
13 simply the rules for the CQS setting out what they were in 2011, 2013.

14 THE PRESIDENT: When you say "the rules", you mean what the content was, the content of
15 courses that people had to take?

16 MR. WOOLFE: I mean in terms of, for instance, in 2011 we know that it was not required to
17 have AML training, in 2013 a requirement was introduced, I am seeking the documents that
18 constitute not the training but the CQS each year so we can see what they----

19 MISS SMITH: This is disclosure, because the explanation is given in para. 12 as to what was
20 done----

21 THE PRESIDENT: Yes, it is disclosure.

22 MR. WOOLFE: It is disclosure.

23 MISS SMITH: Well, I know, but that starts to reopen the whole question of disclosure and that is
24 something, as I understood it, was going to be addressed in the evidence that has just been
25 outlined by you, Sir.

26 MR. WOOLFE: If I could perhaps finish explaining what----

27 MISS SMITH: If we are----

28 THE PRESIDENT: Miss Smith, let Mr. Woolfe finish.

29 MR. WOOLFE: It may I have misunderstood the volume of this stuff. My understanding is that
30 there would be a small number of documents, one for each year that the Law Society would
31 have on the shelf somewhere and could pull out, or on somebody's hard drive, and send to
32 us in order that there is no messing about over misunderstandings of what the rules have
33 been at different times. That is all we are really looking for. I am not asking for searches to

1 be done I am asking for those specific documents. If there is a problem with that I am
2 willing to hear what it may be, but we simply think it would be easier if we could have
3 those sooner rather than later.

4 THE PRESIDENT: You have exhibited to your particulars of claim the January 2016 document.

5 MR. WOOLFE: Sir, that is right. I do not have it in front of me now, but I know the document
6 you mean, and what we are talking about is the equivalent of that in the earlier years.

7 THE PRESIDENT: These were public documents.

8 MR. WOOLFE: They were public but I understand no longer available from the Law Society
9 website.

10 THE PRESIDENT: I see.

11 MISS SMITH: I am sorry; which documents were public but no longer available?

12 THE PRESIDENT: Do you have the particulars of claim, there is attached----

13 MISS SMITH: Yes, I have particulars of claim annex 1B I think it is, "Conveyancing Quality
14 Scheme Changes to Online Training 27th January 2016". Are we being asked to carry out a
15 search for every equivalent or potentially equivalent document to those for every year after
16 2011? What is the purpose of the disclosure, because if it is simply seeking further
17 information as to what was required for each of the years then we can provide that by way
18 of further information, I do not see the necessity of doing a disclosure exercise for that.

19 THE PRESIDENT: Are we clear now that it was, as I understood it from your explanation, 2013
20 this came in. We heard how it had to be covered each year and then the 2015/16 change, so
21 what more is it that you----

22 MR. WOOLFE: I am quite prepared to re-plead our document on the basis of what has been said.
23 I simply do not want there to be another issue that arises down the road where it turns out
24 because we are pleading from that rather than having just seen what the rules are, we
25 inadvertently misstate something slightly and it sets another hare running. That is simply
26 the idea.

27 MISS SMITH: If there is anything that is unclear in the defence as to what the CQS actually
28 required, then it has not been asked for in the request for further information, so it does not
29 appear to have been ambiguous to Mr. Woolfe when he drafted that. It is set out in the
30 defence what was required for each year, that training was required for each year and I have
31 explained it now. I am not quite sure what further information is required.

32 THE PRESIDENT: I think it is sufficiently clear now what has happened, and I think we can
33 plead on that basis and if anything else emerges you can deal with that.

1 MR. WOOLFE: I am content as long as we are not criticised for any slight misstatement in what
2 we plead on that basis.

3 THE PRESIDENT: You have based it on what you have been told, and if documents emerge
4 from years past that change it you can adjust that accordingly.

5 I think the parties should start to think about a possible limited disclosure. Miss Smith
6 raised the question of exchanges with firms who were clients of Socrates, but did not renew
7 or cancel their subscriptions. Some of that may be attached with the witness statement, but
8 I think you should consider, Mr. Woolfe, with your client what is involved in giving
9 disclosure of exchanges with those firms surrounding their cancellation or non-renewal, and
10 what sort of work that would involve. It should not be substantial. This is since 2013.
11 Miss Smith, it seems to me that the Law Society should give disclosure of any reports of
12 road shows which were, I think, May/June 2014 and May to July 2015. You have pleaded it
13 in your defence. Presumably after each road show somebody makes a report of what
14 happened.

15 Secondly, you refer to the survey of 2015 of CQS law firms, and you say there were 300
16 responses. It is May/June 2014 road shows and May to July 2015 - that is the survey, and
17 road shows were in 2015. I think you should give disclosure of those documents,
18 irrespective of what is in the witness statement.

19 MISS SMITH: With the witness statements?

20 THE PRESIDENT: At the same time as the witness statements. I would like you to consider for
21 a further CMC what would be involved if you had to disclose all documents concerning the
22 decision in 2013 to introduce an AML element into CQS training, and again in 2015, I
23 imagine it would be, the revised AML content of the restructured training.

24 To be clear, the first point I made, namely the road shows and the 300 responses, you are
25 required to disclose. The second part, I would like you to consider what would be involved
26 and how much work it would be, and so on. We will address that at the further CMC. I am
27 not ordering that now.

28 MISS SMITH: Just to clarify: the distinction is between the first topics that you identified, the
29 reports of the road shows and the survey, those documents are to be disclosed at the same
30 time as the witness statements, 22nd July. We are to consider what is involved, if we had to
31 disclose all the documents that related to the 2013 introduction of the AML element of
32 mandatory training and revised content of mandatory training, including in the AML
33 element in 2015, and we will come back to you with that information at the CMC?

1 THE PRESIDENT: Exactly.

2 MISS SMITH: Can I just clarify what the claimant is required to do about disclosure of what
3 must be a pretty fundamental part of their case, the reasons why their subscribers have
4 cancelled or not renewed subscription? Is that disclosure to be given with their witness
5 statements?

6 THE PRESIDENT: No, they will attach any documents they rely on, and I have indicated that
7 they are likely to do so, but I want them to consider what is involved if they had to produce
8 all their exchanges with cancelling subscribers since 2013, not just the ones they rely on it,
9 as it were.

10 MISS SMITH: They will be providing details of that in the schedule that you have identified, all
11 the cancellations since 2013.

12 THE PRESIDENT: The number.

13 MISS SMITH: The number, not the identity? I suppose it depends on what the numbers are.

14 THE PRESIDENT: I said what they need to identify in terms of the ones they have referred to in
15 the pleadings.

16 MISS SMITH: Right.

17 MR. WOOLFE: Identify the law firms referred to in para.22 and 41, provide these in a schedule
18 of subscribers who have been cancelling since 2013, which I understood to be numbers each
19 year rather than identities, as such. You did mention at that stage that----

20 THE PRESIDENT: The identities of those you have pleaded, which is para.22, and the one firm
21 referred to in paragraph - I mentioned it now I cannot find it. You were somewhere saying
22 there was one firm----

23 MISS SMITH: That got the manuals, but not the training. I am just wondering whether, on that,
24 the claimants can give us an indication of what sort of figures we are talking about on
25 cancelling subscriptions, because if it is ten a year then it does not seem overly onerous to
26 ask them those ten. If it is 375 it may be a bit different. They must be able to give us at
27 least some idea of the sort of quantities involved, one would have thought.

28 MR. WOOLFE: This is very much a ball park, but, as I understand it, my client has roughly 600
29 odd law firms who take AML training at the moment, that order of magnitude.
30 Cancellations in the course of a year might be in the order of 100, that sort of number rather
31 than 10,000 or two.

32 THE PRESIDENT: That is AML training in total, not just conveyancing firms, is it?

33 MISS SMITH: And the 100 cancellations are CQS members or natural wastage or?

1 THE PRESIDENT: That is what will be explored, but at the moment we are just going to get the
2 figures, and we will see what is involved. There might be all sorts of reasons why they
3 cancel. The firm might close down. That is something that we will look at when we come
4 back, whether general disclosure or specific disclosure of all exchanges need to be given.

5 MR. WOOLFE: Sir, am I to understand as well that each party should come to that CMC armed
6 with any specific disclosure requests that they want to press upon the other side?

7 THE PRESIDENT: You should write in advance with that and prepare your costs budget on the
8 basis of either having to make the disclosure I have outlined or not, in the alternative.
9 In the light of all that, I think one can say that expert evidence, if any, should be by
10 29th September. That is what I have in mind which seems to me reasonable on the basis of
11 the factual evidence being provided by 22nd July.

12 MISS SMITH: I am very sorry, I do not want to over-complicate matters, but we are talking
13 about a CMC towards the end of June, and we are talking about specific disclosure
14 applications at that CMC at the end of June. The sort of specific disclosures we are thinking
15 about are the reasons given by subscribers for cancelling their subscriptions with Socrates.
16 We are not going to get the schedules, as I understand it, that set out the number of firms
17 each year who have cancelled until they accompany the witness statements by 22nd July.

18 THE PRESIDENT: Yes.

19 MISS SMITH: So we are not going to get the aggregated information until 22nd July, so we are
20 not going to be in a position to say, "There were 100 cancellations, we think it would be
21 proportionate for you to provide us with a sample of those", or, "There were 15
22 cancellations, please provide us with all the disclosure relating to those 15 cancellations".
23 We are not going to get that information before the CMC in late June.

24 THE PRESIDENT: I think we will. What I envisage is that Mr. Woolfe will come and say, "If
25 we had to provide this information it will take so much time and cost so much because there
26 are 700 firms", or, "No, it will not, because there are 20".

27 MISS SMITH: Yes, I understand. So, ideally, we would have formulated our request of what we
28 would like to see, told them what we would like to see and they can then say, "Sorry, it is
29 going to be proportionate".

30 THE PRESIDENT: Exactly, we will all be much better informed by then. I appreciate you will
31 not have had all your evidence, or seen the other side's evidence, but you will have a much
32 clearer idea of what this case is about. I think we need to look at it then. As I say, one will
33 then also know where you are with experts in your thinking. The date I have in mind is

1 29th September. This matter could come on for trial in the week of 6th November for, I will
2 say, three to four days. Is that a week that presents difficulties for either counsel? I have to
3 say, if we are doing the fast-track, there is a limited extent to which we can accommodate
4 counsel's difficulties.

5 MR. WOOLFE: Sir, not for me, although 6th November is, I think, a Sunday.

6 THE PRESIDENT: You are quite right, 7th November. Thank you very much, 7th November.

7 MR. WOOLFE: It would not present a problem for me, Sir.

8 MISS SMITH: Yes, Sir.

9 THE PRESIDENT: Then it is a case of fixing a further CMC. As I said at the outset, I am
10 putting this into the fast-track. If at that point it look as though it is just manageable it can
11 be taken out. At the moment, it seems to me that, as this is the sort of case with a small and
12 medium sized enterprise where the issues are not over-complicated, should be manageable.
13 It is exactly the sort of case, shorn of any quantification issues, that can be heard under the
14 fast-track.

15 Then one is looking at a CMC, which I said should be in late June. We may have to come
16 back to you on date, but I am thinking of the week of 20th June, on either 20th or 21st June.
17 Is that a date you can manage?

18 MR. WOOLFE: That is fine from our point of view.

19 THE PRESIDENT: Miss Smith, 20th or 21st June?

20 MISS SMITH: Yes, we can do that.

21 THE PRESIDENT: We will let you know which of those two. We should be able to do that by
22 the end of today or tomorrow morning.

23 Are there any further issues that we ought to address today, Mr. Woolfe?

24 MISS SMITH: There is one outstanding issue----

25 THE PRESIDENT: I just asked Mr. Woolfe.

26 MISS SMITH: I am sorry, I thought it was an open question.

27 THE PRESIDENT: I like to take you in turn, you will have your chance.

28 MR. WOOLFE: Sir, there is one point, which is a point of disclosure, and therefore it may be a
29 point of timing as to whether it is dealt with in the first tranche of witness statements,
30 evidence and disclosure or whether it comes to be dealt with at a CMC. We understand that
31 people have complained to the Law Society about having to purchase AML training from
32 the Law Society, and we would like disclosure of those complaints, just as we are required
33 to disclose emails, etc, from people who----

1 THE PRESIDENT: This is people who are CQS accredited presumably?

2 MR. WOOLFE: CQS accredited, who are saying, "What is this new requirement? I do not like
3 this, I want to take my AML training from somebody else". The reason behind saying we
4 want that is because, of course, the effect on my client depends not just on people who are
5 happy with my client and have left, and have given a reason as opposed to just cancelling,
6 as may often be the case, there are other people who are out there in the market. So that is a
7 relevant area of disclosure. In a sense, if you are willing to order the defendant now to give
8 it in the next tranche, that is great, but if not that is something which we will be wanting to
9 press upon you next time.

10 THE PRESIDENT: You have put down your marker about that. I will not order it now, but I will
11 add it to the matters that the Law Society should consider as to what that will involve. This
12 is complaints from firms who are in the CQS scheme, about the fact that it contains the
13 AML element which, prior to 2013, they obviously did not get in the scheme but could
14 purchase elsewhere. Again, it is presumably 2013 to date?

15 MR. WOOLFE: Yes.

16 THE PRESIDENT: Thank you. Now, Miss Smith, you were itching to say something.

17 MISS SMITH: Apologies for that. There was one outstanding point which was the claimant's
18 request for further information, whether they are still seeking an answer to that, given the
19 pretty full timetable that you have ordered for amending pleadings and then for us to put in
20 an amended defence by Tuesday, 31st May.

21 THE PRESIDENT: Thank you for raising that. Mr. Woolfe, I read that, it is attached to your
22 skeleton. I have sought to incorporate elements of that informing what I had in mind. I did
23 not take all of it. I was not, unless you wish to advance it with me, proposing to order
24 anything else.

25 MR. WOOLFE: Sir, as I see it, the most pressing parts of this have been dealt with by what you
26 have asked the defendant to do either this week or by July. As long as I understand it as
27 being that your answer to the remainder is 'not now', rather than 'never', I am willing to
28 leave it on that basis.

29 THE PRESIDENT: I am not saying 'never', because you can be free to raise any point. I think
30 that you have both got quite a lot to be getting on with in a tight timeframe. I may well
31 have overlooked something that you say is very important. You have just drawn my
32 attention to the point about complaints. One is going to see what the income is. I am not

1 going to order answers to all these questions, but is there any particular one you want to
2 raise?

3 MR. WOOLFE: I am just trying to cross-check against what you have ordered, Sir.

4 THE PRESIDENT: Some of these matters will be covered in the witness evidence, some of it
5 will be covered in the further information, one will be covered in the amended defence.

6 MR. WOOLFE: Sir, that is why I am just going through, to satisfy myself there is nothing else
7 which is pressing that cannot be dealt with later, and I do not think there is.

8 MISS SMITH: Can I just double-check in the light of what Mr. Woolfe said then about things
9 that the Law Society has to do this week, I did not understand that there was going to be
10 anything for the Law Society to do this week. As I understand your order, Sir, it was for the
11 claimants to amend their pleadings by Monday, 23rd May, and for us then to put in an
12 amended defence, which would address explicitly the questions of market definition, on
13 Tuesday, 31st May.

14 MR. WOOLFE: When I said 'this week', I was speaking loosely.

15 THE PRESIDENT: Miss Smith, you are exactly right.

16 MISS SMITH: Thank you very much.

17 THE PRESIDENT: Thank you both very much, and we will take it forward at the next CMC on
18 20th or 21st June. If you could put in costs budgets, which is the last thing just to raise, plus
19 any other applications that you may wish to make, by 4 pm on 15th June. Obviously, either
20 side can spend as much as they like, but in terms of recoverable costs, I will have a careful
21 scrutiny of what is proportionate and justified in the context of this case and the way it is
22 being tightly managed. No doubt you will bear that in mind.

23 Thank you very much.
24 _____
25