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IN THE COMPETITION
APPEAL
TRIBUNAL

Case No: 1351/5/7/20

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 24 January – Wednesday 2 February 2022

Before:
The Honourable Mr Justice Zacaroli
Paul Lomas
Derek Ridyard
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Churchill Gowns Limited and Student Gowns Limited

-v-

Ede & Ravenscroft Limited and Others

A P P E A R A N C E S

Fergus Randolph QC & Derek Spitz (On behalf of Churchill Gowns Limited and Student Gowns Limited)

Conall Patton QC & Michael Armitage (On behalf of Ede & Ravenscroft Limited and Others)

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1 Wednesday, 26 January 2021

2 (9.00 am)

3 MR STEFAN MUFF (continued)

4 THE CHAIRMAN: Good morning.

5 Good morning, Mr Muff. Welcome back. Thank you for
6 come back this evening.

7 A. Good morning.

8 THE CHAIRMAN: Mr Patton will continue his questioning of
9 you now.

10 Cross-examination by MR PATTON (continued)

11 MR PATTON: Good evening to you, Mr Muff.

12 A. Good morning, sir.

13 Q. Could you look in your first witness statement at
14 page 11, please {D1/3/11}. You see paragraph 46 towards
15 the bottom of the page, you say:

16 "Prior to delivery of the first batch of gowns in
17 May 2017, I recall having looked again at the samples
18 originally supplied in November of the previous year.
19 This would have been in about April 2017. Looking at
20 those samples again, I decided that they weren't quite
21 what we wanted -- not because the samples were not good
22 quality -- but because the material of the finished
23 product was not as matte as I had expected it to be."

24 So your concern about the sample was it was too
25 shiny?

- 1 A. That was one of our concerns, yes.
- 2 Q. The other concern?
- 3 A. I think we were trying to get a better understanding of
4 the price of recycled fabrics, so I wanted to have
5 direct conversations with suppliers to better understand
6 that -- to make sure that we were getting the right
7 price.
- 8 Q. So was the concern that you might have been overpaying
9 for the first batch?
- 10 A. Possibly, but we wanted to make sure.
- 11 Q. Recycled fabric is generally more expensive than normal
12 fabric; correct?
- 13 A. Yes, sir.
- 14 Q. So just to be clear, what is happening here is you have
15 already ordered the first batch. You ordered that in
16 March, did you not?
- 17 A. Of the original samples? Of the original fabric?
- 18 Q. Yes.
- 19 A. Yes.
- 20 Q. Exactly.
- 21 Before you have received them, you go back to look
22 at the samples and you think, "I will look to see if
23 there is another supplier who might provide less shiny
24 gowns"?
- 25 A. Yes, we wanted to see if we -- you know, we were

1 continually trying to improve the product; could we do
2 better.

3 Q. And cheaper?

4 A. And cheaper, yes.

5 Q. Shininess: that is one of the views that people often
6 have, or the expectations people often have about
7 recycled polyester, that it will look shinier than
8 normal fabric, is it not?

9 A. Well, I do not know if those concerns are specific to
10 recycled polyester, given that recycled polyester and
11 virgin polyester are fundamentally identical.

12 Q. So you do not agree that there is a widespread
13 perception that recycled polyester may be shinier than
14 normal polyester?

15 A. I would disagree with that, yes.

16 Q. If you go to paragraph 48, so over the page {D1/3/12},
17 you say that:

18 "On 19 April ... [you] replied to an advert
19 from ..."

20 A particular supplier; I will not read out the name:

21 "... on Alibaba stating that I was looking for
22 a black gabardine fabric ..."

23 Do you see that?

24 A. Yes, sir.

25 Q. Alibaba, this is a sales platform where you can chat

1 with suppliers; correct?

2 A. Yes, I believe it is the world's largest source or
3 platform(?).

4 Q. Could we just look at the schedule to your statement at
5 page 17 {D1/3/17}. You do not have that? It will be on
6 the screen.

7 A. Yes.

8 Q. This is a list of documents that were reviewed and
9 referred to during the preparation of your witness
10 statement dated 21 August 2021, and you see at item 7:

11 "Alibaba chat messages [between you and
12 the supplier], various dates (identified in statement)."

13 Do you see that?

14 A. Yes, I do.

15 Q. You were shown that chat in the course of preparing your
16 witness statement?

17 A. Yes, I was --

18 Q. The reference we have -- sorry?

19 A. I believe in the witness statement, a lot of it was gone
20 off memory.

21 Q. Sorry, were you shown -- go ahead?

22 A. I believe that a lot of my witness statement in this
23 regard was off my personal recollections from that time.
24 Since then we have looked at the chat, the full chat
25 messages, which go into more detail.

1 Q. When you say "we"?

2 A. I mean myself.

3 Q. So were you shown the chat messages when you were

4 preparing your witness statement or not?

5 A. I believe at the time, I believe I did not see those

6 messages.

7 Q. So you think item 7 is incorrect?

8 A. No, sir, I believe there were from the chat which I saw,

9 not -- but now we have found the entire chat.

10 Q. Okay.

11 Now, the reference, it does not appear on

12 the screen, but you can take it from me that when you

13 are on our system the reference that is given in

14 the bundles for item 7 is {F3/1080}, so if we could

15 please look at that.

16 Now, do you see that this is the entire chat history

17 that you had with the supplier?

18 A. Yes, sir.

19 Q. Do you recognise this document?

20 A. I do, sir.

21 Q. When do you say you first saw the entire chat history?

22 A. I do not recall.

23 Q. Are you saying you only saw that after you put in your

24 witness statement?

25 A. I believe that, from memory, there were -- this document

1 was compiled from individual messages. So I believe at
2 the beginning, when I wrote the witness statement,
3 I only saw, I believe it was, the beginning of the chat.

4 Q. The metadata on our system for this document is
5 26 February 2021. Do you have any reason to doubt that?

6 A. I do not know.

7 Q. Do you recall in February 2021 someone obtaining a full
8 copy of the Alibaba chat?

9 A. Yes, it is possible.

10 Q. That would have been some months before you prepared
11 your witness statement?

12 A. Yes.

13 Q. Do you think you might be mistaken? Do you think you
14 did see the full chat when you prepared your witness
15 statement?

16 A. If I had seen the full chat, I would have included more
17 information in my witness statement. I wish I had seen
18 the full chat.

19 Q. So the reason you think you may not have seen the full
20 chat is because there are parts of it that you have not
21 mentioned in your witness statement which, sitting here
22 today, you would prefer to have mentioned; is that fair?

23 A. Yes, that is fair.

24 Q. If we can start on page 1, we see your message of
25 19 April 2017:

1 "Hi,

2 "We are a producer of academic dress such as
3 graduation gowns. I am looking for a black gabardine
4 fabric made from RPET or RPET/wool blend. Weight around
5 200 GSM. Do you have something like this? Quantity
6 will be about 6000m."

7 It is right, is it not, that right from your initial
8 enquiry on 19 April 2017, you were raising
9 the possibility of using a blend?

10 A. Yes, this was because at the time we had a wholesale
11 customer enquiry in Australia, the Australian College of
12 Ophthalmology, who was enquiring about high quality
13 garments. So they initially enquired about wool gowns.
14 We very quickly realised that wool would be much too
15 expensive for this customer.

16 Q. You see the response at the bottom of the page:

17 "Thanks for your inquiry.

18 "My name is Maggie.

19 "Yes, we have polyester viscose wool blended fabric
20 and polyester wool blended fabric. Pls tell us how much
21 percentage of wool you want?"

22 Then if we could go over to page 2 {F3/1080/2}, you
23 say:

24 "Maybe around 25%-50% wool. In my business
25 unfortunately the price is more important so too much

1 wool is expensive.

2 "What do you think?"

3 She says:

4 "Yes, the more wool, the price is higher.

5 "If you need the poly wool [blended] fabric?"

6 She sets out the details of that.

7 Then you ask about the quote and then you see

8 the price at the bottom of the page; do you see that?

9 A. Yes, sir.

10 Q. Then on page 3 {F3/1080/3} you say at the top of

11 the page -- just let me know if you have that?

12 A. Yes, I have that.

13 Q. You say:

14 "Thank you for the information. Unfortunately

15 the price is very high for me. My target price is

16 around \$2 per metre. Do you have anything which could

17 be suitable?"

18 Then she says:

19 "Thanks for your reply.

20 "At your target price, we give you 4 options."

21 You see the four options, and the first of those is

22 70% polyester, 30% viscose; yes?

23 A. Yes.

24 Q. All the other options have between 20% and 30% of

25 viscose; correct?

1 A. Yes, sir.

2 Q. None of them is 100% polyester; correct?

3 A. No; correct.

4 Q. Then if you turn over the page {F3/1080/4}, at the top
5 of page 4, you say:

6 "That is interesting. We do not need wool.
7 Polyester/viscose is fine as well. For me it's
8 important that the material drapes well and is not
9 shiny."

10 The reason you point that out is because that was
11 the concern that you had, that the samples that you had
12 got from the factory in November 2016 looked too shiny;
13 correct?

14 A. Yes.

15 Q. You ask for photographs.

16 In the middle of the page, there is a further
17 message from you. You say:

18 "What about 100% polyester? Do you have anything
19 you think might be suitable?"

20 Do you see that?

21 A. Yes.

22 Q. Now, she then sends some photos, and we can just see
23 those at page 5 {F3/1080/5} and page 6 {F3/1080/6}.

24 Then at page 7 {F3/1080/7}, at the top of the page,
25 she says:

1 "We also make polyester. But polyester fabric will
2 look [shining] ..."

3 "Shinning" it says, but you understood that to mean
4 "shining"; yes?

5 A. Yes.

6 Q. That was exactly the concern that you had about the what
7 you thought were 100% polyester samples that you already
8 had; correct?

9 A. We only received one sample.

10 Q. Yes, but the previous sample that you had, which was
11 said to be 100% polyester, that was too shiny and she is
12 telling you the same thing: 100% polyester fabric will
13 look shiny; correct?

14 A. That is what she is saying. From personal experience,
15 I have seen many types of polyester that are not
16 shining -- that are not shiny, so I am aware that
17 polyester as a yarn can be woven into both very cheap
18 and shiny fabrics and very premium fabrics which are
19 used by luxury retailers.

20 Q. Anyway, the view of this supplier was that it would look
21 shiny, and she says:

22 "We don't suggest you to use."

23 Correct?

24 A. Yes.

25 Q. So she was making clear to you she was not going to make

1 you an offer for 100% polyester, because she did not
2 think it would be a good idea; correct?

3 A. Yes, I do not know what her motives were for not pushing
4 the 100% polyester. Perhaps she had, you know,
5 ulterior -- you know, alternate motives for why she
6 thought that a blended fabric would be better. Perhaps
7 the price of blended fabric is higher.

8 Q. Okay, but the only reason she actually gave was the
9 concern that it would look shiny?

10 A. Yes, correct.

11 Q. It is correct, is it not, that you never went back on
12 that with her; you did not press her for 100% polyester
13 after this message from her; correct?

14 A. Correct. Also, I do not believe I ever mentioned
15 viscose again, or that Maggie ever mentioned viscose
16 again in our entire communications.

17 Q. Now, is this one of the messages that you regret not
18 mentioning in your witness statement?

19 A. I would have mentioned this, yes.

20 Q. You accept that you do not mention it, and sitting here
21 today, you accept that you should have mentioned it,
22 yes?

23 A. I should have. I should have mentioned it.

24 Q. If we could go to paragraph 48 of your statement at
25 page 12 {D2/3/12}. In the fourth line, you say:

1 "I no longer have the communications which followed
2 between us ..."

3 Pausing there, that is not right, is it? You did
4 have a full set of the communications by the time you
5 gave your witness statement. Do you accept that?

6 A. Yes, that appears to be incorrect. Yes, sir.

7 Q. Then you say:

8 "... but at the end of April 2017, [the suppliers]
9 sent me samples of their fabric. I do not now recall
10 how many samples we received, but given that I had
11 originally asked for RPET or RPET/wool blend, I would
12 have expected them to have included both ..."

13 Just pausing there, you had said no to wool blend,
14 had you not?

15 A. There was still -- a sample that she suggested we look
16 at did contain the wool.

17 Q. As we have now seen, she had said not to use 100% RPET;
18 correct?

19 A. That is what she says.

20 Q. So do you accept, sitting here now, that you would not
21 have expected her to be sending you a 100% RPET sample?

22 A. I am not entirely sure. I know that the samples that
23 she sent me were not the samples that she listed in
24 the chat earlier. We know that the sample that we
25 ultimately chose -- our current fabric is a 310 GSM

1 fabric, and that was not listed in the original samples.

2 Q. Okay, but actually, given the exchange we have just
3 seen, you would not have been expecting her to send you
4 a 100% RPET sample, would you?

5 A. Yes, I am not sure. At the time I was talking to, as
6 I say in my statement, between 20 and 30 different
7 suppliers, many of whom sent me samples, so I had
8 received many samples by this point. It is possible
9 that she only sent me -- I do not recall the samples
10 that she sent me and it may have gotten mixed up
11 together with the other samples that I received.

12 Q. Leaving aside what she actually sent you, so far as what
13 you would have been expecting from her, you would not
14 have been expecting her to send you a 100% RPET, given
15 what she had said to you, that they suggest not to use
16 it?

17 A. I am not sure, sir. She may have found -- in
18 the interim, she may have found a sample of RPET that
19 was, you know, was fitting the purpose and she may have
20 sent that as well.

21 Q. She may have done, but that was not what you were
22 expecting?

23 A. I do not think I was expecting anything in particular.

24 Q. I see.

25 If we go back to {F3/1080/8} on page 8, please. At

1 the foot of page 8, there is another message from you,
2 now on 28 April 2017. Do you have that?

3 A. Yes, I have.

4 Q. You say:

5 "Hi Maggie,

6 "I have received the samples. Thank you for sending
7 them so quickly.

8 "Fabric TR05640 is quite interesting for us. It is
9 nice density and not shiny.

10 "Is the polyester used normal polyester or recycled
11 polyester? Recycled polyester is more liked by my
12 customers."

13 I kind of take it from that that the samples you got
14 from her did not actually say on them what they were
15 made from?

16 A. I cannot say that, sir. I do not recall what
17 information was on the samples.

18 Q. Do you accept that if the samples had made it clear
19 whether it was normal polyester or recycled polyester,
20 you would not have had to ask?

21 A. I do not know. I cannot recall, sir. It would also be
22 prudent to ask.

23 Q. Okay.

24 Then if you go to page 9 {F3/1080/9}, at the top of
25 the page we see the reply:

- 1 "Thanks for your reply,
2 "we used normal polyester."
3 Do you see that?
- 4 A. Yes, sir.
- 5 Q. Then there is a message a few hours later saying:
6 "i recheck the fabric, it uses recycled polyester."
7 Do you see that?
- 8 A. Yes, I do.
- 9 Q. It must have been obvious to you that you could not rely
10 on this sort of statement from her as the basis of
11 making claims to consumers, could you?
- 12 A. I took this, at the time, you know, as an honest
13 mistake, and she corrected her mistake. I did not push
14 her to correct her mistake.
- 15 Q. No, I am not suggesting anything about that, but the
16 fact that the supplier says one moment, "It is normal",
17 and, "Now I have checked, it is recycled", a few hours
18 later, that is not the sort of statement you would want
19 to rely on for making claims to consumers in the market,
20 would you?
- 21 A. Yes, that is correct.
- 22 Q. Now, in the light of the discussion you had had, you
23 must have known that although she talked about normal
24 polyester and recycled polyester, you must have known
25 that she was talking about the blend that you had

- 1 previously discussed with her; correct?
- 2 A. The blend, I do not think we had ever previously
- 3 discussed this particular fabric, other than by
- 4 the product code, which I had given her.
- 5 Q. All the options that she had given you, as we saw, were
- 6 all blends of polyester and viscose; correct?
- 7 A. Yes, but the sample that we chose was not in that
- 8 original message.
- 9 Q. She had made clear to you she would not be offering 100%
- 10 recycled polyester?
- 11 A. She said she would not recommend it. I do not believe
- 12 that she said she would not be sending me a sample.
- 13 Q. Do you say that you were somehow able to distinguish
- 14 between the samples that were blends and were not blends
- 15 then?
- 16 A. No, I do not.
- 17 Q. You must have understood that they were all blends;
- 18 correct?
- 19 A. Yes, it is possible that it is a blend, and we now
- 20 understand that this fabric is a blend. You know,
- 21 I fully concede that I made a mistake, that I should
- 22 have checked this, and that I was indeed buying a 70%
- 23 polyester/30% viscose blended fabric. At the time,
- 24 however, it was my genuine belief that I was buying
- 25 a 100% PET fabric.

- 1 Q. If we could look at page 10 {F3/1080/10}, you then ask
2 her to send a sample to the factory; correct?
- 3 A. Yes, correct.
- 4 Q. Now, the explanation that you give is simply that you
5 forgot that the supplier had mentioned blends. That is
6 effectively what you are saying, is it not?
- 7 A. Yes. Given the number of suppliers I was talking to at
8 the time and the number of samples I had received,
9 I admit that I made a mistake and forgot that what I was
10 buying was a blend.
- 11 Q. Have you provided documents relating to discussions you
12 had with other suppliers, to your solicitors?
- 13 A. I do not believe we have that information.
- 14 Q. So we have no way of seeing what you were discussing
15 with any of the other suppliers; correct?
- 16 A. We do not have that information, yes.
- 17 Q. In the case of this supplier, you had asked about 100%
18 recycled polyester and you had been told it was not
19 a good idea, yes?
- 20 A. Yes.
- 21 Q. The explanation for that was one you were already
22 familiar with. It was the precise problem you were
23 concerned about, which was the shininess of the fabric,
24 yes?
- 25 A. Yes. In my --

- 1 Q. You never -- go ahead.
- 2 A. In my opinion, any type of 100% polyester, whether
3 recycled or not recycled, can be made into a premium
4 quality material, and, you know, many graduation
5 suppliers around the world, I believe most of them would
6 use 100% polyester in their gowns, which do not look
7 shiny.
- 8 Q. In April 2017, you would have had access to this chat,
9 would you not?
- 10 A. In April 2017, yes.
- 11 Q. Yes.
- 12 A. Yes, sir.
- 13 Q. You would have been able to see exactly what you had
14 discussed with the supplier, would you not?
- 15 A. Yes.
- 16 Q. You would have been concerned to see precisely what was
17 being offered to you, would you not?
- 18 A. I do not believe I was concerned by her message at the
19 time, no.
- 20 Q. I suggest that the explanation you gave, that you simply
21 forgot that this was a blend, is not true.
- 22 A. I do not understand, sir.
- 23 Q. I am just putting to you that the explanation that you
24 gave, that you forgot that this was going to be a blend,
25 that that is not a true explanation. Do you want to say

- 1 anything to that?
- 2 A. My honest recollection is that we forgot -- that
- 3 I forgot that this was a blend. That is my honest
- 4 recollection, in all the discussions that I had and
- 5 the samples that I received. I have no reason to -- we
- 6 had no motive for pushing 100% PET. If we -- if I had
- 7 remembered, why would I not have -- why would we not
- 8 have just said so?
- 9 Q. Well, 100% recycled is a nice clear message that is
- 10 going to be understood by consumers, is it not?
- 11 A. It is, but there are no other recycled manufacturers in
- 12 the market, so any percentage of recycled content would
- 13 be preferable to non-recycled content.
- 14 Q. Your intention had been to launch yourself as
- 15 the supplier which stood out for sustainability, was it
- 16 not?
- 17 A. That is one of our USPs, yes.
- 18 Q. As part of that, to say that your gowns were made
- 19 entirely from recycled polyester; correct?
- 20 A. That is what we said, yes, because that was our genuine
- 21 belief.
- 22 Q. You did not want to have to water down that message by
- 23 saying, "Oh, well, it is actually only 70% recycled
- 24 polyester"; is that not correct?
- 25 A. I would disagree with that, sir.

1 Q. If we go to page 35 of this chat {F3/1080/35}. At
2 the top of the page, can you see the date of
3 10 October 2017?
4 A. I can.
5 Q. This is a message from you, and you say:
6 "Can you please send me invoice for this fabric?
7 Thank you."
8 Do you see that?
9 A. Yes, sir.
10 Q. Obviously you would check carefully any invoice that you
11 were sent?
12 A. Yes, sir.
13 Q. If we look over at page {F3/1080/36}, we see the invoice
14 that was sent to you, 10 October 2017 in the top
15 right-hand corner; do you see that?
16 A. I do.
17 Q. It is addressed to you; do you see that in the fifth
18 entry, "Attn: Stefan muff"?
19 A. Yes, sir.
20 Q. If you look at what you are actually being invoiced for,
21 do you see, "Commodity & Construction, TR70/30"; do you
22 see that?
23 A. Yes, I do, sir.
24 Q. That is something you would have noticed at the time, is
25 it not?

1 A. Presumably. I did not know what the letters "TR" stood
2 for at the time. I am now aware that "TR" stands for
3 polyester/viscose blend.

4 Q. 70/30, that was one of the blends you had specifically
5 been discussing with the supplier, was it not?

6 A. It was one of the list, but none of those were ones that
7 we ended up purchasing.

8 Q. The point you are making there was that the GSM was
9 slightly different, is it not?

10 A. Yes, it is a different fabric.

11 Q. You can see the GSM here, it is "310", so you would have
12 seen that from the invoice; correct?

13 A. Presumably.

14 Q. So you would also have seen the 70/30, would you not?

15 A. It is possible. I do not have a recollection of that.

16 Q. That is exactly the proportion that was item 1 on
17 the list of blends that you had been offered; correct?

18 A. There were four fabrics, I believe, offered, and we --
19 I do not know which ones she sent, but the ones she sent
20 were different to the ones that we initially -- that she
21 initially proposed.

22 Q. That is the GSM point you are making again, yes?

23 A. Yes. At the time, just reading the four samples that
24 she had proposed, it is not particularly insightful
25 without actually seeing the samples. So I do not

1 believe I would have paid particularly close attention
2 to the initial four mentions of those fabrics. Until
3 you get the sample, there is really no way of telling
4 its actual -- if it is a good fabric or not.

5 Q. Well, you are being invoiced for just over \$1,000, which
6 is a relatively large amount of expenditure in respect
7 of the UK business at this point in time, was it not?

8 A. This was for an Australian wholesale customer, sir,
9 the wholesale customer I referred to at the beginning of
10 our conversation. It is for a blue dyed fabric.

11 Q. You have already accepted, I think, you would have
12 looked at the invoice carefully, and one of the things
13 you would look at is what it is that you have been sold;
14 do you agree?

15 A. Yes, I believe I looked at the reference number, which
16 is the same reference number as we had discussed in
17 the chat.

18 Q. So that is TR05640 and right next to that, TR70/30. You
19 would have seen that, would you not?

20 A. Yes, sir.

21 Q. That was precisely consistent with what you knew was one
22 of the fabrics you had been offered, which was a 70/30
23 blend; correct?

24 A. What do you mean "offered"? Do you mean in the --

25 Q. In the chat.

- 1 A. In the chat. It is a different fabric, sir. I do not
2 understand.
- 3 Q. Well, you make that point about the GSM. What I am
4 suggesting is that the proportions of the blend, 70/30,
5 was one of the four blends that had been specifically
6 mentioned to you by this very supplier; do you agree?
- 7 A. Yes, I believe that she mentioned them. I do not recall
8 placing much weight in -- when I was reading those
9 suggestions of hers.
- 10 Q. Why not?
- 11 A. Well, they could be just the -- it is a description of
12 the fabric, it does not tell you much about its hand
13 feel, or even its shininess. It is just a, you know,
14 quantitative way of describing the fabric, but it misses
15 all the nuance of what makes a fabric a good fabric or
16 a bad fabric.
- 17 Q. It tells you what proportion of it is recycled, does it
18 not?
- 19 A. Yes. Yes, it does.
- 20 Q. That is important, is it not?
- 21 A. Yes, that is very important.
- 22 Q. So what I am putting to you is that when you saw this
23 invoice, that simply confirmed what you already knew,
24 which was that you were getting a 70/30 blend; correct.
- 25 A. I honestly do not recall thinking that, and it was our

1 genuine -- it was my genuine belief that I was buying
2 100% recycled polyester. I do understand that I made
3 that mistake, and in hindsight, this is a flag that
4 I could have picked up on, although I also maintain that
5 the TR lettering is -- was potentially ambiguous to me
6 at the time.

7 THE CHAIRMAN: Can I just ask for the beginning of that
8 answer to be repeated. There was a slight break in the
9 transmission. When you said your belief was, at the
10 beginning of that answer, could you just repeat that?

11 A. Yes, sir. It was my genuine belief at the time that we
12 were buying 100% recycled polyester. I understand that
13 I made a mistake and that I did indeed purchase a 70%
14 polyester/30% viscose blended fabric. I should have
15 picked up on that.

16 THE CHAIRMAN: Thank you.

17 MR PATTON: Now, you accepted yesterday that you appreciated
18 that environmental certification would be important if
19 you were going to make claims about the composition of
20 your gowns; do you recall that?

21 A. Yes, sir.

22 Q. For the reference, it is {Day2/55:5-8}.

23 Now, from April 2017 onwards, you were going to be
24 using a completely new supplier of the fabric; correct?

25 A. Yes, sir.

1 Q. I think you accepted earlier that you could not rely on
2 a chat from a supplier before you made claims to
3 consumers about what the fabric was made of, yes?

4 A. Yes, sir.

5 Q. You accepted the same point yesterday in relation to
6 the word of the first supplier in August 2016. You
7 could not simply rely on what they said as a basis for
8 making claims to consumers?

9 A. No, that is why we asked for the certificate.

10 Q. Exactly.

11 Now, whatever you might have thought about
12 the certificate you got in November 2016, you knew that
13 that had nothing to do with this new supplier, did you
14 not?

15 A. Yes, correct.

16 Q. You do not ask for any form of certification from this
17 new supplier, do you?

18 A. No, I do not.

19 Q. Why is that?

20 A. There was a long -- there was a many months gap between
21 when we first had these chats and then initially
22 purchased the 500 metres of fabric, and then there was
23 a further few months gap. I believe at the end of
24 the chat, I was still discussing the possibility of
25 finding a suitable fabric, because at the time it was my

1 belief that this fabric was too expensive.

2 Regardless, I accept that I should have asked for
3 a certificate earlier. I should have asked for
4 a certificate at the time I placed the initial order for
5 the 500 metres and I did not do that.

6 Q. Is the reason that you did not ask because you did not
7 really care whether it was recycled or not?

8 A. No, sir.

9 Q. Now, you say you should have asked for a certificate at
10 the time you placed the initial order. It is true, is
11 it not, that you did not ask for a certificate at any
12 time in 2018, 2019 or 2020?

13 A. Yes, sir. After I put Ling Feng in touch with
14 [redacted]. I went on and did other things and I did
15 not give this any more thought. I understand that that
16 was a big mistake.

17 Q. Are you saying you forgot about the importance of
18 certification, something we saw that you emphasised
19 heavily in 2016? You just forgot about that?

20 A. Yes, I made a mistake. I have no good reason why I did
21 not do that.

22 Q. You knew that these companies were making claims to
23 students in the market about the composition of
24 the fabric, did you not?

25 A. Yes, sir.

- 1 Q. You knew that you had no certification whatsoever in
2 respect of that fabric for that entire period?
- 3 A. Yes, sir. I believe that our, you know, Ling Feng
4 supplier would flag any issues if they came across them,
5 but I agree that I did not push for certification.
- 6 Q. Is that not a rather cavalier attitude to making claims
7 to consumers?
- 8 A. In hindsight, I definitely agree that we should have
9 done more due diligence to establish that.
- 10 Q. Was it not the position that you did not really care
11 whether you could back up the claims that were being
12 made to consumers about your products?
- 13 A. No, sir, we do care. I do personally care a great deal.
- 14 Q. Now, Ms Nicholls joined the company in March 2018; do
15 you recall that?
- 16 A. I do.
- 17 Q. So that is almost a year after this chat that we have
18 been looking at in April 2017, yes?
- 19 A. Yes, sir.
- 20 Q. Did you tell Ms Nicholls when she joined the company
21 that you had certification for the recycled polyester?
- 22 A. I do not specifically recall what I said, but I did say
23 that we were using recycled polyester.
- 24 Q. Do you recall mentioning certification to her?
- 25 A. I am sorry, I do not remember specifically recall that.

1 Q. She gave evidence about this on {Day1/180:7}, page
2 {Day1/181:5}, just for the record, but she gave evidence
3 that certification was mentioned in her original
4 discussions with you in March 2018. Do you dispute
5 that?

6 A. No, sir. If that is her recollection, then I will go
7 with that.

8 Q. So does that not suggest that you were actually
9 conscious of the question of certification in
10 March 2018?

11 A. Again, sir, I am sorry, I do not specifically recall
12 those conversations, but I was aware that certification
13 should have been performed.

14 Q. Does that not suggest that you had not actually
15 forgotten about certification in March 2018?

16 A. I do not believe so, sir. It would have been very easy
17 for me to send an email asking the supplier to send
18 the certificate. That is no concern. We know that they
19 were, you know, currently still are, GRS certified, so
20 there would have been no reason why that could not have
21 been achieved very easily.

22 Q. I am sorry, you said we knew that who were GRS
23 certified?

24 A. Well, we know now that the supplier of the yarn is
25 GRS certified.

- 1 Q. This is not something you knew in March 2018, 2019 or
2 2020; correct?
- 3 A. It was not.
- 4 Q. I have put this to you already, but you knew, did you
5 not, that it was untrue to continue telling consumers in
6 the UK that your gowns were 100% recycled anything, did
7 you not?
- 8 A. No, sir, not at the time. I was only made aware of that
9 in the January 1 email from Alius last year.
- 10 Q. In relation to this new fabric, no one had said to you
11 that the 70% part was made from plastic bottles, had
12 they?
- 13 A. No, sir.
- 14 Q. We saw in the November 2016 certificate that there was
15 something said there about plastic bottles, but no one
16 had said anything like that to you about the fabric from
17 the new supplier; is that correct?
- 18 A. Yes, that is correct.
- 19 Q. So you had no basis to say that gowns made from the new
20 fabric were made from plastic bottles; do you agree?
- 21 A. Our opinion was that the plastic bottles is a visual
22 metaphor that easily and quickly conveys to the general
23 public that this garment is made from recycled
24 polyester.
- 25 Q. Okay, well, I have been over that point with you

1 already.

2 Could you look at page 13 of your statement
3 {D2/3/13}. You say in paragraph 54 towards the bottom
4 of the page, you refer to receipt of the Alius letter
5 dated 1 January 2021. That is the letter that enclosed
6 the Intertek reports, is it not?

7 A. Yes, I believe so.

8 Q. You contacted the supplier:

9 "... to ask them directly what fabric they had
10 supplied and what its composition was."

11 You say:

12 "... it was more appropriate to ask this question of
13 the fabric supplier than the gown manufacturer ..."

14 You see what you say there?

15 A. Yes, sir.

16 Q. Then in paragraph 55 you refer to an email reply to you
17 dated 7 January 2021. Can we just look at that, please.
18 It is at {F4/331}. Now, this is the email of 7 January
19 that you are referring to, is it not?

20 A. Yes, sir.

21 Q. Can I just remind you how this comes about. So, if we
22 can go to page 4 {F4/331/4}. Can you see in the middle
23 of the page an email from you of 6 January; do you see
24 that?

25 A. Yes, sir.

1 Q. You say:

2 "Hi ...

3 "Below is the first email that I have received from

4 you. Can you please let me know if the 'TR fabric' you

5 are referring to is made from recycled polyester?"

6 Do you see that?

7 A. Yes, I can.

8 Q. So this was an email you sent a few days after the Alius

9 Law letter; correct?

10 A. Yes, that is correct.

11 Q. Then on page 3 {F4/331/3} at the foot of the page, the

12 supplier responds:

13 "Dear Stefan,

14 "Good day.

15 "TR means polyester viscose fabric.

16 "T means polyester, the polyester is recycled.

17 "R means viscose. Viscose no recycled in the

18 world."

19 Just on that, that came as no surprise to you; you

20 never thought that viscose was recycled, did you?

21 A. No, I had no -- no.

22 Q. Then above that, you say:

23 "Thanks ...

24 "Just to confirm, what is the specific fabric that

25 we have been using?

1 "What is the composition of the fabric?"

2 Do you see that?

3 A. Yes.

4 Q. Then on page 2 {F4/331/2}, you get some answers. They
5 are your questions and then their answer is 80%
6 polyester, 20% viscose:

7 "What is the composition ...? 80% polyester 20%
8 viscose."

9 You say:

10 "That is very helpful. Can you please confirm for
11 me that the polyester used in this fabric is recycled
12 polyester?"

13 "Thank you very much."

14 Do you see that?

15 A. Yes, sir.

16 Q. Were you simply writing these emails on your own to
17 the supplier?

18 A. Yes, I was. Yes, I was, and then I believe I cc'd, or
19 I sent the emails on to the team.

20 Q. So if we then come to page 1, which is the reply that
21 you referred to in your statement {F4/331/1},
22 the supplier says:

23 "Good day.

24 "I should say sorry to you, as my boss just came
25 back yesterday, he helped me to call our factory and

1 provide all the right docs as attachment ...

2 "As you know I'm salesman, so about the production
3 details I don't know very well. So I have some
4 mistakes, give you the wrong docs ...

5 "1. Now everything is clear, your greige fabric we
6 buy from [a particular entity], about the GRS
7 certificate as attachment and you can check in
8 certificate, I screen shot the yarn we use for you.

9 "For greige it is 65% recycled Post-Consumer
10 Polyester 35% conventional Viscose.

11 "After dying, some viscose faded, so finally it will
12 become 70% polyester and 30% viscose."

13 Do you see that?

14 A. Yes.

15 Q. Now, you have no knowledge as to whether that is true or
16 not, that 65 somehow becomes 70, do you?

17 A. I do not know, sir.

18 Q. So, is this explanation -- is this email the basis for
19 the explanation that justifies describing it as 70%
20 polyester?

21 A. Yes, I believe so.

22 Q. Then item 2, he says:

23 "About the greige contract Chinese Version, please
24 kindly check the attachment."

25 Are you fluent in Chinese, Mr Muff?

1 A. No, sir.

2 Q. Then item 3, he says:

3 "Even you told me you have translator, but I'm
4 worried, it is specilized Chinese, so we translate
5 the contract as attachment."

6 Now, when he says, "Even you told me that you have
7 translator", we have looked through the chain and
8 I cannot see any reference to a translator. What is
9 that a reference to?

10 A. I think he means to say, "Even if you told me you had
11 a translator". I believe that is what the meaning is,
12 sir.

13 Q. "Even if, in theory, you may have a translator, I do not
14 want you to rely on the translator"; that is what you
15 think it means?

16 A. That is how I read this, yes.

17 Q. So you had not spoken to them alongside sending these
18 messages?

19 A. No, sir.

20 Q. Then if you read 4, it says:

21 "We call our recycled yarn factory and also called
22 Chinese SGS test company, they told us, they can't test
23 if the poly yarn is recycled or not. Just show
24 the certificate, then it can prove everything."

25 Then it says:

1 "So maybe the person who indicted you has some
2 misunderstanding or mistake."

3 What is that a reference to?

4 A. I am not sure, sir.

5 Q. Does that not suggest that this person was aware that
6 someone had taken issue with the claims that you had
7 been making about the composition of your fabric?

8 A. I understand. I have disclosed every email, sir. Every
9 email was sent to the team. I am happy to -- whatever
10 is required to check that, I am happy to oblige.

11 Q. Are you really sure you had not spoken to them to
12 explain what the context was for this email that comes
13 out of the blue saying, you know, "What is
14 the composition of the fabric"?

15 A. I do not -- this is a new person. I have never spoken
16 to this [redacted]. I believe I have never spoken to
17 him before. I believe this is a new contact.

18 Q. So when you received this email, what did you make of
19 this last line:

20 "... maybe the person who indicted you has some
21 misunderstanding or mistake."

22 A. I am not sure --

23 Q. You do not have --

24 A. He seems to be defending himself to say that his fabric
25 is recycled.

1 Q. As we can see, he has given you the Chinese version, but
2 then said:

3 "Even you told me you have translator, but I'm
4 worried, it is specilized Chinese ..."

5 Are you sure you had not said, "Send us the Chinese
6 version, do not worry, we will get it translated"?

7 A. Yes, sir, I am sure.

8 Q. He sent you the Chinese version of the contract. Did
9 you actually get it translated?

10 A. Personally I did not, sir, no.

11 Q. If we look at the translation, it is at {F4/303}. Just
12 looking at this, in the specification, do you see:

13 "TR 65/35, 65% Recycled polyester 35% viscose ..."

14 Do you see that?

15 A. Yes, sir.

16 Q. So that appears to be the composition of the fabric; do
17 you agree?

18 A. Yes, I suppose before the dyeing, yes.

19 Q. If you look at the quantity, 30,000 metres, you have
20 never bought that quantity of fabric, have you?

21 A. I am not sure. We buy -- we have a contract with
22 Ling Feng and Ling Feng decides how much fabric they
23 need to buy to fulfil an order.

24 Q. If you look at what this says just above
25 the specification:

1 "We hereby confirm having sold to you on Mar 2nd,
2 2020, the following goods on terms and conditions ..."

3 Since March 2, 2020, you have not bought gowns that
4 would involve anything like 30,000 metres of fabric; do
5 you agree?

6 A. Well, in Australia, we likely would have.

7 Q. I see. Well, I do not have any information about that.

8 You do not have any documents which tie this
9 translation, this contract, to any of the gowns you have
10 actually purchased; do you agree?

11 A. I do not believe so. I believe there are contracts that
12 exist as evidenced between Ling Feng and [redacted], and
13 between [redacted] and [redacted].

14 Q. I am sorry, could you just repeat that?

15 A. I am not sure about this specific contract. I believe
16 there are contracts in place between [redacted] and
17 [redacted], and between [redacted] and Ling Feng.

18 Q. Yes, but you do not have anything which allows you to
19 trace from this parcel of fabric to anything that you
20 have bought; correct?

21 A. Correct. I do not have that.

22 Q. Could we just look at {G5/14.1}. This is a certified
23 translation of the original Chinese version of
24 the contract, and if we look at page 2 {G5/14.1/2}, can
25 you see that, according to this translation,

1 the word "recycled" does not actually appear anywhere in
2 the contract; it instead describes the polyester simply
3 as "environmental-friendly"?

4 Have you seen this translation previously?

5 A. Yes, I have.

6 Q. Have you taken any steps to check it?

7 A. The translation, sir?

8 Q. Yes.

9 A. We have not had it translated again, if that is what you
10 are asking. I have searched for -- if I search for
11 the words "eco-environmentally-friendly polyester" on
12 Alibaba, I only receive results showing recycled
13 polyester, so I am not sure what other
14 environmentally-friendly polyester there could be.

15 Q. Just a moment ago you said, just going back to {F4/331},
16 you said, I think, a moment ago that this person --
17 I think you may have named him, but apparently his name
18 is confidential, so I will not name him, but if we call
19 him "Mr X", I think you said a moment ago this is
20 someone you had never had any contact with before; is
21 that right?

22 A. I do not recall. Yes, I did not recall that I ever had.

23 Q. If we just look at page 4 {F4/331/4}, can you see just
24 at the foot of the page that you are actually forwarding
25 an email exchange you had had with the same person in

1 April 2018?

2 A. Yes, I can see that.

3 Q. So do you accept?

4 A. I do, sir. This must have been the contact after Maggie
5 left.

6 Q. Right.

7 Now, just going back to your witness statement at
8 page 14 {D2/3/14}, you say at paragraph 56 that you were
9 surprised to read this email, and I put to you that you
10 were not surprised, because what he said was what you
11 had been told from the start. Do you accept that?

12 A. No, sir. I genuinely did believe that I was purchasing
13 100% recycled polyester. I understand it was a mistake,
14 but I genuinely was surprised when I received his email.

15 Q. Would you accept it was at best very careless?

16 A. Yes, I did not exhibit the level of due diligence that
17 we should have exhibited.

18 Q. If you look at paragraph 57, you say: {D2/3/14}

19 "I was not aware of the documents which are
20 typically used to prove chain of custody in the context
21 of global recycling standards until these issues were
22 raised in this action by Alius and their clients."

23 I have already put some questions to you about that:

24 "It was our firm belief ... that the gowns were made
25 from 100% polyester, based on what we had ordered,

1 the documents provided to us ..."

2 Now, what documents are you referring to there?

3 A. I do not know, sir. I might still be referring to --

4 I might have been referring to, or thinking back to

5 the initial certificates, or communications that we had

6 with our suppliers.

7 Q. The November 2016 certificate?

8 A. Potentially.

9 Q. You are not sure now what you meant by "based on

10 the documents provided to us"?

11 A. It is possible I was thinking about the November 2016

12 certificate.

13 Q. Could you just look at {F3/1}. This is an invoice from

14 Ling Feng dated 22 May 2018; do you see that?

15 A. Yes, sir.

16 Q. Was this based on an order that you placed?

17 A. I do not specifically recall. It is possible, yes.

18 Q. It is likely, in May 2018, that it would have been you

19 dealing with the ordering; correct?

20 A. It is likely, yes, sir.

21 Q. Do you see that under "Quantities and Descriptions", all

22 it says is "Matte Gown"; do you see that?

23 A. Yes, sir.

24 Q. There is nothing to indicate that the gowns are going to

25 be made from recycled polyester; do you agree?

- 1 A. Not on this invoice, no.
- 2 Q. So what basis do you have for saying that those gowns
3 were made from recycled polyester?
- 4 A. In the conversations, I would say almost every
5 conversation that I have had with our suppliers,
6 I mention, I say "recycled polyester". In every,
7 you know, almost, I would say every email,
8 I say "recycled polyester".
- 9 Q. Now, in you look at paragraph 58 of your statement
10 {D2/3/14}, you say:
11 "Although I understand from [the individual] ...
12 that he has spoken to ..."
13 I will not read it out, but that is the yarn
14 supplier, is it?
- 15 A. Yes, it is, sir.
- 16 Q. "... and been told by them that their recycled polyester
17 is sourced from bottles, we have not received any
18 certificate from them equivalent to that provided by
19 Shanghai PET in November 2016 and no such statement has
20 been received by us directly from [the yarn supplier]."
21 You have nothing in writing about bottles at all,
22 have you?
- 23 A. No, I do not believe so.
- 24 Q. You have had a conversation with this individual, but
25 that individual could have given evidence, could they?

1 A. I do not know. Can they? I was not involved in those
2 conversations.

3 Q. You do not know of any particular reason why they could
4 not have given evidence about what they know about
5 the fabric?

6 A. No, sir, I was not privy to those conversations.

7 Q. Paragraph 56, just going back to that, you say in
8 the middle of the paragraph that:

9 "The directors took the commercial decision, given
10 the new information, to make certain changes to our
11 website pending further investigations ..."

12 At the end of the paragraph, you say:

13 "These are described in more detail by Ruth."

14 Was it Ms Nicholls who took charge of editing
15 the claims made on the website?

16 A. I believe so.

17 Q. Did you review the new wording, or did you leave that
18 entirely to her?

19 A. I left that to her, sir.

20 Q. Have you looked at what the wording is on the website
21 today about the composition of the gowns?

22 A. Yes, I have.

23 Q. If we can look at that {F3/1517}. Can you see in
24 the bottom paragraph, in the third line:

25 "Every graduation gown contains a minimum of 550g of

1 recycled plastic waste, which equates to at least
2 28 500ml plastic bottles."

3 So there is still a reference on the website to
4 plastic bottles?

5 A. Yes, sir.

6 Q. Do you accept that this was intended to continue giving
7 the impression that plastic bottles are, or at least may
8 be, used in the gowns that you are selling?

9 A. I again have to say, this is a convenient marketing --
10 a way of conveniently communicating the message in
11 a very succinct way.

12 Q. I suggest that you knew that that is a misleading
13 impression to create on the part of consumers.

14 A. I personally do not believe that consumers will feel
15 misled by that statement.

16 Q. Now, are you aware that in November 2020 someone called
17 Alison got in touch with Ms Nicholls to ask about
18 the recycled plastics claims?

19 A. Yes, sir.

20 Q. When did you first become aware of that?

21 A. I do not specifically recall the month.

22 Q. Well, can we look at that. It is {F3/1123/4}. So
23 the bottom email is the first email on the chain and it
24 is dated 4 November 2020. This is from Alison to
25 Ms Nicholls. Did you find out about this the day it was

1 sent?

2 A. No, sir. It would have been sometime later.

3 Q. How much longer later?

4 A. I am sorry, I do not have a specific recollection.

5 Q. A week, a month, a year?

6 A. Honestly, I honestly do not know. Is there evidence in
7 the record to show -- I am sorry, sir, I do not recall.
8 It was not instantaneous.

9 Q. Did you have any input into the answers that were
10 provided to Alison?

11 A. No, sir.

12 Q. Had all the emails to Alison been sent by the time you
13 became aware of them?

14 A. Yes, I believe so.

15 Q. Do you remember the context in which you became aware of
16 them, why it came to your attention?

17 A. I am sorry, I do not.

18 Q. Did you notice that one of the documents that had been
19 sent to Alison was a certificate from 2012?

20 A. No. I am aware of this document now. I do not recall
21 when I became aware of this.

22 Q. When you did become aware of it, you appreciated that
23 that certificate had nothing to do with the gowns that
24 were being sold in the UK by the claimants in
25 November 2020; yes?

1 A. Yes, sir.

2 Q. Did you do anything about that?

3 A. No, I did not.

4 Q. Now, moving on to a different topic, can we look at
5 page 10 of your witness statement {D2/3/10}. At
6 paragraph 44 you say you:

7 "... made claims [on the website] concerning our
8 dress manufacturer, Lingfeng, specifically the living
9 wages paid by them to their workers based on information
10 provided by them (including during the trip Alec and
11 I took to visit their factory in China on
12 3 September 2014)."

13 Now, you have only ever visited a Ling Feng factory
14 once, on that occasion; correct?

15 A. Yes, that is correct.

16 Q. My question may not have been clear enough. You have
17 never visited since 3 September 2014?

18 A. Yes, that is correct. We have never since gone back.

19 Q. That is not the factory from which Ling Feng is actually
20 manufacturing your gowns today, is it?

21 A. No, they have moved since then.

22 Q. What -- go ahead, I am sorry.

23 A. Since 2014, yes, there is now a new factory.

24 Q. Is that from about 2017?

25 A. I think it is from the time when I received the photos

1 from Ling Feng. Those photos that I received were from
2 the new factory.

3 Q. So that was in April 2017?

4 A. Yes, sir. I do not specifically recall, but ...

5 Q. You have never visited the new factory, have you?

6 A. Correct.

7 Q. You do not have any documents from your visit; correct?

8 A. We have an email exchange saying that we were going.

9 Q. Oh, I accept that. I am not suggesting you did not
10 visit.

11 A. Okay.

12 Q. I am suggesting that you do not have any documents
13 recording what you were told during the visit.

14 A. No. No, we do not.

15 Q. Still on paragraph 44, you say in the brackets:

16 "... based on information provided by them
17 (including during the trip Alec and I took to visit
18 their factory in China ...)."

19 Is there anything else you are relying on in
20 relation to living wages, apart from what you say you
21 were told during that visit?

22 A. I believe I have had chats with Canna on occasions about
23 working conditions and the conditions in the factory.

24 Q. Do you have any records of those?

25 A. No, sir.

- 1 Q. You do not have any specific recollection now of
2 precisely what was said?
- 3 A. No, sir. It has been about seven years. I do not have
4 any specific recollection.
- 5 Q. So those chats also were about seven years ago?
- 6 A. It would have likely been around the same time, yes.
- 7 Q. If you look at paragraph 45 {D2/3/11}, you say in
8 the sixth line:
- 9 "I ... recall being told that the workers were paid
10 very well, and what the rates were ..."
- 11 Do you see that?
- 12 A. Yes, sir.
- 13 Q. So that is simply what the factory told you; correct?
- 14 A. Yes, that is correct.
- 15 Q. You did not get that verified in any way, did you?
- 16 A. I did not.
- 17 Q. I mean, do you agree that it is quite common for those
18 using factories in China to have an independent audit of
19 the factory?
- 20 A. I was not aware of how common that was and is, even
21 today.
- 22 Q. You are now aware of it?
- 23 A. I am aware that such audits exist. I do not know how
24 common they are.
- 25 Q. You did not actually seek to establish what a living

1 wage was in this particular region, did you?

2 A. No, sir.

3 Q. In the seven years since September 2014 until, say,
4 September 2021, you have not made any checks on what
5 the wages are, have you?

6 A. No, we have not.

7 Q. Still sitting here today, you do not know what a living
8 wage would be in this particular region in China, do
9 you?

10 A. That is correct, I do not know.

11 Q. Just seven lines from the end of paragraph 45, you say:

12 "When Lingfeng opened a new factory, we were
13 supplied with photographs which showed that
14 the conditions from the earlier set-up had been
15 maintained. Those photographs were - until recently -
16 shown on our website."

17 If we can just see those at {F3/49}. That is
18 page 1. If we could just look at the next page
19 {F3/49/2}. Can you see that, page 2, the picture of
20 scissors in the bottom, yes?

21 A. Yes, sir.

22 Q. It is updating?

23 Then page 3 {F3/49/3}, a smiling employee.

24 I mean, these are obviously just publicity shots,
25 are they not?

- 1 A. Yes, sir. There were also additional photos sent.
- 2 Q. Right. So these are not the photographs you are
3 referring to; is that right?
- 4 A. I believe there are other photos as well, sir.
- 5 Q. All you are relying on here are just photographs that
6 the supplier itself has sent you to reassure you that
7 everyone in the factory is treated well; correct?
- 8 A. Yes, sir, that is correct.
- 9 Q. Not something you have independently verified?
- 10 A. No, sir. I believe at the beginning of 2017 I contacted
11 a labour organisation and asked about what we could do
12 to, you know, check that our suppliers were complying
13 with all regulations, and I was told that we were too
14 small as a business to join.
- 15 Q. Did you ask anyone else?
- 16 A. No, sir.
- 17 Q. It is right, is it not, that very recently you have
18 requested the factory to obtain an audit?
- 19 A. Yes, sir.
- 20 Q. That was done only because of this trial, was it not?
- 21 A. I believe that is correct.
- 22 Q. If we could just have a look at that {F3/1289}. This is
23 the audit that you have produced, is it not?
- 24 A. Yes, sir.
- 25 Q. It was the factory itself which contacted the audit

1 company to get this done; correct?

2 A. I believe so.

3 Q. Then if we could just look at the second page
4 {F3/1289/2}, do you see the name given -- the business
5 name and the site name; do you see that?

6 A. Yes, I do.

7 Q. That is different from the name of the factory that we
8 have all been looking at, is it not?

9 A. What factory? I am not sure, sir.

10 Q. Ling Feng.

11 A. Yes. I do not understand the contractual relationship
12 that Ling Feng -- that that business has with this
13 business.

14 Q. So you cannot really be sure that this is actually an
15 audit of the factory that you are getting your gowns
16 from; correct?

17 A. I have no reason to believe otherwise.

18 Q. Then if we could just look at page 7 {F3/1289/7}, and if
19 you see the heading in bold, "Negative findings". If we
20 just see what these are:

21 "1. Based on onsite observations, it was noted that
22 50% of sewing machines were not installed with needle
23 guard.

24 "2. It was observed that approximately 30% of
25 materials viewed in the workshop and warehouse were

1 placed against the wall or the pole.

2 "3. During factory tour, it was found that 15 out of
3 18 workers exposed to noise did not wear the provided
4 earplugs.

5 4. No pre-job and off-job occupational health
6 examination was provided to all employees exposed to
7 occupational hazards position.

8 "5. Social insurance coverage was insufficient.
9 There was a total of 81 employees ... Thus, there were
10 68 employees in Oct ... in the facility should be
11 provided with five kinds of social insurance. However,
12 as per the social insurance payment receipts and
13 coverage employees register provided by the factory,
14 medical insurance, maternity insurance, retirement
15 insurance, unemployment insurance and work-related
16 injury insurance were provided to 4 employees."

17 You have read this report, have you?

18 A. Yes, sir.

19 Q. It provides more detail about these findings of
20 non-compliance, yes?

21 A. Yes, sir.

22 Q. All of those insurances are those that are required
23 under local law to be provided to employees?

24 A. I am not -- I do not know, but it is possible.

25 Q. In fact, it is given only to four out of

1 the 68 employees; do you agree?

2 A. That is what the report concludes.

3 Q. "... it was found that monthly overtime in excessive of
4 36 hours is disclosed for all sampled workers in ...
5 September 2021, April 2021 and December 2020, up to 72,
6 74 and 78 hours."

7 That is in breach of the requirements of local law
8 as well, is it not, as you understand from the report?

9 A. Yes.

10 Q. Finally:

11 "Through document review and management interview,
12 it was found that the factory did not provide the
13 Pollution Discharge Declaration and Registration for
14 review."

15 You understand, having read the report, that that is
16 an important environmental point that the factory is
17 supposed to comply with, is it not?

18 A. Yes, I assume, as a sewing factory, there will be very
19 limited discharge, if any.

20 Q. This audit does not make any findings about whether
21 the employees are being paid a living wage, does it?

22 A. I believe there is reference to the wages paid.

23 Q. But it does not look into whether they are being paid
24 the living wage; do you agree?

25 A. I do not think it makes specific reference to "living

1 wage".

2 Q. Well, if you could look at page 42 {F3/1289/42}, can you
3 see, in the middle of the page, "M"? Do you see that?

4 A. Yes.

5 Q. "Is there a defined living wage: This is not normally
6 minimum legal wage. If answered yes, please state
7 amount and source of info."

8 The answer given is "No"; do you see that?

9 A. Yes.

10 Q. The concept of a living wage, if you look back at your
11 witness statement at page 11 {D2/3/11}, at the top of
12 the page, in the third line, you say:

13 "[You] understand 'Living wages' to mean those that
14 are high enough to maintain a normal standard of living,
15 taking into account the living costs in a worker's
16 country and locale."

17 Do you see that?

18 A. Yes, sir.

19 Q. That was the claim that you were making on your website
20 about the factory workers at the factory producing your
21 gowns; yes?

22 A. Yes.

23 Q. Even the audit you have had done in the last few months
24 does not find that the workers are being paid a living
25 wage; do you agree?

1 A. I am confused by the wording of the audit, sir. It said
2 the living wage is not defined. I do not know how to
3 interpret that.

4 Q. Well, you have received this audit some months ago. Did
5 you read it carefully?

6 A. I did, yes.

7 Q. Given that you have been making claims about the living
8 wage on your website, was that something you were
9 concerned to see if the audit had verified?

10 A. Yes, sir.

11 Q. Did you find anything in the audit which suggested that
12 the workers were being paid a living wage?

13 A. I did not see anything that said that they were not.

14 Q. Did you see anything saying that they were?

15 A. I cannot recall.

16 Q. Now, do you accept that the statements you made about
17 living wages on your website, you actually did not have
18 any proper basis to make those statements?

19 A. Yes, I accept that.

20 Q. Can I just ask you this. You are a discloser of both of
21 the English companies, so CGL and SGL, yes?

22 A. Yes.

23 Q. You are also a director of Churchill Australia; correct?

24 A. Yes, sir.

25 Q. If you felt that either of the English companies needed

1 to see a document that belonged to Churchill Australia's
2 business, it goes without saying that that would be
3 accommodated; do you agree?

4 A. Yes, in most circumstances, yes.

5 Q. Can you think of any circumstances in which
6 Churchill Australia -- you are a director of all of
7 these companies -- Churchill Australia would say "I am
8 holding this document from the Churchill UK business"?

9 A. Not at the moment.

10 Q. It would simply be understood that if the UK businesses
11 needed a document from the Churchill Australia business,
12 that would just be handed over, would it not?

13 A. It is likely.

14 Q. Since you are a director of all three entities, it is
15 not like you would have to ask someone for permission,
16 would you? You would be absolutely in a position to
17 provide the documents from the Australian business to
18 the UK business, yes?

19 A. I think that depends on the document. I am a 50%
20 shareholder, which means, potentially, given the nature
21 of the document, we would need a majority decision,
22 which would involve the other shareholder -- the other
23 director.

24 Q. That is Mr Ramsey?

25 A. Yes, sir.

- 1 Q. He is also a director of the UK companies, is he not?
- 2 A. Yes, sir.
- 3 Q. So you have no reason to suppose that he would create
4 a difficulty about that?
- 5 A. I am not sure, sir. I am not sure. Unlikely, but I am
6 not sure.
- 7 Q. Have you carried out some searches for disclosable
8 documents for the purposes of this litigation?
- 9 A. Yes, I have, yes.
- 10 Q. So for example, you have looked, have you not, for Slack
11 chats between you and Mr Ramsey?
- 12 A. Yes. Or Mr Ramsey would have also checked.
- 13 Q. Yes, both of you checked for that kind of document, for
14 example?
- 15 A. Yes.
- 16 Q. When you have been doing that, you have not been seeking
17 to draw any distinction between documents that belong to
18 the Australian company and documents that belong to
19 the English company, have you?
- 20 A. No. I do not ...
- 21 It was our understanding that we disclosed
22 everything that was asked of us.
- 23 Q. So when you have been looking through chats, for
24 example, you have not been saying, "Oh, this is a chat
25 that belongs to the Australian company, so I will not

1 hand that over, but here is a chat belonging to
2 the English company, so I will hand that over"? You
3 have not been doing that, have you?

4 A. No, if it referred to recycled fabric, then, regardless
5 of if it is Australia or the UK, then it would have
6 handed it over.

7 Q. I think you mentioned yesterday, for example, that one
8 of the documents we were looking at, it was actually
9 discussing an order, you said. Do you remember the one
10 that referred to "normal polyester", and you said,
11 "Well, that is an order for the Australian business"?
12 Do you recall that.

13 A. Yes.

14 Q. That is an example of a document you saw, you thought it
15 was relevant to the case and you handed it over and you
16 did not seek to say, "This belongs to the Australian
17 business, so I will not hand it over for that reason"?

18 A. No.

19 Q. Have you at any stage refused to provide any documents
20 that were asked for by the claimants' solicitors on
21 the basis that those documents belonged to
22 the Australian entity? Is that something you have ever
23 done?

24 A. Not that I can recall.

25 Q. That is not something you would have done. If you had

1 that letter, because it relates to the evidence and
2 the questioning that you were asked at the very end of
3 your cross-examination.

4 (Pause)

5 A. Okay.

6 Q. Thank you. You have read, in particular,
7 subparagraph (2) on the first page of that letter?

8 A. Yes.

9 Q. You will recall yesterday Mr Patton asked you about why
10 you had not disclosed certain accounts and other
11 documents of Churchill Australia, and you said that your
12 legal team did not follow up with you about that.

13 I simply wanted to show you those letters and ask you if
14 you have any comment on that.

15 A. Yes, sir.

16 Q. So, having read those letters, do you understand what
17 the position was in relation to those documents?

18 THE CHAIRMAN: I think this is a legal question, is it not?

19 In a sense, this is a submission you can clearly make,
20 based on the correspondence, but it is not really
21 anything he can give evidence about, is it?

22 MR SPITZ: He cannot. I simply did not want to leave
23 the point up in the air that it was a concern on his
24 part. It is indeed a legal point and it is something
25 that we will address further in legal submissions. I am

1 happy to leave it there.

2 The second short point, Mr Muff, is if we can have
3 shown to you {F3/1080/30}, and you will recall that
4 Mr Patton showed you this. I wanted to confirm what you
5 said, because your evidence, as I noted it, was that
6 this is a sales confirmation for an Australian wholesale
7 company. I wanted to check with you, is that correct?

8 A. What specifically am I looking at?

9 Q. You are looking at the chat.

10 A. Yes, but which one in the chain?

11 Q. If you read through all of it.

12 A. Yes.

13 Q. You will recall that what your evidence was in that
14 regard was that this is a sales confirmation for an
15 Australian wholesale customer.

16 A. Yes, the "lab dips" refer to the dyeing of the blue
17 polyester, which is, in order to find the correct shade
18 of blue, you supply the company with some of samples,
19 you know, samples of blue, and then they create
20 so-called "lab dips", which is their best estimate of
21 that colour. So this refers to the Australian College
22 of Phlebology order.

23 Q. So was this for gowns in the United Kingdom or not?

24 A. No, it was for an Australian wholesale customer.

25 Q. Okay.

1 The last area that I would like to raise with you
2 is, if you turn up {F4/331/4}, you will recall Mr Patton
3 asked you some questions about these documents. Once
4 you have looked at that, I would also like to refer you
5 to the Anthesis report, which is at {F3/1404}, and in
6 particular at page 4 {F3/1404/4}.

7 A. Yes.

8 Q. If you could call up page 4.

9 You will see on the right-hand column the key
10 findings are summarised. I would like you to look at
11 the third key finding.

12 A. Yes, sir.

13 Q. Then I would like you to look at the left-hand column,
14 under the "Executive Summary", the last paragraph that
15 begins:

16 "Secondly, has Churchill Gowns ..."

17 A. Yes, sir.

18 Q. Now, what you said in relation to the questioning was
19 you said that you did not exhibit the level of due
20 diligence that you should have. Having seen
21 the Anthesis report, what is it exactly that you think
22 you ought to have done but did not do?

23 A. Well, in hindsight, knowing more about the supply chain
24 and knowing about the complex number of certificates
25 that are involved, I believe we, you know, we should

1 have requested some of those certificates.

2 Q. What was your genuine belief at the time?

3 A. It was my genuine belief that we were buying recycled
4 polyester, that there was no reason to doubt
5 the authenticity of a supplier.

6 Q. The final area -- I said there were three, in fact there
7 were four points and this is the fourth point and last
8 point to make. If you can be shown {F3/1289/16}. This
9 is the audit report that you were questioned about, and
10 if you can have a look just two-thirds of the way down
11 the page, just before the shaded area that says:

12 "N: Attitude of worker's committee ..."

13 Just before that, if you could read out the sentence
14 that starts:

15 "For wages issues ..."

16 A. Do you mean:

17 "For wages issues, all workers said they were paid
18 by hourly rate. And their overtime hours were
19 compensated in accord with the local law requirement."

20 Q. Yes, thank you. What is your understanding of that
21 sentence?

22 A. To me, that reads that they were paid fairly and they
23 were paid in accordance with the law.

24 MR SPITZ: Thank you.

25 Sir, that is all we have. No further questions.

1 THE CHAIRMAN: Mr Muff, thank you very much. We have no
2 questions for you, so you can sign off the call now.
3 Thank you very much for your assistance to the tribunal.

4 WITNESS: Thank you, sir.

5 (The witness withdrew)

6 THE CHAIRMAN: Yes, Mr Patton.

7 MR PATTON: Sir, I was just going to let the tribunal know
8 we are way ahead of schedule, so if it was convenient to
9 take a longer break now?

10 THE CHAIRMAN: Yes, would half an hour be appropriate?

11 MR PATTON: It would.

12 THE CHAIRMAN: So we will recommence at 11 o'clock.

13 MR PATTON: Thank you.

14 (10.32 am)

15 (A short break)

16 (11.00 am)

17 THE CHAIRMAN: Yes, Mr Adkins, do you want to come forward
18 again?

19 MR OLIVER ADKINS (continued)

20 Cross-examination by MR PATTON (continued)

21 THE CHAIRMAN: Good morning.

22 Yes.

23 MR PATTON: Good morning, Mr Adkins.

24 A. Morning.

25 Q. Yesterday I asked you -- the reference is

1 {Day2/172:18} -- whether you had had any emails with
2 Oak Hall. Do you remember Oak Hall, the US company?
3 You said:

4 "Not that I recall, although it is possible."

5 Can I ask you to look at {F3/1599}, please.

6 THE EPE OPERATOR: Sorry, can I have the reference again,
7 please?

8 MR PATTON: {F3/1599}.

9 Do you see, towards the bottom of the page, your
10 message at 3.28 pm, after the conversation you had had;
11 do you see that?

12 A. Yes, it has just come up.

13 Q. Then if you look about seven lines from the bottom, it
14 says:

15 "Lee is going to email me with some more
16 information."

17 Do you see that?

18 A. Yes, I do.

19 Q. So you had given him an email address at which to email
20 you, presumably?

21 A. Yes, I must have done, yes.

22 Q. Can I assume that was not your Churchill Gowns email
23 account?

24 A. I cannot recall the email address that I provided for
25 him.

- 1 Q. You have a number of email accounts, or you did have at
2 this time a number of email accounts in the names of
3 other people, did you not?
- 4 A. That is possible, yes.
- 5 Q. Well, it is true, is it not?
- 6 A. Yes, I believe so. I recall having some different email
7 addresses, yes.
- 8 Q. Email addresses in the names of people other than
9 yourself?
- 10 A. Correct.
- 11 Q. Have you searched those email accounts for an email from
12 Oak Hall?
- 13 A. I did do a search. Many of those I no longer have
14 access to, but I did my best to search through those.
- 15 Q. Specifically looking for communications with Oak Hall?
- 16 A. Correct, yes.
- 17 Q. Do you have any explanation for why those emails have
18 not been found?
- 19 A. A lot of those email addresses I no longer have access
20 to. They were perhaps used as a one-off and not used
21 again.
- 22 Q. So these are the email accounts in the names of other
23 people?
- 24 A. Correct.
- 25 Q. So you think the most likely explanation for why you

1 have not found the email is because it was sent from an
2 email address in the name of someone else?

3 A. That is possible, although I do not recall which email
4 address I provided with this contact at Oak Hall.

5 Q. That is what you think is the most likely explanation;
6 is that correct?

7 A. It is hard for me to recall this. My conversation
8 happened with this gentleman six years ago. It was
9 quite a brief call. I really cannot remember what email
10 address I provided to him.

11 Q. You do not have any other explanation as to why you have
12 not found the emails with Oak Hall, do you?

13 A. No, sir. I know that I did a thorough search on all of
14 the email addresses that I have in my possession and
15 have access to, and I was not able to find anything from
16 this person.

17 Q. You do not have a recollection of deleting these emails,
18 do you?

19 A. No, I think it is unlikely that I would have deleted
20 them.

21 Q. So that is unlikely to be the explanation for why you
22 have not found them?

23 A. That is right.

24 Q. Just to confirm, do you accept that this exchange, and
25 indeed all of the chats that I took Mr Muff through, in

1 relation to the Oak Hall issue, these were documents you
2 were specifically shown when you prepared your witness
3 statement?

4 A. Yes, that is correct. In regards to these messages on
5 this Slack channel?

6 Q. Yes, about Oak Hall. So there are about four different
7 pages, but you saw, it is a continuous conversation, is
8 it not?

9 A. That is correct, yes.

10 Q. You were shown those four documents when you prepared
11 your witness statement, yes?

12 A. Correct.

13 Q. Can I go to your first witness statement at page 17,
14 please {D2/2/17}. At paragraph 67 you say:

15 "The financial burden of graduating via the ceremony
16 is clearly too much for many students. This discontent
17 about high fees and lack of choice was expressed in
18 petitions started by students at the University [of]
19 Reading, Glasgow University, Glasgow Caledonian
20 University, London School of Economics, Sunderland
21 University and others (see OA1, p38, 39, 40)."

22 So the basis for the statement that you make about
23 the financial burden, it is based on these petitions;
24 correct?

25 A. I am using these petitions as evidence to demonstrate

1 how the students felt about the cost of graduating.

2 Q. That is the only evidence that you have; correct?

3 A. Other than kind of anecdotal evidence of conversations

4 I have had with university students, yes.

5 Q. You exhibit, do you not, the petition from the Glasgow

6 Caledonian University and the petition from the LSE?

7 Those are the two that you put in the exhibit; yes?

8 A. Yes, sir.

9 Q. They are slightly cut off in the version in the exhibit,

10 but we have full versions. If we could go, first of

11 all, to {F3/3005}. This is the Glasgow Caledonian

12 petition, so this is one of the two that you exhibit,

13 yes?

14 A. Yes, sir.

15 Q. If we can just read what it says. It says:

16 "If a 4th year student wishes to attend graduation

17 and celebrate with their fellow classmates and family,

18 they are required to not only pay £52 in 'admin fees' to

19 GCU, but also £42 to be gown hire to an external

20 company. We have been told by GCU that academic dress

21 is mandatory and so the total cost to graduate is £94.

22 "This is a huge cost especially to those already

23 having to pay their tuition fees themselves.

24 "GCU has been contacted by email to ask for

25 a breakdown of their £52 cost but has failed to give

1 one.

2 "GCU also stated in an email that if you cannot
3 afford to attend graduation, you should graduate in
4 absentia which will cost you £26.

5 "Glasgow University and Strathclyde University have
6 scrapped their graduation fees and we think GCU should
7 do the same and scrap the £52 so we only need to pay £42
8 to the external cap and gown hire that is mandatory."

9 Do you see that?

10 A. Yes, I do.

11 Q. So this was actually a petition to get rid of the admin
12 fee charged by the university; do you agree?

13 A. My understanding is that they are complaining about
14 the overall cost incurred to students at graduation.
15 The solution that Glasgow University and
16 Strathclyde University -- to reduce the cost, their
17 solution in reducing the cost was to scrap the fee that
18 the university charge and keep the fee for the gown
19 hire. I think the paragraph at the end suggests that
20 this could be one way in which that is done that could
21 apply to Glasgow Caledonian also.

22 Q. Yes, that is what they are asking the university to do,
23 to scrap the university's own graduation fee; do you
24 agree?

25 A. Yes.

- 1 Q. They are not suggesting that you should scrap
2 the payment for the hire to the hire company; do you
3 agree?
- 4 A. I think the petition shows a general discontent about
5 the overall cost, but there is certainly a suggestion
6 that by scrapping the graduation fee, that is one way
7 that could lower the cost.
- 8 Q. This system of charging graduation fees, that is common,
9 or at least was common before some of these petitions,
10 in the Scottish universities; correct?
- 11 A. That is my understanding, yes.
- 12 Q. The Scottish universities have tended to charge an
13 administration fee as well as students paying for their
14 gown hire; correct?
- 15 A. Yes, that is my understanding.
- 16 Q. Where that is charged, even if you choose not to attend,
17 so you do not actually dress up, you still have to make
18 a payment to graduate; correct?
- 19 A. Yes, I think this was common practice for
20 the universities in Scotland. After a number of these
21 petitions, then I think a majority of the Scottish
22 universities have scrapped, or at least reduced this
23 fee.
- 24 Q. Then if we could go to {F3/3006}. This is a petition
25 from the LSE, so this is the other one you have

1 exhibited; yes?

2 A. Correct.

3 Q. We see the heading at the top:

4 "Say 'No!' to Graduation Fees."

5 Then underneath the image:

6 "£45 to hire robes that are required for graduation
7 is expensive, and unjustifiable. The University of
8 Edinburgh successfully petitioned their uni to abolish
9 these fees, so we believe that it is possible to get LSE
10 to do so as well."

11 Now, you know that in fact the Scottish university
12 petition was about graduation fees and not the robe hire
13 fees, don't you?

14 A. My understanding is that the petition is about
15 the overall cost, and by scrapping the fees charged by
16 the university, that was one way to lower the cost.
17 I suppose, in this example, perhaps that has been
18 somewhat conflated, the two fees.

19 Q. Then you can see it says:

20 "Long version:

21 "In the words of LSE:

22 "'... the graduation ceremony is an important event
23 at the other end of our students' LSE journey. It
24 symbolises completion, that all the hard work has been
25 worth it, that they've made it'."

1 You are familiar with a number of other universities
2 making similar statements, are you not?

3 A. Yes, I am.

4 Q. Then it says:

5 "This petition is part of a long-term, ongoing
6 struggle for the abolition of graduation fees including
7 entrance fees and robe hires; particularly the latter in
8 the case of LSE. It exists because we do not believe
9 that the price tag on something so fundamental to the
10 university experience is reasonable, or acceptable. Its
11 objective is to move LSE to completely abolish these
12 various fees for graduation and not sneakily pass on the
13 costs to students in the form of higher prices elsewhere
14 (notably fees for international undergraduate students
15 which stand at around £18,000 a year and rise by about
16 £700 each year)."

17 Then if we could go on to the next document,
18 {F3/3007/1} 3007 is where it continues.

19 So the top paragraph is the one I have just read.
20 Then it says:

21 "Undergraduate students are required to pay £45 in
22 order to hire their academic dress for just a day, and
23 these can only be hired from Ede & Ravenscroft Ltd,
24 giving them an effective monopoly. Students are not
25 able to opt out from hiring.

1 "Moreover, previous reports and investigations by
2 others suggest that Ede & Ravenscroft Ltd pays a
3 commission up to 20% to universities on the price of
4 each robe rented as part of their contractual
5 relationship (LSE claims that the commission they are
6 paid goes back into the ceremonies budget). This
7 coupled With the fact that LSE made £60.9 million in
8 surplus profits in 2016/17, compels us to feel that
9 should this be true, LSE very much ought to consider
10 re-evaluating their contract with Ede & Ravenscroft Ltd.

11 "Having spoken with some representatives from
12 the LSE, their solution seems to be that they hope to
13 open a fund in the future which needy students can
14 access. However, we do not see this to be sufficient.
15 The issue is not simply that of affordability, it is
16 that the price itself is not justifiable, especially in
17 light of the gross profits that LSE makes each year off
18 its students. The LSE believes that this ceremony is an
19 important event, yet puts a price tag on it where only
20 those who are able or willing to pay can attend it.
21 Even though most undergraduates have already contribute
22 some £27,000 (local) and about £54,000
23 (international) over 3 years for their experience and
24 education at LSE. We do not think that any additional
25 'microtransactions' should be imposed on students,

1 particularly for graduation since it is, as
2 aforementioned, a fundamental aspect of the LSE and
3 university experience."

4 What this petition is saying is that graduation
5 should be free for everyone, is it not?

6 A. That is not necessarily how I would interpret
7 the petition. I believe they are looking at ways of
8 reducing the cost and they are clearly expressing some
9 discontent that they are forced to choose from one
10 single supplier and that price has been set without
11 their consent. Perhaps if there were other suppliers
12 that they could freely choose from, they could
13 potentially save money or spend more money; they would
14 be free to choose.

15 Q. The main point they are making that the LSE is wealthy
16 and it should pay for robe hire for all of the students?

17 A. I am sure free robe hire might be a satisfactory outcome
18 of this for the LSE students, but I do not think that is
19 necessarily their intent. I think that they are looking
20 at ways to reduce the cost.

21 Q. I read it, but it actually says, does it not, that
22 the issue is not simply that of affordability; it is
23 a point of principle that these students are taking, is
24 it not, that the university should pay?

25 A. I believe part of their discontent is, as they mentioned

1 above, the monopoly that Ede & Ravenscroft has. So part
2 of this is about choice and transparency. I would in
3 part interpret this that they are unhappy with the fact
4 that they are paying an amount of money to
5 Ede & Ravenscroft and some of that is being used to fund
6 the ceremony as a whole.

7 Q. If the university decided to pay for all the gowns, that
8 would not assist your B2C model, would it?

9 A. No, sir, it would not.

10 Q. So, really, your reliance on these petitions in
11 paragraph 67 do not actually support the point you are
12 seeking to make, which is that the financial burden of
13 graduating is clearly too much for many students; do you
14 accept that?

15 A. No, sir, I do not. I think these petitions demonstrate
16 that university students are discontent with the amount
17 that they are paying and discontent with the lack of
18 choice that they have.

19 Q. If you could look at {F3/847}, this is an email from
20 someone at the University of Chichester. Do you see
21 there:

22 "Hi Gabriella ..."

23 A. Yes, sir.

24 Q. This is one of the ones that was forwarded to you in
25 September 2019; do you recall that?

1 A. Correct.

2 Q. She says:

3 "We've had no complaints this year about the cost of
4 gown hire but a couple of years ago we were contacted by
5 some students telling us that they weren't attending
6 graduation due to the cost of gown hire. Apparently
7 there was a rumour going round that the cost of hiring
8 was £100. We now publish the hire prices on our
9 Facebook page and haven't had any complaints since."

10 Do you see that?

11 A. Yes, I do.

12 Q. Do you agree that some concerns about the cost of gown
13 hire may simply arise from a misconception as to how
14 expensive it really is?

15 A. I would agree that the price is not prohibitive for all
16 students. Potentially some students come from more
17 affluent backgrounds, perhaps some parents of students
18 are more than willing to pay the price, but it is
19 certainly something that affects a reasonable proportion
20 of students at probably all universities.

21 Q. Could you go to page 28 of your witness statement
22 {D2/2/28}. In paragraph 110 at the top of the page you
23 say:

24 "In general we rarely participate in tenders because
25 we have seen some of the 'behind closed doors'

1 communications ..."

2 Now, that is a reference, is it, to
3 the communications that the mole on the list has
4 forwarded to you, is it?

5 A. In part, yes. It is also my understanding that
6 universities have communicated directly with
7 Ede & Ravenscroft about upcoming tenders as well.

8 Q. When did you see that?

9 A. I saw some -- I recall seeing some redacted documents
10 within the disclosure.

11 Q. So that is in the last year or so, yes?

12 A. Perhaps, yes.

13 Q. The mole was sending you messages in September 2019?

14 A. Yes, those dates sound correct, yes.

15 Q. So all of the behind closed doors communications are
16 from or after September 2019; correct?

17 A. Perhaps we had evidence of these behind closed doors
18 communications at that point. We obviously had
19 a suspicion that they were taking place long before
20 that. That suspicion arose from the calls that I had
21 with the various universities and the student unions.
22 They mentioned something that implied that
23 Ede & Ravenscroft -- sorry, the defendants and
24 the universities were communicating quite a lot about
25 upcoming tenders.

- 1 Q. What are you referring to?
- 2 A. When I was first employed through Churchill Gowns, one
3 of my early tasks was to contact university graduation
4 departments and student unions in a bit of a kind of
5 fact-finding mission but also in an attempt to kind of
6 pitch our services. Through these conversations it
7 became very clear that there was a deeply entrenched
8 relationship between Ede & Ravenscroft and many of
9 the universities that I had contacted.
- 10 Q. So you mean that there were agreements between them in
11 respect of being an official supplier; is that what you
12 are referring to?
- 13 A. Yes. They did make it clear that there were agreements,
14 but probably more so than that; many of these calls also
15 hinted that they had discussed other things with
16 Ede & Ravenscroft, including things like upcoming
17 tenders, including things such as intellectual property.
- 18 Q. So, what, you are suggesting that you phone up
19 the university saying, "I am a new entrant in this
20 market", and the university volunteers to you that they
21 discuss tenders privately with Ede & Ravenscroft? Is
22 that what you are suggesting?
- 23 A. These are conversations that took place quite a while
24 ago so it is hard to remember the specifics, but I had
25 a general impression that the universities, specifically

1 the graduation departments of the universities, were
2 communicating a lot with Ede & Ravenscroft and that
3 the agreements they had had been manufactured in
4 collaboration.

5 Q. "Manufactured", did you say?

6 A. I did say that, yes.

7 Q. What do you mean by that?

8 A. In the sense that they had these exclusive arrangements
9 whereby the defendant and the universities had an agreed
10 understanding that they would be the sole supplier to
11 that university.

12 Q. So that is just a reference to the contract?

13 A. I believe not all universities had an official supply
14 agreement, but yes, I was referring to the agreements
15 that they have.

16 Q. That is not what I am asking you about. What I am
17 asking about is the evidence you have just given that
18 the universities hinted to you in 2016 that they had
19 private discussions with Ede & Ravenscroft about
20 tenders. What is that a reference to? What are you
21 referring to there?

22 A. Again, I cannot give you any specifics from
23 conversations I had five/six years ago, but I remember,
24 having called the majority of the universities and
25 the majority of student unions, I left with an

1 impression that they had discussed their contracts and
2 they had discussed whether they were going to publicly
3 tender and that these discussions had taken place with
4 their current supplier.

5 Q. You have no notes of a call where a university said
6 something like that to you?

7 A. Not that I am aware of, no.

8 Q. You did not communicate that by email or by Slack or by
9 any other means to Mr Ramsey or Mr Muff?

10 A. I certainly would have given an update to Mr Muff and
11 Mr Ramsey about the calls. I certainly conveyed to them
12 that it was going to be difficult for us to supply to
13 these university students, because they were under these
14 exclusive arrangements. I certainly conveyed that to
15 Alec and Stef. It potentially took place over a Skype
16 call or a phone call.

17 Q. No, but then you are just back to the contracts.
18 The bit that I am interested in is the suggestion that
19 the universities revealed to you that they had private
20 discussions with Ede & Ravenscroft about the tenders.
21 Is that not something that you would have communicated
22 to Mr Muff and Mr Ramsey, if that had happened?

23 A. It would have been information that I passed on, but
24 this most likely would have taken place via a weekly
25 catch-up call or, as I mentioned before, a Skype call,

1 something like that.

2 Q. So you have not seen any contemporaneous document in
3 which you convey that information to them?

4 A. There is certainly no report that I wrote or that
5 details that, no.

6 Q. I would suggest it is an absurd idea that universities
7 would have said that to you. It just does not make any
8 sense, does it?

9 A. It was certainly the impression that I had at the time.

10 Q. I suggest you have just made up that evidence that you
11 have just given because you recognise that all of these
12 behind closed doors communications that you are
13 referring to do not start until September 2019. That is
14 when you first see them.

15 A. I had a suspicion that there were communications going
16 on between the defendant and universities. I think my
17 suspicion first arose from these early communications.

18 Q. You say you know that many universities perceive you in
19 a negative light. Well, we have been over
20 the March 2017 email. Do you accept that that would
21 have presented you in a negative light to many of
22 the universities if they had then looked at your website
23 and found that the dress either was not there or was
24 erroneous.

25 A. Yes, I suppose in part, they perhaps would have had some

1 concerns that not all of the universities that we
2 contacted, we had images of their regalia on our website
3 at that time. Part of the reason for reaching out, and
4 I think I alluded to this yesterday, part of the reason
5 for reaching out was to offer the opportunity whereby we
6 could send them samples and have a discussion to allay
7 their fears in terms of our garments matching garments
8 that their students procure from their exclusive
9 supplier. So I did try to confront, maybe, that concern
10 that they may have and offer them the opportunity to
11 discuss that with us.

12 Q. You say:

13 "It is my belief that universities do not tender
14 objectively and often discriminate on subjective
15 self-serving grounds."

16 Do you see that?

17 A. Could you point that out to me, sorry?

18 Q. Yes, it is in the third line.

19 A. Yes, sir, yes.

20 Q. Are you saying that the universities do not conduct
21 the tender honestly?

22 A. I would say that if the university has, for example,
23 given the defendants an indication as to when the tender
24 might take place, then that would obviously unfairly
25 advantage them. That would not qualify as being wholly

1 objective.

2 If I can give, perhaps, another example. We found
3 that the universities, when asking for samples, will
4 often look at what their current supplier is providing
5 them and kind of hold that up to the standard that must
6 be met.

7 Q. So --

8 A. So it can lose some objectivity in that sense.

9 Q. I am sorry to interrupt you, but these are the points
10 you make at (a) (b) (c) and (d). Is that all you are
11 saying? When you make the allegation that they "often
12 discriminate on subjective self-serving grounds", is
13 that simply a way of characterising the points you make
14 at (a) (b) (c) and (d)?

15 A. Yes, I believe the points that I have listed are kind of
16 relevant to your question, and I would also, again,
17 highlight the point that I made, that if universities
18 are communicating with Ede & Ravenscroft, then that does
19 undermine the tender.

20 Q. You have submitted six tenders, I think you said, have
21 you not?

22 A. I believe six or seven, yes.

23 Q. In paragraph 111 you say six; is that correct?

24 A. That sounds about correct, yes.

25 Q. For a number of those tenders, if not all of them,

- 1 the university has provided detailed feedback, has it
2 not, as to the reasons why you have not been successful?
- 3 A. Yes, I believe so.
- 4 Q. They have scored you on each of the published criteria,
5 yes?
- 6 A. Correct.
- 7 Q. They have given a comment which explains why your score
8 is what it is, yes?
- 9 A. Yes, on the whole, I believe that is correct.
- 10 Q. You have never challenged the outcome of any of these
11 tenders, have you?
- 12 A. From my recollection, we have received a tender response
13 that just gave a score, and therefore we wrote to that
14 university asking for some further details. We framed
15 this in the light of saying, you know, we were looking
16 to improve, so perhaps some further details would help
17 our ability in doing that.
- 18 Q. Okay, but in relation to the tenders where they have
19 given you that detail -- did they give you that detail
20 when you asked for it?
- 21 A. I believe so, yes.
- 22 Q. So in relation to the tenders where you have been given
23 scores and an explanation, you have never suggested to
24 the university that they have not properly applied
25 the criteria, have you?

1 A. I cannot recall.

2 Q. You do not have a recollection of ever suggesting that,
3 do you?

4 A. I do not have a recollection, no.

5 Q. If we could just look briefly at the points you make at
6 (a) (b) (c) and (d). The first point you make is:

7 "the gowns and hood[s] ... that must be provided are
8 measured against the universities' current suppliers
9 stock, therefore this can seem like a benchmark which
10 favours incumbents."

11 What is your basis for saying that, that it is
12 measured against the current suppliers' stock?

13 A. We know from communications that we have had with our
14 customers on occasion who have been told by
15 the university that they are not allowed to wear their
16 gown, they have often been told that it is wrong. So
17 any sample that obviously we provide, they are therefore
18 matching that sample that we provide within a tender to
19 their current supplier's hood, for example. If they
20 looked at the lining of those two hoods, then
21 the benchmark by which they see their academic dress is
22 what they have been receiving for the last few years.
23 So if our shade of lining is darker or lighter, that is
24 often perceived as not being correct.

25 Q. So what you are going on here is the fact that, while

1 there was currently someone else acting as the official
2 supplier, the university takes exception if students
3 whom you have supplied B2C are wearing different dress?
4 That is the basis for the point you are making in (a);
5 correct?

6 A. Could you repeat that question?

7 Q. Yes. The basis on which you make this point is your
8 experience in situations where the university has
9 someone else as the official supplier, say
10 Ede & Ravenscroft, and you supply certain students on
11 a B2C basis, the university takes exception if those
12 students' dress differs from the one provided by
13 the official supplier?

14 A. Yes, that is correct. That is part of the reason why
15 I believe they hold the incumbent supplier, their
16 exclusive supplier, as the benchmark.

17 It is also very difficult for a company such as
18 ourselves to prepare samples. Often the tender is open
19 for around a month, so you have to provide samples for
20 often all the different degrees that are awarded at
21 a university, the bachelors, masters and often the more
22 complex PhD regalia. Obviously this is far easier if
23 you are the incumbent supplier. You simply send in
24 the stock that you have been providing for
25 several years. For somebody who is tendering, you have

1 to manufacture this new stock and you have a very
2 limited time to do so.

3 Q. So that is your point (b), but I am still on point (a).

4 Your business model, as I think has been made clear,
5 involves buying Ede & Ravenscroft or the official
6 supplier's garments and copying them as exactly as you
7 can; correct?

8 A. We certainly try to, for our customers' sake, we try to
9 ensure that they are as indistinguishable as possible so
10 that our customers wear something that not only meets
11 the university's regulations, but goes above that and
12 ensures that they are not going to look distinguishably
13 different from those supplied by Ede & Ravenscroft.

14 Q. You believe you achieve that?

15 A. The vast majority of our customers are able to attend
16 their ceremony, and I think the reason why is because
17 they are hard for the staff, for Ede & Ravenscroft's
18 staff or for the university' staff to identify, and that
19 is how they are often able to attend. The staff who
20 have -- sorry, the customers who have asked for refunds
21 or have been told to go and get a refund, these are
22 often the exceptions where the university staff have
23 been able to identify them.

24 Q. So the answer is yes?

25 A. Yes, insofar as, yes, I think our stock matches

- 1 the defendants' stock quite closely, yes.
- 2 Q. So producing samples that match the existing supplier's
3 stock, that is not a problem?
- 4 A. We are able to do that. I think what I was referencing
5 was the time frame, it is quite difficult to do that --
- 6 Q. I see, so you had to do it in a short period of time,
7 that was your complaint?
- 8 A. That was my point, yes.
- 9 Q. You have someone who is able to make these things for
10 you quickly, if you need to?
- 11 A. Yes, our manufacturers can manufacture them fairly
12 quickly, yes.
- 13 Q. Do you recall there is actually a website that would
14 notify you whenever a university puts out a tender? Do
15 you recall that?
- 16 A. I am aware of a website that can alert.
- 17 Q. I think maybe you have to pay £300 a year to subscribe
18 to that; is that right?
- 19 A. I am aware there is a subscription fee. I cannot recall
20 the exact amount, but that sound plausible.
- 21 Q. It is right you decided not to subscribe to that?
- 22 A. That is correct.
- 23 Q. Then just looking at (c), you say:
24 "many tenders seem to ask for a commission but do
25 not specify the exact amount expected. E&R have an

1 insight into the level of commission that
2 the universities want and thus can set their offer with
3 much greater precision ..."

4 Now, as far as you understand it, the way the tender
5 will work is that whoever offers the highest commission
6 will get the most points; yes?

7 A. That is not quite my understanding. I would assume
8 the level of commission that you offer has an impact on
9 the price that you are then offering to the students,
10 and I imagine universities do have a threshold whereby
11 the price becomes unreasonable. So there is a bit of
12 a balancing act between offering a university
13 a commission which they find attractive, and on the
14 other hand keeping the price point to the end user,
15 the actual student who is paying for it, keeping that
16 reasonable, and without an insight, it is quite
17 difficult to know what that level might be.

18 Q. Well, you know what the price currently charged to
19 the students is, do you not?

20 A. We do, yes.

21 Q. So you know that fact?

22 A. Correct.

23 Q. Then it is a matter for your commercial judgment as to
24 how much commission you are prepared to offer without
25 going above that price; correct?

1 A. Yes, again, I think it would be more helpful if you knew
2 the amount of money that the universities were currently
3 finding acceptable. That would certainly be an
4 advantage when tendering.

5 Q. It would always be interesting in a tender to know what
6 other people were submitting; is that the point you are
7 making?

8 A. Yes, I suppose I am referencing the commission as
9 opposed to the price point here. I think there is
10 a subtle difference.

11 Q. Because you know the price point?

12 A. Correct, yes.

13 Q. Just looking at (d), you say:

14 "E&R offers photography ..."

15 Churchill has teamed up with a photography agency,
16 has it not?

17 A. We have done, yes, we have worked with different
18 photography companies, yes.

19 Q. Is it most recently an agency called Perfocal?

20 A. Yes, we currently have a relationship with a company
21 called Perfocal, yes.

22 Q. So if you are bidding for photography plus gowning, you
23 are able to do that in partnership with Perfocal or
24 someone like that; correct?

25 A. Yes, in that the reason we partnered with Perfocal was

1 actually to offer students a slightly different service.
2 Again, because our focus is very much direct to
3 consumer, we want to see ways in which we can offer
4 the most value there.

5 With Perfocal, a customer can hire their cap and
6 gown for a five-day period for ourselves. It is sent,
7 obviously, out in the post, and then a professional
8 photographer will then go and meet that customer, either
9 at their home or a location of their choosing, and do an
10 hour's photo shoot with them. This is quite different
11 to the photography that is often offered on the actual
12 day of the ceremony, which is more of a kind of conveyor
13 belt with a shorter time frame.

14 So the photography relationship that we currently
15 have much more benefits our B2C model. We think it
16 offers more value as well, that it would be plausible
17 for us to partner with a photography company and offer
18 something more akin to what the defendants currently
19 offer.

20 Q. Just moving on to a different topic, which is
21 the recycled polyester issue.

22 Do you agree that the use of recycled polyester was
23 a USP for Churchill?

24 A. Yes, I do agree that recycled polyester was one of our
25 USPs.

- 1 Q. Do you agree it was a key USP?
- 2 A. Yes, I suppose it was one of our key USPs. Probably
- 3 the sustainability, the home delivery and
- 4 the affordability were often the three things that
- 5 I probably would say we most commented on.
- 6 Q. So the use of recycled polyester was a key USP; do you
- 7 agree?
- 8 A. Yes.
- 9 Q. It was necessary to distinguish Churchill from
- 10 the competition; do you agree?
- 11 A. Yes.
- 12 Q. Now, if you look in your statement at page 32 {D2/2/32},
- 13 just at the top of the page, around eight lines down,
- 14 there is a line that begins "event", it says:
- 15 "In the event, Stefan advised that he had received
- 16 samples of gowns made by Lingfeng from recycled
- 17 polyester made of 100% recycled plastic bottles (which
- 18 we then ordered an initial batch of) and this was
- 19 reflected in statements made on our website."
- 20 Do you see that?
- 21 A. I do, yes.
- 22 Q. So do you accept that the website reflected that
- 23 the polyester was made of 100% recycled plastic bottles?
- 24 A. Yes, I accept that -- it was my understanding that
- 25 the gowns were made from 100% recycled plastic.

1 The bottles was -- again, I think my colleagues have
2 mentioned this, but the bottle reference was perhaps
3 less of a literal one, but that was certainly on our
4 website at that time.

5 Q. Do you accept that the website reflected that the gowns
6 were made from recycled polyester made of 100% recycled
7 plastic bottles?

8 A. Can I just check, is this in reference to the first
9 fabric?

10 Yes, I would say that there was reference on our
11 website to recycled bottles. This was always supposed
12 to be a shorthand of, you know, giving the consumer
13 something that they could visualise.

14 Q. Do you accept that the website reflected that the gowns
15 were made from recycled polyester made of 100% recycled
16 plastic bottles?

17 A. Yes, I believe there was reference to 100% recycled
18 plastic, and again, we also made reference to bottles in
19 a more -- more used as a kind of a metaphor.

20 Q. I am not clear whether you are agreeing with my
21 proposition or disagreeing with it?

22 A. Well, I am agreeing with the statement that they were
23 made from 100% recycled plastic and at that point that
24 we had used the bottles to help illustrate the types of
25 plastic that was being used.

1 Q. I am a bit confused by this. You say:

2 "... Stefan advised that he had received samples of
3 gowns ... from recycled polyester made of 100% recycled
4 plastic bottles ..."

5 So just pausing there, was that what Mr Muff told
6 you?

7 A. Yes. I was informed that the fabric that was making
8 the gowns was made from recycled plastic and he informed
9 me that it was very likely that that plastic had come
10 from plastic bottles.

11 Q. So not quite as you say here then; is that what you are
12 saying? He did not advise you that it was recycled
13 polyester made of 100% recycled plastic bottles?

14 A. He did indeed say it was 100% recycled plastic, which
15 could have been made from bottles.

16 Q. No, no, so you are answering a different question from
17 the one I am asking. I am simply reading from what you
18 say he advised you, that the recycled polyester was made
19 of 100% recycled plastic bottles. Is that true or is
20 that not true?

21 A. That is true, yes.

22 Q. That was then reflected in statements made on
23 the website.

24 I mean, if he told you it was made of 100% recycled
25 plastic bottles, it is perfectly natural you would say

1 on the website that it is made from recycled plastic
2 bottles. Why do you have difficulty with accepting
3 that?

4 A. Yes, I think he expressed to me that it was made from
5 100% recycled plastic. That much was very, very clear
6 to me at the time. The reference to bottles I think
7 came out of research that we looked into, that most
8 recycled plastic was made from PET bottles.

9 Q. This is a witness statement you made in August 2021,
10 after all of these issues had come to light, yes?

11 A. Correct.

12 Q. You had no difficulty in saying there "made of 100%
13 recycled plastic bottles"; do you see that?

14 A. Yes.

15 Q. But every time I put it to you now, you say "recycled
16 plastic which could have been made from bottles". Why
17 is that? Why is there that change between what you were
18 happy to say in your witness statement, which you
19 confirmed at the start of your evidence was true, and
20 what you say now?

21 A. Well, just to clarify, I was informed that the fabric
22 was recycled polyester made from 100% recycled plastic
23 bottles.

24 Q. Okay, good.

25 Then you reflected the information that Mr Muff had

1 given you on the website, that information, yes?

2 A. Yes, that is correct.

3 Q. Could we go to {F3/1078}. If we could look at page 2,
4 please {F3/1078/2}. This is your email at the top of
5 the page dated 4 December 2020, so just over a year ago,
6 yes?

7 A. Yes.

8 Q. To someone at Reuters. So that is a journalist,
9 presumably?

10 A. Correct.

11 Q. You say:

12 "Thanks for coming down, I'm glad to hear
13 the footage looks usable."

14 What was that a reference to?

15 A. They had filmed a short piece in our warehouse.

16 Q. Then you set out some rough figures for total
17 sales: 1,000 orders in 2018; 2,500 orders in 2019;
18 4,000 orders in 2020. Yes? Well, greater than. There
19 is a "greater than" symbol there. Yes? Is that broadly
20 right?

21 A. Yes, that looks roughly correct, yes.

22 Q. Then you say:

23 "The other states ..."

24 I think that should be "stats" for statistics; is
25 that fair?

- 1 A. Yes.
- 2 Q. "... that might be of interest."
- 3 Then bullet point number 1:
- 4 "28 plastic bottles to make each gown."
- 5 Do you see that?
- 6 A. I do.
- 7 Q. You were happy for the journalist to be told that there
- 8 were 28 plastic bottles to make each gown; yes?
- 9 A. Yes, again this was because it was a common shorthand
- 10 that we used. At this point in time I had used that
- 11 shorthand that we had used elsewhere. Looking back on
- 12 it now, I would have liked to have been perhaps slightly
- 13 clearer and emphasised that this was equivalent. This
- 14 was in reference to our kind of second batch of gowns.
- 15 I would have liked to have specified the composition of
- 16 the gowns as well, but I do not believe I was aware of
- 17 that at the time.
- 18 Q. You did not. I mean, today, you feel uncomfortable with
- 19 having made this statement, but at the time you felt
- 20 perfectly content simply to say it takes
- 21 28 plastic bottles to make each gown. That is true, is
- 22 it not?
- 23 A. Again, I was happy to convey the shorthand that we had
- 24 used.
- 25 Q. She has no idea it is shorthand, does she?

1 A. Other than the fact that they had already come to
2 the warehouse and we had had a kind of more in-depth
3 discussion, but I cannot recall the specifics of that
4 discussion and what was filmed and edited between that
5 time.

6 Q. You do not have some specific recollection of saying to
7 her, "I am going to send you some statistics, but do not
8 take them literally"?

9 A. It is possible that I would have given additional
10 details at the point when she came to the warehouse, but
11 I admit that the reference to 28 plastic bottles here,
12 I would have liked to have been more specific.

13 Q. Similarly, in the next bullet point:

14 "Around 150,000 recycled plastic bottles used in
15 [total] to make our gowns."

16 That is the sort of statement you would entirely
17 naturally have made before you had the Alius letter in
18 January 2021; correct?

19 A. Yes, that is the type of -- it was the type of reference
20 I would make to recycled plastic.

21 Q. Sorry, to recycled plastic bottles; correct?

22 A. Correct.

23 Q. If you could go to {F3/1696}. This is an image of
24 someone called James' text messages. Who is James, or
25 is that the recipient, do you know?

1 Maybe a brand ambassador?

2 A. Possibly. I do not recall from this picture.

3 Q. If you look at the blue box, it says:

4 "Cool, il get one sent off ASAP. It should be with

5 you by the end of next week. Our gowns are made from

6 100% recycled plastic bottles so we too feel really

7 passionately about sustainability. Have you seen our

8 video on our home page?"

9 Do you think you wrote that message?

10 A. It is possible that I wrote that message, yes --

11 Q. And again --

12 A. -- but I do not recall --

13 Q. Sorry.

14 A. I do not recall the specifics of who this person was, or

15 whether I wrote it, but it is possible.

16 Q. But this would have been the kind of thing that you said

17 all the time, that "our gowns are made from 100%

18 recycled plastic bottles"; correct?

19 A. That is correct.

20 Q. "Have you seen our video on our home page?"

21 That is a reference to the video with the turtle and

22 the turtle gets a plastic bottle on its head; yes?

23 A. I would assume so, yes.

24 Q. Then James replies:

25 "That's grand, thank you so much! And yes, that was

1 what drew me to your company actually ..."

2 Do you see that?

3 A. I do.

4 Q. You commonly got positive responses from people when you
5 emphasised that the gowns were made from 100% recycled
6 plastic bottles; yes?

7 A. Yes.

8 Q. If you just go back to paragraph 124 in your witness
9 statement, page 32 {D2/2/32}. The sentence I was just
10 asking you about:

11 "... Stefan advised that he had received samples of
12 gowns made by Lingfeng from recycled polyester ... and
13 this was reflected in statements made on our website."

14 Is it your recollection that once you had
15 the samples, you put the statements up on the website?

16 A. The precise timeline I cannot exactly recall. I was
17 certainly informed by Mr Muff that we were now able to
18 make garments out of recycled fabrics, and then using
19 the information that he had provided me, that went into
20 our website and marketing material that you have seen.

21 Q. So those statements may have been up there before you
22 had actually ordered any gowns other than the samples?

23 A. I cannot recall the exact timeline. I would need to
24 check.

25 Q. Then in paragraph 125, you say you personally did not

1 have contact with any fabric supplier but you had:

2 "... numerous updates Stefan in 2017 who informed me
3 about progress he was continuing to make in sourcing
4 recycled polyester fabric ..."

5 You say he did not tell you that he was now looking
6 at a blend?

7 A. I was not aware of that, no.

8 Q. Over the page at {D2/2/33}, at paragraph 128, it says:

9 "The Alius letter also referred to a statement in
10 the Claim Form to the effect that our hoods were made
11 from recycled polyester, and that the recycled polyester
12 was made from bottles."

13 If I could just show you that at {B/1/7}. If we
14 could enlarge paragraph 30. So this is the claim form
15 that you signed; do you recall that?

16 A. I do not -- which paragraph are you referring to, sorry?

17 Q. 30.

18 A. Ah, okay, it has just come up.

19 Q. If you could ignore the changes in green for the time
20 being. I will explain what I mean by that, but if you
21 go to the end of the third line and if we ignore
22 the changes that have been made in green subsequently,
23 it says:

24 "The material used to manufacture Churchill gowns
25 and hoods is made ... from recycled plastic bottles ..."

1 That is what you were referring to. That is what
2 the claim form originally said when you issued these
3 proceedings; yes?

4 A. Correct.

5 Q. If you go back to your witness statement, {D2/2/33}, at
6 paragraph 129 you focus on the bit about the hoods; do
7 you see that?

8 A. Yes.

9 Q. You say:

10 "... this is not something that we have ever stated
11 in our marketing or on our website, because we have only
12 ever ordered gowns to be made from recycled polyester."

13 Then you say this at 130:

14 "There was nevertheless a proper basis for
15 the statement made. I recall that we had some of
16 the recycled fabric left over from an order we made for
17 gowns from our manufacturer (Lingfeng). The fabric is
18 very similar to the colour of the backing to a number of
19 hoods and I remember us discussing using this left-over
20 fabric with Lingfeng instead of buying new black fabric
21 for the hood backing (although I do not recall when).

22 I recall specifically this applied to the Imperial
23 College London BSc hoods, for example. It was logical
24 to assume (as I had done) that Lingfeng would use
25 off-cuts in this way, rather than buy new fabric, and so

1 some of our hoods (even if not all) would therefore have
2 included fabric made from recycled polyester.

3 "When this matter was drawn specifically to our
4 attention, I recognised - after double-checking
5 specifically - that Lingfeng had never actually
6 confirmed to us that it had used off-cuts of recycled
7 fabric in some hoods, and so the statement made in the
8 Claim Form ought to be amended."

9 Do you see that?

10 A. Yes, I do.

11 Q. So are you saying that you intended to say in the claim
12 form that the hoods were made from recycled polyester?

13 A. No, that was -- it was not our intention. We never
14 marketed the hoods as being made from any recycled
15 materials. It was possible, as I think I explained
16 here, it was possible that some leftover fabric might
17 have been used, but because we cannot confirm that, it
18 is certainly not something that I would stick to. It
19 was simply a mistake to say that. We only maintain that
20 the gowns are made from recycled fabric and we market
21 the gowns as being made from recycled polyester, not
22 the hoods.

23 Q. Just trying to work out what you are saying in 130:

24 "There was nevertheless a proper basis for
25 the statement made."

1 Are you saying that anything in 130 was in your mind
2 when you were approving the claim form?

3 A. How do you mean, sorry?

4 Q. Were you thinking about 130? Is that what it
5 says "hoods" in the claim form?

6 A. I think it was more that that was just a mistake that
7 hoods was included. Hoods was never part -- it was
8 never our intention to make hoods out of recycled
9 polyester. Although it is possible that some might have
10 included some of that same fabric, it was not our
11 intention to make or market the hoods out of recycled
12 fabrics at this time.

13 Q. So am I right in understanding that what you are
14 describing in 130 is not the thought process you went
15 through when you approved the claim form?

16 A. I think it was more that it was overlooked when it
17 said "gowns and hoods". So then, when I was asked to
18 double-check this, I recalled this conversation with
19 Ruth, who placed the order for the Imperial College
20 London hoods. We had a discussion about it and we both
21 agreed that this was put in error and that reference to
22 hoods should be removed.

23 Q. So is paragraph 130 a description of what you were
24 thinking when you approved the reference to hoods in
25 the claim form?

1 A. No, as I said, the reference to hoods was put in as
2 a mistake. We wanted to say that the gowns were made
3 from recycled polyester. Once we checked and were aware
4 of this, we removed the reference to hoods.

5 Q. So is 130 just a possible justification that you thought
6 of after the mistake had been noticed?

7 A. After we had noticed the mistake, we obviously needed to
8 double-check. As part of that process of checking,
9 I had a number of conversations with Ruth, we looked
10 through previous orders. This was something that we
11 thought was relevant to consider, but ultimately we
12 checked and we felt that the reference to hoods, it was
13 still proper to remove that.

14 Q. I see. So what you thought about, is this right, was:
15 so someone points out that it says "hoods", and you then
16 think, "Is there a basis on which we can keep that?",
17 and 130 is the thought process you went through in
18 relation to that; is that right?

19 A. I do not think that is a fair characterisation. It is
20 simply the case that when we became aware that there was
21 an error here, it was important for us to double-check
22 the facts as kind of detailed and holistically as
23 possible, and this was something that was relevant to
24 consider.

25 Q. I am afraid -- I feel I am going round in circles, but

1 130, is that describing a thought process that you had
2 at the time of the claim form, or after the point was
3 highlighted about the claim form in January 2021?

4 A. At the time of the claim form, "hoods" was put in as an
5 error.

6 Q. Right, so 130 was not in your mind?

7 A. No, not at the time of the claim form, no.

8 Q. So when you say in 131:

9 "When this matter was drawn specifically to our
10 attention, I recognised - after double-checking ... -
11 that Lingfeng had never actually confirmed to us that it
12 had used the off-cuts ... and so the statement ... ought
13 to be amended."

14 That is not actually the reason. Your evidence is
15 it was just a mistake, right from the start?

16 A. Yes, as I said, I have not personally been responsible
17 for placing many of the orders for the hoods and so
18 I needed to double-check and hence why that was amended.

19 Q. But it has nothing to do with you suddenly realising
20 this point about the off-cuts; do you agree?

21 A. I agree that it was an error that that was included.

22 Q. Now, in 132, you say:

23 "As for bottles, the statement made in our original
24 Claim Form reflected the content of our website which
25 (for the reasons ... above) I believed to be true."

1 What you are referring to there is the statement in
2 the claim form that the gowns were made from recycled
3 plastic bottles; correct?

4 A. Correct.

5 Q. You accept that that statement in the claim form was
6 reflected on the website?

7 A. Apart from the caveat that I think some of the wording
8 around recycled plastic has now changed, but yes, at
9 this point, that was correct.

10 Q. Can I ask you this. If you just go back in
11 the statement -- sorry to do this -- at page 32, 125
12 {D2/2/32}, can you look at the last sentence. You say:

13 "The use of recycled fabrics has been confirmed in
14 purchase invoices raised by Lingfeng, by which they
15 warrant what they have sold to us and at what price."

16 Do you see that?

17 A. I do, yes.

18 Q. Are those your words?

19 A. I believe so, yes.

20 Q. What do you mean by "by which they warrant"?

21 A. I think all I am trying to express here is that
22 the invoices that we had from Ling Feng used this term,
23 which for us confirmed to us that what we were buying is
24 what we thought we were buying.

25 Q. But it is the word "warrant". What do you mean by that?

1 A. I cannot recall why I have used that word. Perhaps ...
2 I am not sure.

3 Q. Is that a word someone else has suggested that you
4 should use?

5 A. I do not recall that, no.

6 Q. Could you go to paragraph 133 {D2/2/34}. You say
7 various things, and then in the sixth line, you say:

8 "Since then, our current fabric supplier has
9 confirmed to Stefan that the yarn supplier does use
10 plastic bottles to produce its recycled polyester ..."

11 So that is a conversation to which you were not
12 privy; correct?

13 A. That is correct, yes.

14 Q. You do not have any personal knowledge of what the yarn
15 supplier or the fabric supplier said?

16 A. No, I was not a party to those conversations. I have
17 only seen what has been provided to me by Stefan since
18 then.

19 Q. You accept, do you not, that this report of
20 a conversation that you have received, that is not
21 a basis to go round telling students that your gowns are
22 made from plastic bottles; do you agree?

23 A. In regards to our current statements, you are referring?

24 Q. Yes.

25 A. Well, I believe we have amended that and tried to make

1 it clearer that it is equivalent to plastic bottles, and
2 we have been quite specific in terms of the type of
3 bottle as well. Obviously, as has already been
4 discussed, there are lots of different types of bottles.
5 So I think we have helped to clarify this issue.

6 Q. Just on what you just said now, "we have been specific
7 about various types of bottles", what is that
8 a reference to?

9 A. I believe we now give, I think it is 500 --

10 Q. Millilitre; I see.

11 A. -- millilitre, but I could be wrong.

12 Q. I see. Just before we get to what you say on
13 the website, you accept, do you not, that this report of
14 a phone call you had, that would not justify you in
15 telling students that your gowns were made from recycled
16 plastic bottles; do you agree?

17 A. Yes, I mean, I was not just basing it off a conversation
18 I had had with Stef. I mean, up until the defendants
19 made the allegations about the composition of our gowns
20 I was unaware, but obviously since then we have seen
21 a number of documents. Since those allegations were
22 made, we have ensured that we had a consultancy firm
23 come in and look at our supply chain, look at
24 the certifications that we have, et cetera.

25 Q. They do not say that they are made from plastic bottles,

- 1 do they?
- 2 A. They do not say that they are made from plastic bottles,
3 no.
- 4 Q. So do you agree it would not be right for you to go
5 round saying that your gowns are made from
6 plastic bottles?
- 7 A. In terms of the current wording on our website --
- 8 Q. Just to be clear, I am simply asking whether you agree
9 or disagree that it would not be right to go round
10 saying that. I will come to what you say, but do you
11 agree with the principle?
- 12 A. I think plastic bottles are a common type of plastic
13 waste that people can identify. It is possible that
14 some clear plastic bottles are used within our garments
15 and it is reasonable that customers would look on our
16 website and see that they are made from recycled plastic
17 waste, and a nice way for them to be able to visualise
18 that is the equivalence of plastic bottles that we refer
19 to.
- 20 Q. That is not an answer to my question. The question
21 is: do you agree that it would not be right to tell
22 students that your gowns are made from recycled plastic
23 bottles? Do you agree or disagree?
- 24 A. Not in those words, I suppose it would not be right, but
25 there may be recycled plastic bottles used within our

1 gowns. We would not say that our gowns are made from
2 recycled plastic bottles without now using
3 the additional information that we now provide.

4 Q. If you look at the end of this paragraph, 133 -- well,
5 perhaps you should just read the whole sentence:

6 "Since then ..."

7 I have read that. Then you say:

8 "... but because of the serious allegations made by
9 E&R that we were making false statements, acting out of
10 an abundance of caution, we agreed to remove any express
11 references to our gowns being manufactured from bottles
12 both from our website and marketing and our statement of
13 case."

14 Do you see that?

15 A. Yes, I do.

16 Q. When you say "we agreed", who are you referring to?

17 A. I suppose in this case predominantly myself and
18 Ruth Nicholls. It could have been a broader decision
19 that also included Stefan and Alec as well.

20 Q. Do you remember discussing it with Mr Muff?

21 A. I do not have a specific recollection. I certainly
22 discussed it with Ruth Nicholls, but it is possible that
23 I discussed it with Mr Muff as Mr Ramsey as well.

24 Q. You do not have a specific recollection of that?

25 A. I do not have a specific recollection of that, no.

- 1 Q. You say:
- 2 "... we agreed to remove any express references to
- 3 our gowns being manufactured from bottles ..."
- 4 Do you see that?
- 5 A. Yes.
- 6 Q. Why do you say "any express references"?
- 7 A. We were concerned that people might think that the gowns
- 8 were solely made from recycled plastic bottles, so we
- 9 wanted to reiterate this point that it is an
- 10 equivalence.
- 11 Q. I suggest that the reason you say you only removed
- 12 the express references to the gowns being manufactured
- 13 from bottles is because you appreciated that the website
- 14 implicitly continued to give the impression that
- 15 the gowns are or at least may be made from recycled
- 16 plastic bottles; do you accept that?
- 17 A. I never believed that the 28 bottle reference would have
- 18 been taken too literally, but in this instance, given
- 19 some of the allegations made against us, we believed it
- 20 was proper to be extra cautious and express more clearly
- 21 that it was an equivalence.
- 22 Q. Well, if you were being extra cautious, why not just
- 23 remove the references to plastic bottles altogether?
- 24 A. We could not think of another shorthand that would be as
- 25 easily identifiable. We could have said "plastic meat

1 packing trays", or something like that, but we thought
2 bottle was the most identifiable thing that a customer
3 could look at and recognise as plastic waste.

4 Q. So you thought it was important as part of the marketing
5 message that there be a clear identifiable object to
6 express the amount of recycled material, yes?

7 A. Yes.

8 Q. The only one you could think of was bottles?

9 A. We thought that was the most easiest shorthand for
10 a customer.

11 Q. You decided to continue using that one?

12 A. Correct.

13 Q. Even though that is the one that has actually been
14 tested for and no evidence of plastic bottles has been
15 found in your gowns; yes?

16 A. From my understanding of the tests, it demonstrates that
17 there is a threshold -- I believe it is 10% -- and it is
18 specifically referring to clear plastic bottles, but
19 I think what our customers perhaps are interested in is
20 recycled plastic. Whether that was a recycled plastic
21 bottle or a container for washing-up liquid I do not
22 think was perhaps the important thing. The important
23 thing was that it was using recycled plastic.

24 The reference to 28 clear plastic 500ml bottles is
25 a nice shorthand for them to be able to visualise

- 1 the amount of plastic being used.
- 2 Q. Well, I suggest that you appreciated that at least some
3 students, on seeing that, would understand you to be
4 saying that your gowns were made from recycled plastic
5 bottles; do you agree.
- 6 A. I do not think, especially given that we have now kind
7 of made this point even clearer, I do not think that
8 anybody would think that the gowns are made of that
9 number of plastic bottles. It is quite clear that it is
10 the equivalent to 28 plastic bottles.
- 11 Q. Well, that goes to the varying types and sizes of
12 plastic bottles, does it not?
- 13 A. Well, also the use of the word "equivalent" I think is
14 quite important.
- 15 Q. I suggest you knew that that would give a misleading
16 impression to students who looked at it?
- 17 A. No, I do not believe it would be misleading. I think it
18 is quite clear, by giving a specific weight, by
19 reminding the customer that this is the equivalent of,
20 I think shored up this issue.
- 21 Q. Just give me one moment. (Pause).
- 22 Just to make sure you are conscious of this, if you
23 could just look at {F3/1517}.
- 24 THE EPE OPERATOR: Could I have that reference again,
25 please.

1 MR PATTON: 1517.

2 This is the current language on the website, is it

3 not?

4 A. I do not have anything up just yet.

5 Q. I am sorry. I think your screen might be slower.

6 Do you have it?

7 A. I think that was the wrong document, actually.

8 Q. Oh, I see.

9 A. Yes, it is up now.

10 Q. You have got it.

11 If you look at the bottom paragraph in the third

12 line, it says:

13 "Every graduation gown contains a minimum of 550g of

14 recycled plastic waste, which equates to at least

15 28 500ml plastic bottles."

16 Do you see that?

17 A. Yes, I do.

18 Q. So I think you are mistaken insofar as you say it uses

19 this equivalent language; it actually case "which

20 equates to at least 28 500ml plastic bottles"; do you

21 see that?

22 A. Yes, I see that.

23 Q. It does not refer to clear or coloured or anything else;

24 do you see that?

25 A. Yes.

1 Q. In relation to the points I have put to you, does that
2 affect the answers you have given?

3 A. I would still maintain that that is quite clear.
4 The language "equates" I think reminds the customer, and
5 the fact that we have given the type of bottle and
6 the weight of the bottle, again, I think is helpful.

7 MR PATTON: Thank you very much. I do not have any further
8 questions.

9 MR RANDOLPH: I will be brief, sir, if I may.

10 Re-examination by MR RANDOLPH

11 MR RANDOLPH: Mr Adkins, could you turn to paragraph 210 of
12 your first witness statement, which is at {D1/2/28},
13 please. You do have a hard copy.

14 A. Okay, it is in front of me.

15 Q. You were asked questions about this paragraph.

16 A. Yes, sir.

17 Q. Yes?

18 Could you turn to paragraph 21 of your second
19 witness statement. So paragraph 21 of your second
20 witness statement, which is at {D1/5/7}, please. Do you
21 have that?

22 A. I am just waiting for it on the screen.

23 Q. No, I am sorry. Do not worry.

24 A. Yes, I do.

25 Q. You will have it in stereo, hard copy and soft copy.

1 So paragraph 21:

2 "In his witness statement, Michael Middleton ...
3 (see para 25, 1st Witness Statement ...) appears to
4 suggest that it is somehow okay for a potential bidder
5 to be asked about the content/requirements of
6 a universities tender ..."

7 Just pausing there. When you gave evidence to
8 Mr Patton about paragraph 110, you were talking about
9 the communications between Ede & Ravenscroft and
10 universities in relation to tenders; is that correct?

11 A. That is correct, yes, sir.

12 Q. Is this a reference to that, at paragraph 21?

13 A. Yes, sir.

14 Q. Right. I will continue.

15 So:

16 "In his witness statement, Michael Middleton ...
17 appears to suggest that it is somehow okay for
18 a potential bidder to be asked about
19 the content/requirements of a universities tender which,
20 of course, is self-evidently not correct unless, of
21 course, that entity then steps back from the resultant
22 competition. If a procurement department asks
23 a potential bidder how to structure a tender then that
24 supplier has a clear advantage as they not only have an
25 insight not afforded to other potential suppliers but

1 they can obviously seek to manipulate the tender
2 requirements in their favour. This kind of contact also
3 has the potential to lead to favouritism. His
4 suggestion that the procurement department and
5 the graduation departments are separate is correct but
6 that does not mean that they don't talk to each other.
7 In any event the only complicated parts of the usual
8 tenders relate to the extraneous bolted-on bits ..."

9 Just to be fair to all concerned, you were
10 referring to paragraph 25 of Mr Middleton's witness
11 statement. Let us turn that up. That can be found at
12 {D3/1/8}. I think that should be right. Yes, good.

13 So, this is Mr Middleton, the chairman of
14 Ede & Ravenscroft:

15 "In the late 1990s and early 2000s it became more
16 common for UK institutions to have procurement
17 departments and to start running more formal competitive
18 tender processes for supplier contracts. Instead of
19 just dealing with the staff at the institution who were
20 in charge of running graduation ceremonies, we ..."

21 So that is Ede & Ravenscroft:

22 "... then started to deal with procurement
23 departments of institutions who were removed from
24 the graduation side of things and sometimes did not
25 always understand well what the institution actually

1 required. This problem is still sometimes encountered
2 today. There have been occasions where we were asked by
3 a procurement person at an institution what sort of
4 questions institutions generally ask in an invitation to
5 tender and/or how other institutions approach particular
6 issues."

7 You can finish that paragraph:

8 "That is because the people running procurement are
9 not the same people as those who are involved with
10 graduation ceremonies."

11 So that is the paragraph to which you referred; yes?

12 A. Correct.

13 Q. The evidence that you gave that we read out just
14 a moment ago, at paragraph 21, that is your response to
15 that?

16 A. Correct.

17 Q. Is that what you were referring to when you were giving
18 evidence to Mr Patton about paragraph 110 of your first
19 witness statement?

20 A. That is right, yes.

21 Q. Thank you.

22 Just so that we can close this point off, I wonder
23 if we could bring up, please, {F3/101/5}. Ah, that
24 seems to be completely redacted.

25 It is {F3/101/5}. That is better. Any chance of

1 slightly blowing it up? Good.

2 Can we go to the page below that, so {F3/101/6},
3 please. Thank you so much.

4 Do you have that on your screen?

5 A. I do, sir, yes.

6 Q. Perfect.

7 So we start the conversation at the bottom.
8 James Middleton -- thank you very much indeed -- to
9 someone who is blanked out.

10 Can we go to 7, please. Sorry, the page below that
11 {F3/101/7}. Thank you.

12 Sorry, that is not quite working in terms of
13 the size. Could we go back to 6, please {F3/101/6}.
14 Thank you very much indeed.

15 You can see Writtle University College, can you not?

16 A. Yes, sir.

17 Q. You can see in the middle of the page an email from Tony
18 Thornton to James Middleton and then someone who has
19 been blanked out, saying:

20 "Hello [someone who is blanked out]

21 "I am out of the office at ceremonies at the moment,
22 but would be happy to have a discussion with you if you
23 want one."

24 So this is to both James Middleton and someone at
25 Writtle College:

1 "Or if necessary, I would be happy to visit you for
2 a meeting if you think that would be better."

3 Can we go to the previous page, so {F3/101/5}.

4 So the response to Tony Thornton on 11 November:

5 "Hi Tony

6 "Thank you for your email. We will be putting
7 together ..."

8 So this is from someone at Writtle College:

9 "We will be putting together our spec in the next
10 few weeks ..."

11 I know this is not your document and if you do not
12 know, say you do not know. What does "spec" mean?

13 THE CHAIRMAN: I do not really think this is relevant,
14 is it? I mean, this witness cannot construe an email
15 that he never saw.

16 MR RANDOLPH: No, it simply goes to the point that he was
17 making insofar as there is a link between
18 the universities and Ede & Ravenscroft, which has
19 been --

20 THE CHAIRMAN: Well, this is a piece of evidence that you
21 will put to me to make that point, but can this witness
22 really --

23 MR RANDOLPH: Well, he gave the evidence, sir. I am very
24 happy not to press it. He gave the evidence that
25 essentially there is a problem with the bidding process

1 because there is a sort of inside track, if you can call
2 it that, between Ede & Ravenscroft and the institutions.
3 We have got Mr Middleton admitting that, and all I was
4 trying to do, probably far too completely, was trying to
5 just make that good through contemporaneous evidence,
6 but if do not need to press it, I will not, we can move
7 on. Very good. Thank you very much indeed, sir.

8 USPs: you were asked about those, yes?

9 A. Yes, sir.

10 Q. Can I take you to paragraph 120 of your first witness
11 statement {D2/2/31}. The operator has got there before
12 me, very good.

13 You were asked about your USPs, in particular in
14 relation to recycling; do you remember that?

15 A. I do, yes.

16 Q. Can we look at your witness statement at 121. That is
17 under the title "Churchill's USPs"; do you see that?

18 A. I do.

19 Q. So the first paragraph under this title, "Churchill's
20 USPs", is:

21 "Our standard hire is for a minimum of five days."

22 Yes?

23 A. Yes.

24 Q. Then:

25 "Our customers, as a consequence, spend less time

1 queuing on the day to collect and drop off your gown
2 hire, and more time enjoying the ceremony/spending time
3 with family and friends. This also means customers can
4 try their gown on before the ceremony and have an
5 opportunity to match an outfit and make sure everything
6 fits."

7 So, just pausing there, why did you put that point,
8 in terms of USP, where you did, immediately under
9 the title "Churchill's USPs"?

10 A. I think it is probably the thing that makes us stand out
11 the most from our competition. From the customers'
12 perspective, this probably adds the most value.

13 I am aware that you can hire your gown for longer
14 through Ede & Ravenscroft, but I believe that there is
15 a considerable cost to do so. We know from customers
16 who have contacted us that they very much enjoy having
17 the opportunity to wear it beforehand and after
18 the ceremony with friends and also family members who
19 maybe were not able to get a guest ticket. So it offers
20 quite a lot of additional value to a customer.

21 Q. Thank you.

22 You have got two other USPs, just to be totally
23 fair. 121:

24 "In addition these benefits ..."

25 That you have just mentioned:

1 "... we offer a service that is more cost effective
2 and can save students an average of 24% - ie
3 the discounted hire price from E&R for ordering online
4 is £45 and our standard hire price is £34."

5 So why did you put that USP there, underneath your
6 first USP we have just been discussing about the time
7 with the gown and the student?

8 A. Yes, I think the reason that I put it as a percentage is
9 it is actually quite a considerable saving when you see
10 it as a percentage. For a lot of students, even a few
11 pounds is actually a considerable amount of money -- it
12 may even be the difference between attending or not --
13 and any saving is a big motivator, I believe, for
14 a student.

15 Q. So how important would that be, in terms of --

16 A. I --

17 Q. -- having(?) choices?

18 A. I think it is very important in terms of where they
19 would hire their gown from.

20 Q. Then the third and last USP in your list is you are also
21 a sustainable supplier and you have given evidence on
22 that.

23 A. Correct.

24 Q. Thank you.

25 You were asked at the beginning of your evidence,

1 beginning of your cross-examination, or near
2 the beginning, about CG's, Churchill Gowns', executive
3 summary used to raise funds on the market; do you
4 remember that?

5 A. Yes, I do.

6 Q. {F3/409/1}, please. Thank you very much. Yes?

7 A. Not quite up.

8 Q. I do apologise?

9 A. Yes, it is there now.

10 Q. Is that up now?

11 A. It is.

12 Q. Splendid.

13 This is a document that Mr Patton spent some time
14 with you on and it was put to you that essentially this
15 document sought to downplay your -- oh, I have my mask
16 on, I forgot! I should start all over. Sorry. Well,
17 I hope it did not detract from my re-examination. Good.

18 It was put to you that this document that you used
19 to seek to raise funds in the market sought to downplay
20 your links, Churchill Gowns Limited's links, with
21 Australia. Do you remember that line of questioning?

22 A. Yes, I do.

23 Q. Could we go to the next page, please {F3/409/2}. Can
24 you see on the right-hand side, halfway down, in
25 the circle, it says "The Team"?

1 A. Yes, I do.

2 Q. So, you have got you as the first person. Then:

3 "Alec Ramsey (Investor/Advisor).

4 "Co-founded and self-funded Churchill Gowns

5 Australia ...

6 "Rapidly scaled into an Australian B2c market worth

7 \$1.6 million."

8 I assume Australian dollars.

9 Then:

10 "In 2016/17 funded and advised Oliver in preparing

11 for launch in the UK, while continuing to grow their

12 business in Australia."

13 Then:

14 "Stefan Muff ..."

15 We have heard from Mr Muff.

16 "... (Investor/Advisor).

17 "Co-founded and self-funded Churchill Gowns

18 Australia in 2015.

19 "Helped grow the business, and worked to innovate

20 new products and find new revenue streams.

21 "In 2016/17 funded and advised Oliver in preparing

22 for launch in the UK, while continuing to grow their

23 business in Australia."

24 Bear that in mind.

25 Then can we go to the next page, please {F3/409/3}.

1 Thank you very much.

2 So this is page 3 of a six-page document. What does
3 it say on the top left, underneath the title?

4 A. The "Australian Precedent".

5 Q. Yes.

6 Then it goes on to describe the Australian
7 precedent:

8 "Churchill Gowns Australia has seen fast growth and
9 is part of a larger, successful B2C market worth
10 -\$1.6 million, laying the foundations for the business
11 model in the UK."

12 Just pausing there, would you care to comment on
13 that particular sentence and the link, or otherwise,
14 between Australia and UK in that sentence?

15 A. Yes. We wanted to make it clear that there was a kind
16 of proven track record and a proven business model in
17 Australia, that we were going to use some of
18 the infrastructure and some of the lessons learned and
19 apply here in the UK.

20 Q. Thank you.

21 Then "Product Variation", the next subtitle. Just
22 read that to yourself. (Pause)

23 What does that deal with?

24 A. This is in reference to the number of hoods used at
25 Australian universities compared with UK universities.

1 Q. Thank you:
2 "AU Market Summary."
3 "AU"?
4 A. Would have been the Australia ...
5 Q. That table compares the number of graduates in Australia
6 and the UK, "Product Variants", "Market Saturation",
7 "ARPU". Do you see that on the left-hand side column in
8 the table: "ARPU"?
9 A. I believe this is the average price that a consumer is
10 currently paying in these markets.
11 Q. Then "B2C Market".
12 Then over to the right-hand side you have got
13 the Australian market summary by revenue, yes?
14 A. Correct, yes.
15 Q. Then:
16 "Leveraging the Australian Experience."
17 "The relationship with the Churchill Gowns Australia
18 founders brings valuable industry experience, including
19 lessons on what to do, and what not to do. Advantages
20 include:
21 "Existing supplier relationships in the UK, Poland
22 India & China.
23 "2+ years of product development.
24 "Existing IT infrastructure.
25 "Experience marketing to students.

1 "Experience scaling a business."

2 So just going back to the line of questioning that
3 was put to you by Mr Patton on behalf of
4 Ede & Ravenscroft, how would you describe this document
5 in relation to references to Australia?

6 A. I think we have been quite clear with the relationship
7 between Australia. We tried to give a sufficient amount
8 of context, obviously explain what -- how the two
9 markets compare as well.

10 Q. Thank you.

11 You were questioned about various freedom of
12 information requests that you made, some open, in other
13 words with your name, some under an alibi, and you were
14 strongly criticised for the position that you took in
15 relation to the alibi requests and you answered saying
16 that it was necessary to engage in that process because
17 it was the only avenue where you could get answers to
18 the questions you asked.

19 I have used the words "only avenue" deliberately
20 because they are your words, and they can be found at
21 transcript {Day2/183:7-8}.

22 THE EPE OPERATOR: Page number?

23 MR RANDOLPH: 183. Thank you very much. {Day2/183:7-8}.

24 So if we could go to {Day2/182}, please, as well,
25 and then go over to {Day2/183} when I have read. So

1 back to 182. Thank you.

2 So the question was:

3 "Question: So you are now in a statutory process
4 of, as you put it ..."

5 Could we go to {Day2/183}, please:

6 "... binding the universities to provide
7 information, yes?"

8 "Answer: I do not know whether they are bound to
9 provide us information or not. We felt that when we had
10 contacted them directly, a lot of them were giving quite
11 conflicting answer, seemed to be unsure, many of them
12 refused to answer, so we thought this was probably
13 the only avenue ..." --

14 MR PATTON: "Perhaps".

15 MR RANDOLPH: Sorry:

16 "... this was perhaps ..."

17 I am sorry. I am grateful:

18 "... was perhaps the only avenue where we could get
19 some insight into these questions that we are asking."

20 That was your evidence?

21 A. Yes, sir.

22 Q. On the same page, further down, lines 13 to 14, you
23 said -- we can see this, I will just read it through:

24 "When I say 'binding', I mean, that is just your
25 word ..."

1 This is Mr Patton talking:

2 "... at the end of 86. You say 'which binds
3 universities'; yes?

4 You say "Yes".

5 Then the question was:

6 "You put this in under a false name; correct?"

7 Your answer was:

8 "I believe we did use a different name, again
9 because we felt that the universities were unlikely to
10 answer us truthfully."

11 Then we go through the alibi that you were giving as
12 an alumnus from Bedfordshire, which you admitted you
13 were not.

14 So your evidence to Mr Patton and to the tribunal
15 was that this was the only avenue, or perhaps the only
16 avenue where you could get answers to the questions you
17 asked, and "universities were unlikely to answer us
18 truthfully".

19 I think you mentioned as well -- you did. You
20 mentioned the links, and we have discussed that earlier,
21 the links between Ede & Ravenscroft and universities on
22 the issue of tendering.

23 Before we leave the transcript, sorry, can we go to
24 the following page, so {Day2/184:20-21}.

25 The question that was put to you by Mr Patton at

1 line 12 was:

2 "So you had no reason to think that the universities
3 would not do what they were required to do under
4 the Freedom of Information Act, did you?"

5 Your answer:

6 "The rationale for this was based on the prior
7 communications I had had with the universities, so
8 I contacted them, many of them over the phone, and their
9 responses were that they would not allow another
10 supplier to sell to their students, they would not
11 provide us any information, and they kind of shut down
12 the opportunity to have a kind of open dialogue, hence
13 why we sent this."

14 So that was your evidence and that was your answer;
15 yes?

16 A. Yes, sir.

17 Q. Good.

18 Can we now turn to {F3/128}. So have you seen this
19 before?

20 A. I do not recall it.

21 Q. You do not recall it. Well, it may be a matter then for
22 submission.

23 You do not recall seeing this Ede & Ravenscroft
24 document?

25 Sorry, could we just go back to {F3/127/1}, please,

1 in the same F3. Thank you.

2 So this is an email from Ede & Ravenscroft to
3 someone blanked out, cc'd to, it looks like, well,
4 "bham.ac.uk", which I assume is Birmingham University:

5 "Hi [blank]

6 "I have been given advice from our Legal advisers
7 regarding your academic dress and I have also attached
8 the formal response that we drafted last year for
9 the request for financial information.

10 "Regarding the request for copyright ownership ...
11 as The University of Birmingham has the crest
12 embroidered ... this transfers the copyright from E&R to
13 the University. You can therefore firmly state that the
14 copyright is owned by The University of Birmingham ...

15 "Regarding the request for colours ... you are only
16 required to provide the colours, as they are stated in
17 your dress regulations. If there is a description on
18 your website, or elsewhere in the public domain, legally
19 this is classed as an exception, meaning that you do not
20 need to comply with the request. You can state
21 the basic colours ..."

22 Then talking about the various colours:

23 "I hope that this helps in your dealing with these
24 requests. We ..."

25 So Ede & Ravenscroft:

1 "... have been contacted by dozens of universities
2 that have been contacted this week. The company is an
3 Australian company that sells direct to graduands,
4 similar to others on the internet."

5 Then the attachment is the FOI letter to
6 institutions, and can we go back to {F3/128}, please.

7 So that is that.

8 To be fair, you have not seen this, you cannot
9 comment on this?

10 A. No, I do not recall this --

11 Q. This document.

12 A. -- this cover sheet.

13 Q. Forget about that; are you aware of any links that
14 you know between Ede & Ravenscroft and the universities
15 in this regard?

16 A. Yes, through the disclosure I am aware that when I sent
17 these FOI requests, there was numerous comms between --

18 Q. Sorry, numerous ...?

19 A. Communications.

20 Q. Thank you.

21 A. Yes, between Ede & Ravenscroft, the defendants, and
22 the universities in regards to the colours that we used,
23 the fabrics that we used, et cetera. So they certainly
24 had contacted the universities after I had submitted
25 the FOI request.

1 MR RANDOLPH: Thank you very much. I have no further
2 questions.

3 I do not know whether the tribunal has any
4 questions.

5 THE CHAIRMAN: No, thank you very much, Mr Adkins.

6 WITNESS: Thank you.

7 THE CHAIRMAN: Thank you for your assistance to
8 the tribunal.

9 WITNESS: Thank you.

10 THE CHAIRMAN: You can go back and sit down.

11 WITNESS: Thank you, sir.

12 MR RANDOLPH: Sir, we are in your hands. It is 12.40.

13 THE CHAIRMAN: Yes, the next witnesses are timetabled
14 tomorrow but I assume you are ready to go on today.

15 MR RANDOLPH: Yes.

16 THE CHAIRMAN: It would be sensible to take a break now,
17 I think.

18 MR RANDOLPH: I would think so.

19 THE CHAIRMAN: I anticipate working towards finishing at
20 4 pm again, given the early start today.

21 MR RANDOLPH: Yes.

22 THE CHAIRMAN: We have plenty of time.

23 MR RANDOLPH: Yes, and, sir, I do not think -- famous last
24 words -- I will be taking all the time that has been
25 allotted to me for cross-examination of Ms Middleton.

1 THE CHAIRMAN: We will recommence then at 2 o'clock.

2 MR RANDOLPH: At 2. Thank you so much.

3 THE CHAIRMAN: At 2.

4 MR PATTON: Sir, I do not know if it matters, but just to
5 formally confirm that my learned friend has closed his
6 factual case, obviously subject to the expert evidence?

7 MR RANDOLPH: Yes, absolutely.

8 MR PATTON: I am grateful.

9 MR RANDOLPH: I am not going to bring in someone new.

10 (12.41 pm)

11 (The short adjournment)

12 (2.02 pm)

13 MR PATTON: Good afternoon, sir. May I call Emma Middleton,
14 please.

15 MS EMMA MIDDLETON (affirmed)

16 Examination-in-chief by MR PATTON

17 MR PATTON: Now, Ms Middleton, you should have a file in
18 front of you with your witness statements in them, yes?

19 A. Yes, I do.

20 Q. If you just look at the first page -- that is {D4/2/1},
21 do you see in front of you your first witness statement?

22 A. I do, yes.

23 Q. Could you turn to page {D4/2/41}, please.

24 A. Yes.

25 Q. Is that your signature?

1 A. It is, yes.

2 Q. Now, I understand you have a few corrections to make.

3 Could you look at page {D4/2/6}, please. At the top

4 the page, paragraph 23, you say:

5 "Notwithstanding the different ownership and
6 management of the Defendants, it is accepted in these
7 proceedings that the First, Second and Fourth Defendants
8 all run businesses for the sale and hire of academic
9 dress and are effectively part of the same undertaking."

10 I think you have a correction to make to that?

11 A. Yes, it should say:

12 "... it is accepted in these proceedings that
13 the First, Third and Fourth Defendants ..."

14 Q. Thank you.

15 If you could go on to paragraph 40, which is at page
16 {D4/2/12}, three lines from the bottom of paragraph 40
17 you refer to, do you see:

18 "Most notably Graduation Gowning Company ..."

19 I think you had a correction to make to that?

20 A. Yes, should be:

21 "Most notably Graduate Gowning Company ..."

22 Q. Thank you.

23 Then if you could go to paragraph 79, which is on
24 page {D4/2/23}, about five lines down, you say:

25 "We did in 2013 take up and issue with them about

1 the copying of one of our designs and they gave
2 undertakings to stop offering goods based on copied
3 designs."

4 I think you had a correction to make?

5 A. Yes, it should say:

6 "We did in 2013 take up an issue with them about
7 the copying of some of our designs and they gave
8 undertakings to stop offering goods based on copied
9 designs."

10 Q. Thank you.

11 Subject to those corrections, are the contents of
12 this witness statement true?

13 A. Yes, they are.

14 Q. Then could you turn to probably the next tab in your
15 bundle. For everyone else, it is {D4/5/1}. It is on
16 the screen as well.

17 Is that your second witness statement in these
18 proceedings?

19 A. It is, yes.

20 Q. Could you look at page {D4/5/4}, please. Is that your
21 signature?

22 A. It is, yes.

23 Q. Are the contents of this witness statement true?

24 A. Yes, they are.

25 MR PATTON: Thank you very much. Mr Randolph will have some

1 questions for you.

2 A. Thank you.

3 Cross-examination by MR RANDOLPH

4 MR RANDOLPH: Good afternoon.

5 THE CHAIRMAN: You might want to take your mask off.

6 MR RANDOLPH: Oh, again! Goodness me. I am so used to
7 wearing it. I do apologise. The microphone would help
8 as well. There we are. Good start.

9 Would you like to be called Miss or Ms?

10 A. I have no preference.

11 Q. I will probably call you "Miss" if you do not mind?

12 A. That is fine.

13 Q. Is that all right? Good. I am very grateful.

14 You say clearly in your witness statement at
15 paragraph 20 -- so that is {D4/2/5} for the electronic
16 thing -- that you have got the broadest oversight --

17 A. Yes.

18 Q. -- in the business.

19 So you would be able to comment on, in the broadest
20 fashion, the matters relevant to the case that is being
21 heard and determined by the tribunal?

22 A. Yes, I believe that to be the case.

23 Q. Thank you.

24 Let us see first whether we can establish some
25 common ground. I think that may be helpful for you and

1 me and also for the tribunal.

2 Your lawyers' pleaded case, your case,
3 the defendants' pleaded case, is that the defendants --
4 and so in light of your correction, that would be D1, D3
5 and D4, yes?

6 A. Yes.

7 Q. The defendants supplied academic dress for use at more
8 than 80% of recognised bodies by number in 2018/2019.

9 This is not a memory test and I am not going to try
10 and trip you up, so I am going to take you to where that
11 is pleaded. It can be seen in the re-re-amended defence
12 at paragraph 36.4(a), which can be found at {B/7/13}.

13 So 36.4(a). Can you see that on your screen?

14 If that could be blown up a bit?

15 A. Yes, that would be -- yes.

16 Q. I think Ms Middleton and I suffer from the same issue in
17 terms of our eyes. That is very kind.

18 So 36.4(a). This is in response to something that
19 the claimants have pleaded. So the defendants admit
20 that they:

21 "... supplied academic dress for use at not fewer
22 than 80.5% of recognised bodies by number in the 2018/19
23 academic year. Specifically, the Defendants supplied
24 academic dress for use at approximately 83% of
25 recognised bodies by number in the 2018/19 academic year

1 (if ... Oxford and Cambridge, and those Universities for
2 which the Defendants supplied academic dress for some
3 but not all of that academic year, are included)."

4 That is correct, is it not?

5 A. It is correct, but I should like to add that in coming
6 to that number, we took account of any institution that
7 we had delivered services to that year. So whether we
8 delivered them for part of the year or all of the year,
9 or whether we had an official supplier agreement with
10 them, or whether we supplied it on an ad hoc basis.

11 Q. That is fine, and you make the point about some of
12 them, "not all of that academic year", there. So that
13 is fine. Those figures 80.5% and 83% are set out and
14 you stand by them.

15 You would agree, would you not, that the defendants
16 have arrangements with large numbers of, or a large
17 proportion of institutions where the defendants have
18 been appointed as official suppliers? You would agree
19 with that, would you not?

20 A. I wonder whether counsel could define what he means
21 by "a large number".

22 Q. Well, I will take you to where this is said, and this is
23 said by Dr Niels. Paragraph 3.79 in the first expert
24 report of Dr Niels, who is the defendants' expert,
25 {E5/1/62}.

1 Just before we look at that, would you agree with me
2 that the figure of 80.5%, and 83%, would constitute
3 a large proportion?

4 A. Yes, I would.

5 Q. Thank you.

6 So, here is Dr Niels, the defendants' expert, and
7 there, at 3.79 -- now, we have to be slightly careful
8 here, because table 3.5 below is partially redacted, and
9 just so you know, Ms Middleton, the light grey shading
10 is where that is confidential.

11 A. Thank you.

12 Q. So we are not going to mention those; all right? So we
13 are going to dance around the redactions. I just
14 thought I would mention that for you.

15 So 3.79:

16 "Table 3.5 summarises E&R's contracts by type over
17 the claim period. This shows that E&R served a large
18 proportion of institutions. Such proportion was broadly
19 stable over the 2016-19 period, but fell in 2020 and
20 2021. However, as discussed in section 3D.3, the drop
21 is affected by many institutions postponing ceremonies
22 due to COVID-19."

23 Before I ask you to comment on that, can you just,
24 without speaking out, can you just acquaint yourself, or
25 reacquaint yourself with table 3.5.

1 (Pause)

2 Yes?

3 A. Yes.

4 Q. Thank you.

5 So you can see that the share of recognised bodies
6 served by E&R, which we are not going to mention because
7 they have been redacted, is described in open script at
8 3.79 as showing that E&R served a large proportion of
9 institutions, so you would agree with that, would you
10 not, yes?

11 A. Yes.

12 Q. Thank you.

13 You would also agree, on the basis of those figures,
14 which we cannot see, that "such proportion was broadly
15 stable over the 2016-19 period"?

16 A. I would, yes.

17 Q. Thank you.

18 It is absolutely fair, and you have mentioned it and
19 Dr Niels has mentioned it, and I think Dr Maher has
20 mentioned it and probably the claimants' witnesses have
21 mentioned it, 2019, or the 2019/2020 academic year and
22 the 2020/2021 academic year, so both of which ending in
23 May/June of '20 and '21, have been seriously impacted by
24 COVID?

25 A. Yes, there has been a big impact of COVID.

1 Q. Basically because, am I right, the ceremonies have in
2 large part been cancelled or radically altered?
3 A. Most ceremonies have been cancelled.
4 Q. Yes, thank you.
5 Now, can you turn back to your first witness
6 statement, please -- I think we were last at
7 paragraph 20 -- and look at {D3/2/11}, which is internal
8 page 11 for you, Ms Middleton. At the bottom you
9 have -- I am so sorry, do you have it?
10 A. I do. Sorry, it is D4? D3 --
11 Q. Oh, sorry, you are right. The difference between D4 and
12 D3 is D4 is non-confidential and D3 is confidential.
13 So you have the D4, do you?
14 A. I do, yes.
15 Q. Which means that there will be bits that are completely
16 blanked out, possibly?
17 MR PATTON: I think it is the other way round.
18 MR RANDOLPH: Is it? Yes, okay.
19 When I give you tab and page numbers, it will be to
20 your tab and page numbers. I am just working off
21 something that is the D3 rather than D4 version.
22 A. Okay.
23 Q. So I will remember that you are working off D4.
24 So, "OSAs ...", official supplier agreements,
25 "... in different periods".

1 Now, paragraph 35, I am right in saying that this
2 evidence is in relation to the position as at
3 November 2020?

4 A. Yes, that is right.

5 Q. Right.

6 So as at 2020, that position would have been
7 affected, further to your evidence that you have just
8 given, by COVID?

9 A. Partially, but not fully. We had also lost some OSAs.

10 Q. Yes. Paragraphs 36 and 37, I think 36 is as at
11 November 2020 and 37 is as at 2020 {D4/2/12}. As you
12 can see at the bottom of 37:

13 "Therefore the total number of OSAs of the sort that
14 are the subject of these proceedings among the three
15 Defendants as at November 2020 ..."

16 So that is the position as at 2020. So as you have
17 just agreed with me, that is affected, partially or
18 otherwise, by COVID; yes?

19 A. Partially.

20 Q. Yes, that is fine.

21 Then paragraph 38 starts with the words:

22 "At the date of this statement ..."

23 This statement was made in August of 2021, was it
24 not?

25 A. Yes, correct.

1 Q. So that evidence, in relation to the position of who
2 Ede & Ravenscroft were serving, insofar as concerned
3 the recognised bodies in the United Kingdom, as of
4 21 August 2021 when you made your witness statement,
5 that evidence would be impacted by COVID? That is 2021,
6 not 2020.

7 A. It would, partially, yes.

8 Q. You say "partially". I understand that with regard to
9 2020, in part, because we had the lockdown in
10 March 2020, but why "partially"? You had agreed with me
11 about three minutes ago that COVID impacted seriously on
12 the business of graduation ceremonies. Why is it only
13 partially affected?

14 A. I am sorry, I do not quite understand the question.

15 Q. Okay, sorry, I will try and be clearer.

16 Twice now you have said, when I have put it to you
17 that the data you have given, in relation to these
18 paragraphs I have taken you to, have been impacted by
19 COVID, and you earlier agreed that COVID had impact
20 ceremonies, you have pushed back, saying, "Yes, it is
21 impacted, by only partially".

22 I let that go with regard to 2020 to an extent,
23 because COVID had just started; but August 2021, which
24 is the time when that paragraph refers to that time, you
25 have had had COVID restrictions in place since

1 March 2020. So why is the data there only "partially"
2 impacted by COVID?

3 A. Because we had also lost some OSAs through processes
4 that had started and had not completed.

5 Q. Can you elaborate?

6 A. There had been a tender process, so we had lost some
7 contracts and they had been awarded to other people. So
8 a lot of the numbers of the OSAs had been affected by
9 COVID running out and tenders not taking place, but in
10 addition we had also lost some in a tender process.

11 Q. That is fair, thank you.

12 Paragraph 39, again, this goes back to the "since
13 November 2020", so we have your response, "Yes, it has
14 been affected but partially"?

15 A. Sorry, could you ...?

16 Q. Sorry, I do apologise. Let me give you the courtesy of
17 actually reading the paragraph which I am asking you to
18 comment on.

19 So I will let you read 39.

20 A. 39.

21 Q. Thank you.

22 (Pause)

23 Yes?

24 A. Yes.

25 Q. It is the same point. Since November 2020. I put it to

1 you in relation to the earlier paragraphs that that
2 would mean that the evidence there would be affected by
3 COVID, and your previous answer was: yes, partially. So
4 I assume your answer to that question, in relation to
5 paragraph 39, is the same?

6 A. It is, yes.

7 Q. Thank you.

8 Paragraph 40:

9 "During the claim period the number of OSAs has
10 fluctuated based on the outcome of tenders, RFPs ..."

11 Just for the transcript, can you say what RFPs stand
12 for?

13 A. Requests for a proposal.

14 Q. Thank you:

15 "... and negotiations. As a general trend, we have
16 fewer OSAs now than earlier in the claim period."

17 Then:

18 "The relatively new competitors ... have become
19 increasingly successful ..."

20 And you have amended:

21 "Most notably Graduate Gowning Company ..."

22 And the others.

23 So, paragraph 40 is looking at the claim period, and
24 your evidence is that:

25 "... we have fewer OSAs now than earlier ..."

1 Now, so as at August 2021, than earlier in the claim
2 period, which started in 2016.

3 So again my question is the same. I am sorry, they
4 are boring, but I am putting this to you: that evidence
5 too would be affected by COVID insofar as it relates to
6 periods after the pandemic restrictions came in?

7 A. I think in this paragraph I was meaning that, COVID
8 aside, we have fewer OSAs because we have tendered and
9 we have not been successful in those tenders and
10 universities have chosen other suppliers.

11 Q. Yes, but you would agree with me, would you not, as you
12 have said, that the COVID restrictions meant that
13 ceremonies in large bulk were cancelled and that
14 impacted on your business?

15 A. Yes, it did.

16 Q. Thank you.

17 Paragraph 41:

18 "During the claim period and up to the date of this
19 statement, E&R, Northams and ILA ... have
20 participated ..."

21 So you are setting out there what they have been
22 doing in terms of tenders, competitive tenders and RFP
23 processes. That simply deals with tenderers, but
24 insofar as matters relate to the going up to the date of
25 the statement, that could have been impacted by COVID?

1 A. I am sorry, I am not quite sure I am following.

2 Q. Insofar as the market changed radically in 2020 and
3 2021 -- well, let me ask you this. Insofar as
4 the market did change radically in 2020 and 2021, what
5 was the position in relation to competitive tenders
6 being put out?

7 A. They were delayed, so --

8 Q. Thank you.

9 A. Yes.

10 Q. Thank you.

11 You make the point fairly at paragraph 43 {D4/2/13}:

12 "During 2020 and 2021 a large number of tenders have
13 been put on hold ..."

14 That was your evidence just a moment ago.

15 Then in 44 you were asked to explain certain figures
16 and statistics mentioned in the claim form, which you
17 do, but that has nothing to do with -- well, I say it
18 has nothing to do -- in relation to how the claimants
19 have pleaded out the position of Ede & Ravenscroft and
20 their supply of academic dress to at least 136 of 169
21 recognised bodies; yes? That is what you are talking
22 about there? You are responding to the claimants' plea
23 at 37a?

24 A. I am.

25 Q. Then you say:

1 "In the Defence this allegation is (correctly)
2 admitted."

3 Yes?

4 A. It is, yes.

5 Q. Then you say "it might be a misleading statistic",
6 because you counted any institution. That is the point
7 you made in one of my earlier questions about the figure
8 from Dr Niels?

9 A. It is, yes.

10 Q. Good, thank you.

11 Then at 45 you talk about HESA statistics, about
12 the number of graduates. I think this is
13 the distinction -- correct me if I am wrong -- between
14 looking at market share in terms of institutions
15 supplied and market share in terms of students served;
16 is that correct?

17 A. Yes. So HESA data is the number of qualifiers, so
18 everyone who is entitled to graduate and attend
19 a ceremony. That does not mean that everybody will
20 attend the ceremony.

21 Q. Yes. So that is 45.

22 46 {D4/2/14}, the final bit on HESA again, so it is
23 looking at it from the other end of the telescope, so
24 the student perspective rather than the institutions
25 served?

1 A. I think, in paragraph 46, I was just making the point
2 that HESA data and the recognised bodies, they do not
3 tie up 100%, because HESA numbers include quite a few
4 small colleges that are not included as a recognised
5 body on the .gov.UK website, and they also exclude 17 of
6 the recognised bodies, so it is not an exact match.

7 Q. Yes, you are absolutely correct, but there, in 45 and
8 46, you are not dealing with what you call OSAs; you are
9 dealing with, responding to the claimants' plea about
10 how many recognised bodies were supplied by E&R, and
11 then you make the point about it being potentially
12 a misleading statistic, and then you talk about HESA
13 statistics and graduates; but you are not dealing in 44,
14 45 and 46 with the specific issue of the defendants'
15 OSAs, are you?

16 A. No, I am commenting on the 2018/2019 institutions that
17 we provided a service at.

18 Q. Very good, thank you.

19 Now, as you said at the beginning, as you agreed
20 with me, you have the broadest oversight in
21 the Ede & Ravenscroft family, if I can call it that.
22 Certainly you are the witness being proffered with
23 the broadest oversight, and as you agreed with me, you
24 can give us the best overall, broadest indication of
25 the position insofar as is relevant to the claim.

1 Now, you know, because you have read the pleadings,
2 have you not -- you have?

3 A. I have.

4 Q. Good. It would have been slightly worrying if you had
5 not, but there we are.

6 You have read the pleadings, so you know one of
7 the issues at stake in this case is about
8 the determination of whether these agreements --
9 the market share taken by Ede & Ravenscroft with regard
10 to these agreements and their effect. I am going to
11 come on to their effect in a moment, but may I ask you
12 this.

13 In this section that I have taken you through, you
14 have been concentrating on the period up to
15 November 2020, up to the time of making of the witness
16 statement, and you specify figures in those paragraphs
17 about the number of institutions E&R has served under
18 those OSAs.

19 Why do you not mention in this section, which is
20 entitled "OSAs in different periods", the position of
21 Ede & Ravenscroft in terms of numbers in 2016, 2017 and
22 2018 and indeed 2019, as Dr Niels has done?

23 A. I was responding to the statement in the pleading about
24 how many were served in '18 and '19.

25 Q. First of all, that was in connection with paragraph 44.

1 You do not make that point in relation to paragraphs 35,
2 36, 37, 38, 39, 40, 41, 42, 43 of your witness
3 statement.

4 So are you saying this whole section is just you
5 responding to paragraph 37a of the re-re-amended claim
6 form?

7 A. The paragraph was talking about OSAs in different
8 periods, not in the entire claim period.

9 Q. Yes.

10 So you would admit, would you not, Ms Middleton,
11 that the picture you paint in this section
12 entitled "OSAs in different periods" does not actually
13 give the full picture as has been drawn and painted, if
14 I can continue with this analogy, by Dr Niels, who makes
15 the two critical points clear -- and I am not going to
16 go to the numbers, we have seen what he said at 3.79 of
17 his first witness statement and table 3.5 and I can take
18 you back if you want -- we can see that he has said, and
19 you have agreed with me, that E&R served a large
20 proportion of relevant institutions between 2016 and
21 2019 and that period was very stable. You have agreed
22 with that.

23 So why did you not -- you see, you have the broadest
24 knowledge. You can give the tribunal -- you are here to
25 assist the tribunal and you have agreed with me that you

- 1 can answer the questions relevant to the trial.
- 2 You know that exclusivity is key, you know also that
- 3 market share is key. Why did you not just give the full
- 4 picture during all the relevant period?
- 5 A. I think we accepted fairly early on in this matter that
- 6 our market share had remained stable, and the picture
- 7 that I was giving was that actually, it has decreased
- 8 during the claim period. Our number of OSAs has
- 9 decreased.
- 10 Q. You say it has decreased. The expert evidence that we
- 11 have seen shows that it was -- and you have agreed with
- 12 this -- broadly stable between 2016 and 2019, and
- 13 the reason it changed thereafter is because, in
- 14 Dr Niels' words, and you agreed, because of
- 15 the pandemic. So that was why it decreased, was it not?
- 16 A. I do not think I did agree that. I said that it was
- 17 partially because of the pandemic but that we had also
- 18 submitted tenders that we had not been successful for
- 19 and therefore had a smaller number of OSAs than we did
- 20 at the beginning of the claim period.
- 21 Q. Okay. Can we go back to {E5/1/62}, please. Do tell me,
- 22 Ms Middleton, when you have it, because there is
- 23 a slight time delay?
- 24 A. I now have it.
- 25 Q. You now have it; good. I do not want to ask you about

1 something you have not seen:

2 "Table 3.5 summarises E&R's contracts by type over
3 the claim period. This shows that E&R served a large
4 proportion of institutions. Such proportion was broadly
5 stable over the 2016-19 period, but fell in 2020 and
6 2021. However, as discussed in section 3D.3, the drop
7 is affected by many institutions postponing ceremonies
8 due to COVID-19."

9 You agreed with that. So are you saying you do not
10 agree with that now?

11 A. No, I do not think I said that. I said that it is
12 partly -- it is because of COVID, but we also have
13 a reduction in the number of OSAs because we no longer
14 have those contracts and they have been awarded to
15 someone else.

16 Q. Yes. So you are saying that 3.79 should be read -- so
17 Dr Niels, and this may be something for Dr Niels --
18 "the drop is affected", you would agree it has been
19 affected, but not completely?

20 A. Yes, of course it has been affected by COVID, but within
21 that drop there are some institutions that we just no
22 longer have the OSAs for because they have been awarded
23 to someone else.

24 Q. Yes, but as you put it at paragraph 43 of your witness
25 statement {D4/2/13}:

1 "During 2020 ... a large number of tenders have been
2 put on hold because of the COVID pandemic. I am aware
3 at least 26 institutions who have indicated they will be
4 going out to tender ... but have put things on hold ..."

5 So a large number of tenders have been put on hold
6 due to COVID?

7 A. Yes, that is correct.

8 Q. Yes, good. Thank you.

9 So when I asked you why you did not paint the full
10 picture, your response was -- well, your initial
11 response was: I am answering the claim pleaded at 37a.
12 Then you said: well, I mentioned data and statistics
13 during the claim period.

14 You would agree with me, would you not, that you
15 have not given specific figures in relation to
16 the institutions that E&R supplies in 2016, in 2017, in
17 2018 and in 2019?

18 A. I have not for 2016 and '17, but there are figures for
19 2018 and '19.

20 Q. In this section?

21 A. Yes, because at paragraph 44, we are talking about
22 the number of institutions supplied in 2018 and '19.

23 Q. Indeed. That is in relation to the claim that is
24 pleaded by the claimants, and where it is said that E&R
25 "supplied academic dress to at least 136 of 169

1 recognised bodies", and then you say that allegation is
2 correctly admitted.

3 You then go on to say that it may be misleading, but
4 essentially, insofar as you are mentioning a statistic,
5 it is a statistic that has been initially mentioned by
6 the claimants?

7 A. Yes, but at the end of that paragraph I say that we have
8 OSAs for 81 institutions during that period.

9 Q. Yes. This is in relation to "as at November 2020".

10 As at November 2020. That is not 2020 --

11 A. Oh sorry, yes, correct, my apologies.

12 Q. Yes, so you were wrong. Do not worry. It is fine.

13 This is not an exam. We are generally trying to find
14 out what the position is.

15 So you would agree with me, would you not, that if
16 the tribunal had not had the benefit of Dr Niels'
17 evidence and they just had the benefit of your
18 paragraphs in this section, they simply would not have
19 known what the full picture was, which was that
20 Ede & Ravenscroft had a substantial proportion of
21 business during the period 2016 to 2019? They simply
22 would not have known that; would you accept that?

23 A. It would not have been in my statement, but it would
24 have been known from the disclosure exercise and
25 the number of OSAs that we disclosed over the claim

1 period.

2 Q. Thank you.

3 Now, moving to a slightly different issue, can we go
4 to -- and I am going to warn you, this is a confidential
5 document, so we are going to tread carefully.

6 I understand this morning, despite Mr Patton's
7 completely correct questions, both witnesses actually
8 divulged names which had been redacted. In the great
9 scheme of things, that may not go to anything, but we
10 are going to try and avoid that, and I think we have
11 taken the view that those should be redacted on
12 the transcript, because they were improperly mentioned.

13 So forgive me if I take time and I sort of slightly
14 dance around, but it is important. We do not want to
15 break the confidentiality that is in this document.

16 So can we go to {F3/2990/1}, please. This is --

17 A. I do not have it yet, sorry.

18 Q. I am so sorry. Just let me know when you have it.

19 A. Yes, I have it.

20 Q. Right.

21 So, it should be an email from James Middleton. He
22 is your brother, is he not?

23 A. He is, yes.

24 Q. His job?

25 A. He is the academic director.

- 1 Q. Which means?
- 2 A. He oversees elements of the academic business.
- 3 Q. Which means? By "academic business", it could be
- 4 anything.
- 5 A. Oh, sorry.
- 6 Q. Sorry, I know this is shorthand for you, but --
- 7 A. My apologies.
- 8 Q. No, no, do not apologise.
- 9 A. He oversees the academic hire and academic sale business
- 10 from manufacture -- from design. He is our design
- 11 specialist, so from design through manufacturing to
- 12 delivery.
- 13 Q. So a sort of technical director, am I right? Or would
- 14 that be wrong? I am not trying to make a point here, it
- 15 is just because you are the operations manager and I am
- 16 trying to think: where does James fit in?
- 17 A. He has much more specialist knowledge than I would have
- 18 on academic dress and the history of academic dress and
- 19 design.
- 20 Q. Which is why I stressed he might be called
- 21 the technical, but I do not want to get into that
- 22 because I now understand. That was the point.
- 23 So, anyway, this is an email from James, your
- 24 brother --
- 25 A. Yes.

1 Q. -- to Michael Middleton, who is?

2 A. My father.

3 Q. Your father and chairman. So you and Robert Guy. Who

4 is Robert Guy?

5 A. Robert Guy is a non-executive director.

6 Q. Okay. Adrian Halls?

7 A. Finance director.

8 Q. Finance director. It is entitled, "Academic Strategy

9 2018".

10 A. Yes.

11 Q. The attachment is, "Academic Strategy 2018.docx."

12 It says:

13 "Dear All,

14 "Please find a document for perusal and discussion -

15 it's not polished, but designed instead to stimulate

16 debate.

17 "James."

18 Before we go there, what was the aim of this --

19 well, he says it is designed to stimulate debate, but

20 debate about -- "Academic Strategy" does not really sort

21 of tell us a great deal. What was it saying?

22 A. I think he was looking at the division as a whole, our

23 academic division, which would mean the part of

24 the graduation business, and look at, going forward for

25 the strategy, what he might consider. So it was not

1 prompted by anything, it was just something that he had
2 produced. It was not produced for a particular reason.

3 Q. Would this be produced sort of on a regular basis?

4 Would there be a 2019 and a 2017, or is this a sort of
5 one-off, just happens to be in 2018?

6 A. No, it is a one-off document that he had produced.

7 Q. Okay, thank you.

8 The strategy paper itself can be found at
9 {F4/648/1}. So this is confidential, and the grey bits
10 are the bits that are confidential; yes?

11 A. Yes. Could it be made a bit bigger, please?

12 Q. Yes, for me too.

13 Could it be made a little bigger? Brilliant.

14 A. Sorry, it is still small.

15 Q. We have lost the top.

16 Sorry, could we just scroll down. Is that the top
17 of the document? Thank you so much.

18 So, "Strategy - for discussion", and I can read out
19 the bits that are not hatched:

20 "Introduction.

21 "Strategy is about setting a long-term direction for
22 the company and guiding managers in their
23 decision making by focusing them to achieve success.

24 The strategy should simply aim to exploit the company's
25 core competencies at corporate level, company level and

1 operational level in order to develop products and
2 services that the market will buy. Ede and
3 Ravenscroft's mission statement is as follows."

4 There we pause; the world will not know what
5 Ede & Ravenscroft's mission statement is, because it has
6 all been redacted, or in large part.

7 Could we move the page ... down, probably.

8 So we can see, underneath the mission statement that
9 has been entirely covered up, "Immediate
10 Recommendations". Obviously, do not read out what is
11 said, but you can see what is being said.

12 Then:

13 "Factors to consider when formulating a long term
14 strategic plan:

15 "Current Position."

16 Now, could you read to yourself that first sentence,
17 so the first three lines.

18 A. Under "Current Position"?

19 Q. Under "Current Position", to yourself, because it is
20 hatched, it is covered up.

21 (Pause)

22 A. Yes.

23 Q. So just to remind ourselves, this was a document that
24 was written, or at least it was sent to you in July of
25 2018. We saw that just a moment ago, yes?

1 A. Yes.

2 Q. So you would agree, I assume, with your brother's
3 assessment of the company's current position as set out
4 in that first sentence?

5 A. I could not agree with it exactly, because I do not
6 believe any analysis, thorough analysis was done to be
7 able to confirm all elements of it. However, some of
8 the elements of it, I could agree with.

9 Q. I understand the difficulty in how you had to reply, and
10 thank you, because we have, both of us, to dance around,
11 which is unfortunate.

12 Is there anything -- and if you do not know, just
13 say, and maybe those behind your counsel will be able to
14 find out overnight. Did you respond to this academic
15 strategy paper produced by your brother in July 2018, or
16 that was sent to you and your father? Did you respond?

17 A. Do you mean generally or by email or ...?

18 Q. By email.

19 A. No, nothing. Actually, the paper was not discussed at
20 all. It was looked at. Primarily, I skimmed it, and
21 I think we had different opinions. All of us had
22 different opinions and it was not taken any further.

23 Q. So there was no email traffic generated in relation to
24 this? It was not even, "Thanks, James, looking forward
25 to reading it", or were you in the same office and you

1 just said "Thanks"?

2 A. We were not in the same office. I do not recall sending
3 an email about it. If I had done, it would be no more
4 than "Thanks".

5 Q. So you said that you -- but I assume it is not just you;
6 it is the addressees, so that would be your father,
7 Mr Halls and Mr Guy. You said that you had a different
8 view or different views about what was being
9 recommended. So if you did not have a communication --
10 because I assume your father had a view and Mr Guy maybe
11 had a view and Mr Halls maybe had a view, and obviously
12 those views did not chime with your brother's views; so
13 how did that work? Was there no communication?

14 A. So, the topics that are talked about later on in
15 the report, in relation to where operations might be,
16 had been raised in previous meetings and there was
17 a difference of opinion around the table.

18 I do not know whether that helps.

19 Q. That helps. So you had a difference of opinion round
20 the table, then James produces this strategy report, or
21 was it the other way round?

22 A. I think as a general theme, it came up at a few meetings
23 that we would have, or a few discussions about what
24 options might be, and so we knew what each other's view
25 was, and I think the paper was not looked at in detail.

1 Well, I know that the paper was not looked at in detail.

2 Q. So you had had these discussions. Obviously important
3 insofar as where is the company going in the future, and
4 we are not going to go beyond that because that is
5 confidential. Then James put this strategy paper in and
6 essentially the matter is closed down; is that right?

7 Or how did you decide your strategy going forward?

8 A. I think this is a very broad strategy paper that was
9 produced, and the strategy would be revisited for
10 the group, for the Ede & Ravenscroft group, more
11 narrowly, and this was put to one side, and other
12 strategic objectives would have been agreed at different
13 meetings.

14 Q. Would those new strategic objectives agreed at
15 subsequent meetings have been put down in writing?

16 A. They may have been.

17 Q. Right, so they should have been disclosed?

18 A. Sorry, is that ...?

19 Q. Sorry, that is a question to you. They should have been
20 disclosed?

21 A. If they were, yes, they will have been disclosed.

22 Q. All right, well, we will check on that. Thank you.

23 Now, you would agree that some gowns for hire can be
24 used for a number of different universities?

25 A. There is some overlap between gowns that can be used at

1 different universities, yes.

2 Q. Thank you.

3 You would agree that, pursuant to what you describe
4 as OSAs, official supplier agreements, you would agree
5 that defendants typically pay commissions to
6 the universities concerned?

7 A. Yes, typically.

8 Q. Thank you.

9 You would agree, would you not, that those
10 commissions have amounted in the past -- I am choosing
11 my words very carefully -- to 20% for gowning hire/sale,
12 and 50% for photography services?

13 Just before -- I do not want to trick you, this is
14 part of your pleaded case and we can see at that
15 {B/7/17}, please.

16 Is that up?

17 A. It is, yes.

18 Q. Perfect, thanks.

19 May we have it slightly larger? I say "we"; I mean
20 "we". Thank you.

21 So, at 37.3(a):

22 "As to subparagraphs (b) and (c) ..."

23 That is referring back to the re-amended claim form:

24 "... the First Defendant's OSAs with

25 the Universities of Liverpool and Greenwich expired in

1 2019."

2 I mention those institutions because they have not
3 been redacted:

4 "It is admitted that the First Defendant paid a 20%
5 commission to those Universities during the currency of
6 the respective OSAs but there are no current
7 arrangements between any of the Defendants and those
8 Universities in relation to the payment of commission."

9 So the first defendant paid 20% to those
10 universities during the currency of the respective OSAs;
11 is that correct?

12 A. Yes.

13 Q. I will revert in terms of photography service, because
14 I believe that that reference -- actually, I will park
15 that, I will come back to that, because the figure is
16 mentioned in the re-amended claim.

17 You would agree that the OSAs that the defendants,
18 and in particular Ede & Ravenscroft, have entered into
19 contain -- I am going to choose my words carefully
20 here -- standard terms? Would you agree with that?

21 A. Could you clarify what you mean by "standard terms"?

22 Q. Yes, I can, because you said it.

23 Can we go back to your witness statement,
24 paragraph 31. So {D4/2/8}. Internal page 8. 31(1),
25 over the page at {D4/2/10}.

1 So, just to play ourselves in, if you go back two
2 pages to paragraph 31 {D4/2/8}:

3 "I explain briefly how E&R's OSAs with institutions
4 typically work."

5 So this is how OSAs typically work. So that means
6 that they have a type. This is how they work typically.

7 You go through a number of points, and we will come
8 back to some of them later, but over the page at
9 {D4/2/10} at (1):

10 "Most of the OSA standard terms expressly state that
11 the institution does not guarantee the numbers of
12 students attending any graduation ceremony."

13 So you were saying there that the OSAs contain
14 standard terms?

15 A. Some of the terms will be standard, but not all of
16 the terms are standard.

17 Q. That is fine.

18 A. Does that make sense?

19 Q. That is fine.

20 Now, you would also agree that, irrespective of
21 the fact that some terms are not exactly the same in all
22 the agreements, there are, as you say, standard terms.
23 You would agree that they work, the OSAs, your OSAs, in
24 a broadly similar way?

25 A. They work in a broadly similar way, but the detail is

1 always unique to a particular institution.

2 Q. Of course, thank you.

3 Most of Ede & Ravenscroft's arrangements with
4 institutions, relevant institutions, are through the OSA
5 route, are they not?

6 A. It would depend on the year. I would not --

7 Q. Okay, well, I will take you to your evidence. We can
8 turn on to paragraph 70 {D4/2/21}. Do you have that?

9 A. Not yet, but I have it in hard copy.

10 Q. You have it either way. You should have it now.

11 So, paragraph 70:

12 "As I have explained above, whilst most of E&R's
13 arrangements with institutions are OSAs which are for
14 a particular duration ..."

15 So that is your evidence. That is what you have
16 said. Do you want to change that evidence?

17 A. No, I do not want to change the evidence, but from year
18 to year it might vary. I just would not want to say
19 that all the time we have had more OSAs than ad hocs.

20 Q. Thank you.

21 Could we go to {E4/1/38} and {E4/1/39}, please. Do
22 you have that?

23 A. No.

24 Q. Gosh, you do not, sorry. I should have a great big tag
25 saying "time delay".

1 A. I have it now.

2 Q. Thank you.

3 This will be confidential, but luckily on this page
4 there is nothing that has been redacted.

5 Now, this is Dr Maher's expert report. Have you had
6 an opportunity to read Dr Maher's reports?

7 A. I have read it, but not taken all of the detail in.

8 Q. I was about to say, there is so much more to do in life,
9 but that would have been rude and cruel, but
10 I understand.

11 Could we look at paragraph 167, and this is under
12 the title, "8.3. Structure of the supply arrangements
13 between the E&R Undertaking and the universities". You
14 may not have picked up in your perusal of Dr Maher's
15 report that when she talks about "the E&R undertaking",
16 she is talking about D1 and D3; yes? That is what she
17 means.

18 Read 165 and 166 to yourself and then we will read
19 167 together.

20 (Pause)

21 A. Yes.

22 Q. Thank you.

23 Then 167:

24 "The E&R Undertaking has indicated that as of
25 20 August 2021 ..."

1 So that is the date of your witness -- or I think
2 pretty much everybody's first-round witness statements.
3 In fact, just to confirm, you have produced one further
4 witness statement, have you not, since your original?

5 A. I have, yes.

6 Q. Yes, you have; good.

7 So:

8 "The E&R Undertaking has indicated that as of
9 20 August 2021 they had 68 OSAs and 23 ad-hoc
10 appointments in place. From my review of the current
11 supply arrangements between the E&R Undertaking and
12 the universities in the relevant markets I have noted
13 the following:

14 "(a) The E&R Undertaking is identified as
15 the supplier to 132 of the institutions included in
16 the relevant markets - ie some 75% of
17 the 174 institutions I identified above are supplied by
18 the E&R Undertaking."

19 Could we go to (b) {E4/1/39}:

20 "of the 64 formal written contracts the E&R
21 Undertaking has in place as at the date of this report,
22 42 (around 66%) are 'standard form' ..."

23 Then we have a blank:

24 "... agreements written on E&R Undertaking headed
25 paper."

1 Then she talks about bespoke agreements accounting
2 for the remaining 22 formal contracts. Then:

3 "the remaining 68 reply arrangements appear to
4 be 'ad hoc' in that there is evidence of a continuing
5 supply, but not of a formal written contract ..."

6 "of these 68 ad hoc arrangements 33 are with
7 universities which were supplied under a formal written
8 contract in July 2019 - in 21 cases despite the contract
9 having expired the E&R Undertaking is still identified
10 on the universities' websites as the official
11 suppliers."

12 You have no reason to challenge those findings set
13 out of your position, your company's position, as taken
14 from the disclosure that has been made available by
15 you -- not obviously by you individually, but by
16 the defendants in this case?

17 A. I do not feel I can comment on that.

18 Q. Okay, but you do not have a reason at the moment to say,
19 "Oh, well, I am going to challenge that and that and
20 that"?

21 A. I would query "standard form" --

22 Q. No, I understand. I understand.

23 A. -- and --

24 Q. We are not going to mention the next word.

25 A. Yes, and I do not feel --

1 Q. Okay, that is fine, it is fine because, first of all, it
2 is a long report; secondly, you do not have the data in
3 front of you, but I just wanted to put it to you,
4 because that is what has been collated following
5 the disclosure.

6 So, as you may or may not know, the parties have
7 agreed, for the benefit of the tribunal, a table which
8 contains extracts -- and I am using my words very
9 carefully -- of contractual clauses/provisions contained
10 in the various OSAs. Are you aware that that table was
11 put together and agreed?

12 A. I am not sure whether it was agreed.

13 Q. It certainly was agreed. It is not a problem, it may
14 avoid -- this happened just before the hearing. It is
15 in the bundle and I will take you to it, because there
16 is a table that sets out -- and we have referred to this
17 in opening -- extracts -- I am being very careful --
18 from the contractual agreements.

19 So could we turn, please, to {G6/32}.

20 My learned friend Mr Patton suggested that -- well,
21 "suggested" -- thought that this might be a convenient
22 moment for a mid-afternoon break given the fact that we
23 are almost exactly between 2 and 4.

24 THE CHAIRMAN: Yes, if that is convenient for you, we will
25 break for five minutes now.

1 MR RANDOLPH: I am grateful, thank you.

2 (3.04 pm)

3 (A short break)

4 (3.15 pm)

5 MR RANDOLPH: Thank you, sir.

6 Before we come on to the table I mentioned before
7 the short break, you remember that I mentioned to you
8 a reference to percentage commissions, or percentage
9 amounts for commissions on gowns and photography
10 services that E&R pays to the institution pro rata?

11 A. Yes.

12 Q. I took you to the relevant paragraph in the defence,
13 which showed 20% for gowning for a particular
14 institution, did not actually mention the 50% for
15 photography services, but I am grateful to Mr Spitz, who
16 showed me where it is, and it does indeed cross-refer,
17 as I thought, back to the re-amended claim form, which
18 can be found at {B/1/10}.

19 Do you have that?

20 A. I do, yes.

21 Q. Splendid.

22 You can see, at (c), which is 38(c), because 39
23 comes below, and none of this is redacted:

24 "The University of Greenwich receives 20% commission
25 on gowning and 50% commission on photography services

1 from E&R."

2 Just to be fair to you, Ms Middleton, let us go back
3 to the response, your lawyers' pleaded response to that,
4 which can be found at paragraph 37.3 of
5 the re-re-amended defence, which can be found itself at
6 {B/7/17}.

7 So this is the paragraph we were looking at; do you
8 remember?

9 A. Yes.

10 Q. Good.

11 You can see that (c) -- so that was the (c) we were
12 just looking at, the University of Greenwich:

13 "Further as to subparagraph (c), the First Defendant
14 has not provided photography services to the University
15 of Greenwich since 2016."

16 So that is fine.

17 But it is correct, and you do not deny, that prior
18 to that time, Ede & Ravenscroft paid 50% commission to
19 the University of Greenwich for the photography services
20 it provided to that university's graduands?

21 A. I would need to check the document. I could not tell
22 you now whether that is correct.

23 Q. Okay, but you would accept, would you not, that had that
24 not been correct, it would have been pleaded as not
25 being correct? There is nothing in (b) that we have

1 just looked at, 37.3(b), that says, "No, terribly sorry,
2 claimants, you have got that totally wrong, we never
3 paid 50% commission on photography services to the users
4 of Greenwich"? It does not say that, does it?

5 A. No, (b) does not say that.

6 Q. Thank you.

7 Yes, I am grateful: 37.3 at the top of that page,
8 you can see:

9 "The facts alleged in subparagraphs (a)-(e) ..."

10 Therefore that includes (c), where reference is made
11 to the University of Greenwich and the 50% commission.
12 That is admitted. So would you accept that now, or do
13 you not accept your pleaded case?

14 A. I accept that it has been admitted, yes.

15 Q. Good. You "accept that it has been admitted"; are you
16 saying that you do not accept that that is true?

17 A. No, it must be true if it has been admitted.

18 Q. Good, thank you.

19 Now, we can come back to the joy of the tables, and
20 they can be found at {G6/32/1}.

21 Tell me when you ...

22 A. Yes, I have it, sorry.

23 Q. Perfect, thank you, and because you were not sure about
24 the status of this table, I will tell you, because
25 otherwise it is not very fair for you to answer

1 questions about it.

2 This is a table that contains what it says on
3 the tin. The tin says, "Extracts from the Defendants'
4 contractual arrangements".

5 There are three tables. There is table 1, and that
6 contains extracts from the defendants' OSAs, which are
7 presently in operation. We are going to get to table 2
8 and table 3, but we are just concentrating on table 1
9 for a moment.

10 So these are extracts from OSAs that are presently
11 in operation. This has been agreed by the parties as
12 representing the position.

13 None of these deliberately, none of the items -- and
14 by "item", I mean the numbers on the left-hand side. So
15 you see it starts at 1 and on this page goes down to 12?

16 A. Yes.

17 Q. When I say "item", I am going to be referring to that.

18 So item 12 says:

19 "During the term of this agreement and subject to
20 its terms, the Institution appoints the Supplier as
21 the Institution's 'Official Robemaker and Supplier of
22 Academic Dress' for the purposes of the Ceremonies and
23 as its exclusive provider of the Services (or any
24 equivalent or substantially similar services)."

25 Yes?

1 A. Yes.

2 Q. Can we go over the page, please {G6/32/2}, item 13:

3 "The Institution shall not, during the term of this
4 agreement, endorse or recommend any other provider to
5 supply and/or hire academic dress to Students or provide
6 any Student with the name or details of any other
7 provider."

8 Yes?

9 A. Yes.

10 Q. Thank you.

11 You can -- well, you cannot put it away, because it
12 is electronic, but bear those in mind, if you will.

13 What I am going to do, I am not going to try and
14 trick you, I am going to take you to three OSAs,
15 agreements, between Ede & Ravenscroft and three
16 institutions. They are redacted in part, so we are
17 going to tread carefully, and please -- I am sure you
18 will not; you have done very well to date -- please do
19 not blurt out a bit that is in the grey, because, I am
20 not particularly fussed, but your side is very, very
21 keen to ensure that this is the position.

22 Also, just to make absolutely sure, although
23 the names of the institutions do not appear to be
24 redacted on the particular agreements, I am not going to
25 name them, okay, because it is not terribly essential.

1 I think it would be preferable if you did not name them.
2 You will see them, but we do not need to name them;
3 okay? Just because otherwise I think people are going
4 to get a little sensitive.

5 So, could we go to {F2/67}, please.

6 Can you just read through that first page to
7 yourself.

8 A. Please could the operator make it a bit larger?

9 Q. Yes, but then you will run out of space at the bottom,
10 but anyway, I will let you read.

11 (Pause)

12 A. Yes, I have read.

13 Q. Thank you very much.

14 So this is a document that is an official supplier
15 agreement in the way that you would describe them; is
16 that correct?

17 A. Yes.

18 Q. Thank you.

19 It is on Ede & Ravenscroft paper, headed paper. You
20 can see that at the top?

21 A. I cannot actually, at the moment, because I cannot
22 see --

23 Q. Could we slightly ...

24 A. Ah, now it is.

25 Q. The joy of cross-examining electronically.

1 Can you see your --

2 A. I can now, thank you.

3 Q. Perfect. So we are in agreement that this document is
4 on headed paper of your company, established in 1689, as
5 we can see there, and it is an agreement made on
6 1 July 2018.

7 So this is your agreement. It is on your headed
8 paper.

9 A. It is an agreement that we have created that will
10 reflect the terms that have been agreed between
11 the parties.

12 Q. Of course. An agreement that you have created following
13 agreement with the parties, absolutely. Your agreement.

14 It is between you and someone, and (A):

15 "The Supplier is in the business of supplying
16 services to the Institution."

17 (B):

18 "The Institution has selected the Supplier to
19 provide certain services to the Institution, and
20 the Supplier has agreed to do so, on the terms set out
21 in this agreement."

22 That, I would imagine, is pretty standard in terms
23 of these types of agreements, that little introduction?

24 A. Yes.

25 Q. Yes. Good.

1 Could we then go to the next page, please {F2/67/2}.

2 This will definitely require -- and the next one.

3 There --

4 A. I am afraid I do not have it yet.

5 Q. I am so sorry.

6 A. Yes, it has just come.

7 Q. Fine.

8 You can see, and the tribunal can see,
9 the penultimate item on the left-hand side. This is
10 a definitions section and it is just defining what that
11 penultimate item is, what it means. Can you see that?

12 A. Yes.

13 Q. Yes, perfect, thank you.

14 Then next page, please {F2/67/3}. Can you read to
15 yourself clause 2.1, which comes under the unredacted
16 title "Appointment of the Supplier; Provision of
17 Services". Just 2.1.

18 A. Yes, I have read it.

19 Q. Thank you very much indeed.

20 Can we now go to {F2/102}, please.

21 Sorry, can we just quickly go back to {F2/67/1},
22 just the front page.

23 Can you see that this is the first agreement that we
24 were looking at and we have not dealt with the name of
25 the institution. We are not going to call out

1 the actual date, but it is in the year 2018; that is
2 correct, is it not?

3 A. Yes.

4 Q. Thank you.

5 Can we go to {F2/102}, please. Can we have it
6 slightly closer in.

7 Again, we do not need to talk about the actual date,
8 but we can see that it is made in the year 2017?

9 A. Yes.

10 Q. Good.

11 Again, we see introduction (A):

12 "The Supplier is in the business of supplying
13 services ...

14 "(B) the Institution has selected the Supplier to
15 provide certain services to the Institution, and the
16 Supplier has agreed to do so, on the terms set out ..."

17 This is again on Ede & Ravenscroft headed paper, so
18 again it is your agreement made further to negotiations
19 with the institution concerned?

20 A. It is an agreement that has been negotiated between
21 the parties, yes.

22 Q. Yes, but that was not quite the question I put. It was:
23 it is your agreement, it is on your headed paper. Are
24 you saying it is not?

25 A. I am not quite sure what you mean by "it is your

1 agreement".

2 Q. I am making the point that this agreement is on your
3 headed paper.

4 A. Yes, it is on our headed paper.

5 Q. So unless it was masquerading as something else, this
6 would seem to be your agreement that you have reached
7 with the institution in question following negotiations?

8 A. Yes.

9 Q. Thank you.

10 Then --

11 MR PATTON: If anything more is being put by the words "your
12 agreement", perhaps that could be made clear to
13 the witnesses, other than it is on the headed notepaper.

14 THE CHAIRMAN: Yes, I do not understand you to be making any
15 such allegation that it is their -- they have drafted
16 all the terms and imposed them on the university?

17 MR RANDOLPH: No, I have not -- no, because the evidence
18 that the tribunal has heard is that these terms arose
19 through negotiation, but it is on their headed
20 notepaper.

21 THE CHAIRMAN: So all you mean is it is on their headed
22 notepaper?

23 MR RANDOLPH: Yes, and to that extent it is their agreement.
24 It is a point that has been made.

25 Can we go down two pages, please {F2/102/2}, and

1 again {F2/102/3}.

2 Can you read to yourself --

3 A. Sorry, I do not have it yet.

4 Q. Do not worry. Also you will need, as I need, this to be
5 blown up, because it is ... thank you.

6 Do you have that now?

7 A. I do, yes.

8 Q. Perfect.

9 Under the same title that we saw in the earlier 2018
10 agreement, not dated, but yeared, "Appointment of
11 the Supplier; Provision of Services", can you read to
12 yourself 2.1.

13 (Pause)

14 A. Yes, I have read that.

15 Q. Thank you very much.

16 Can we then go to {F2/144}, please.

17 Again, it is on Ede & Ravenscroft paper.

18 A. I am afraid --

19 Q. I am so sorry.

20 A. Sorry.

21 Q. I am so sorry.

22 A. Yes, I now have it.

23 Q. This is an agreement made in the year 2016?

24 A. It is, yes.

25 Q. So, again on Ede & Ravenscroft headed paper; again

1 the introduction is the same. Then we can skip down
2 two/three pages, probably. {F2/144/3}.

3 So again we see at point 2, which we have seen in
4 the previous two agreements, "Appointment of
5 the Supplier; Provision of Services". Then can you read
6 to yourself 2.1, which has been covered up.

7 (Pause)

8 A. Yes, I have read that.

9 Q. Thank you. So you have read those three agreements in
10 2018, 2017 and 2016.

11 A. Yes.

12 Q. We will go back, because it is not a memory test, we
13 will go back to the table {G6/32/1}, please. Just
14 the first page. Thank you.

15 Re-read item 12, please.

16 A. I have that. Sorry, I was on the wrong page before.

17 Q. Has it gone back?

18 A. It has gone back to 12, yes.

19 Q. It has gone back to 12, perfect. Can you read that.

20 Yes?

21 A. Yes.

22 Q. Can you read, over the page, 13 {G6/32/2}. Yes?

23 A. Yes.

24 Q. So you will agree with me that the three agreements that
25 we saw in 2018, 2017 and 2016 contain the words that are

1 set out in items 12 and 13 at the relevant clause that
2 you read to yourself because it has been covered up?

3 A. Yes.

4 Q. Thank you.

5 Now, both the independent experts in this case
6 agree, or treat the agreements, the OSAs, as you would
7 describe them, as being exclusive or near-exclusive for
8 the purposes of their competition assessment. Are you
9 aware of that agreement, and if you are not, tell me,
10 and I will take you to where it is.

11 THE CHAIRMAN: I think (inaudible) for the moment,
12 Mr Randolph.

13 MR RANDOLPH: I am not going to -- I would like, if I may,
14 to continue with my cross-examination.

15 A. Sorry, could you repeat the question?

16 Q. Totally right. This is not a memory test. I will just
17 put it to you and then I am going to take you to
18 the point, which is where it is set out in
19 the defendants' expert evidence in his second report.
20 So this is Dr Niels' second report {E6/29/20}.

21 Has that popped up?

22 A. Yes, it has.

23 Q. Brilliant.

24 You may know that the experts have exchanged initial
25 expert reports and then they responded to each other's

1 in responsive reports that were exchanged at the same
2 time but obviously later.

3 A. Yes, I am aware of that.

4 Q. You have read both sets of papers, but as you said, you
5 may not have grasped every intricate detail?

6 A. Yes.

7 Q. Is that a fair assessment? Yes, I think that is
8 perfectly fair.

9 So this is Dr Niels' reply report at 4.1:

10 "Both Dr Maher and I treat the agreements as
11 exclusive or near-exclusive for the purposes of
12 the competition assessment."

13 Then, just to read the whole paragraph:

14 "The difference is that I assume them to be
15 exclusive, whereas Dr Maher considers that there is
16 enough information to conclude that they are exclusive."

17 That is the difference he is seeking to make:

18 "I have reviewed Dr Maher's supporting evidence and
19 I still conclude that, to the extent that there is no
20 de jure exclusivity, de facto exclusivity remains an
21 assumption in this case."

22 So you can see what Dr Niels has said about how
23 the independent experts treat the agreements as
24 exclusive or near-exclusive, one on the basis of an
25 assumption, and one on the basis of a conclusion?

1 A. Yes, I have that paragraph.

2 Q. Thank you.

3 In the light of item 12, which we have seen as an
4 extract in the table but also appearing verbatim in
5 three redacted agreements in 2016, 2017 and 28, in
6 the light of that, it is quite clear that those
7 agreements are exclusive, are they not?

8 You may have forgotten the actual words of 12.

9 I will read them out again:

10 "During the term of this agreement and subject to
11 its terms, the Institution appoints the Supplier as the
12 Institution's 'Official Robemaker and Supplier of
13 Academic Dress' for the purposes of the Ceremonies and
14 as its exclusive provider of the Services ..."

15 So you would agree, would you not, insofar as at
16 least those agreements, those agreements were exclusive?

17 A. I do not know that I am in a position to -- I am not
18 quite sure what I am being asked to agree to.

19 Q. Okay, well, that is interesting. So your evidence is
20 that you are not in a position, the person who has
21 the broadest view of the position of E&R in the market,
22 you are not in a position to say whether the OSA
23 agreements, which your evidence is that that is the main
24 way in which E&R gets its supplies to the market, you
25 are not in a position to say whether they are exclusive

1 or not; is that right?

2 A. I am not quite sure what counsel means by "exclusive"
3 and therefore I am not quite sure how to answer
4 the question.

5 Q. Well, that is very interesting.

6 THE CHAIRMAN: There is a legal conclusion from this. You
7 might ask the witness what she understands the reference
8 to "exclusive" in the agreements to mean.

9 MR RANDOLPH: Yes, well, I will take up the Chair's
10 invitation.

11 What do you understand the reference to "exclusive"
12 to mean?

13 A. That we are the official appointed supplier.

14 Q. Okay. So only that? Not that it is you and no one
15 else? Exclusive supplier, sole supplier?

16 A. Usually there is only one official supplier, but there
17 are occasions when there is more than one official
18 supplier.

19 Q. You see, the reason I raise this is because, in your
20 written evidence, have been remarkably keen to avoid any
21 reference to "exclusive" or "exclusivity". In fact,
22 I did a word search on your written witness statements
23 and there is only one, and that is to
24 the word "exclusivity", which cross-refers to
25 the claimants' evidence.

1 The point is that you know, having read
2 the pleadings, because you have said that you have read
3 the pleadings, that a key issue in this case
4 is "exclusive" and whether these agreements are
5 exclusive. Your pleaded case is that
6 the words "exclusive agreements", or "exclusivity
7 agreements" is tendentious, in other words is
8 controversial.

9 Now, you see, I want to explore with you, in
10 the light of not only the experts' joint agreements that
11 these agreements are exclusive, but also the wording --

12 THE CHAIRMAN: Mr Randolph, I think that is slightly

13 misleading, is it not? The agreement or assumption.

14 I think you need to keep --

15 MR RANDOLPH: Sorry, yes, the agreement or assumption.

16 The agreement or assumption that they are exclusive,
17 or indeed that at item 12, which we have seen, specific
18 reference is made to the words:

19 "... the Institution appoints the Supplier ..."

20 So that is Ede & Ravenscroft:

21 "... as its exclusive provider of the Services ..."

22 So, to take up the Chairman's invitation again, let
23 us not look at the word "exclusive" in the context of
24 Dr Maher's reply report, but let us look at it in
25 the context of the terms that are set out at 12 in this

1 table, and have been seen, and you confirmed, are
2 contained in earlier or presently existing OSAs
3 in '16 '17 and '18, and that those words are: you have
4 been appointed, the supplier has been appointed, as
5 the institution's "exclusive provider of services".

6 So how do you define "exclusive provider of
7 services"?

8 A. In the context of the agreements that we looked at --

9 Q. Indeed.

10 A. -- for the contracts that we looked at, we are the only
11 official supplier of those contracts.

12 Q. Can anybody else supply?

13 A. Other people can supply students and are free to supply
14 students, but we are the universities' only supplier --
15 appointed supplier.

16 Q. How does this work then? How can they supply if there
17 is an agreement with the institution that says you are
18 the only supplier? Why would you enter into an
19 agreement that says you are the only supplier and then
20 the effect of that agreement is to allow other people to
21 supply? It is not a sole agreement?

22 A. We expect to get a significant proportion of students by
23 being the sole appointed supplier, but that does not
24 necessarily mean we get all of the students. It does
25 not. We do not expect to get every single student.

1 Q. So you do not expect to get every single student despite
2 the fact that you have got the words "exclusive provider
3 of services" set out in the agreements that we looked at
4 and in the table? So that does not mean what it says on
5 the tin, "exclusive provider"?

6 A. We are providing those services to the institution.

7 Q. Exclusively. Those are your words, not mine, or E&R's
8 words, or were they the institutions' words? You said
9 they were negotiated. Who put them in? Who
10 put "exclusive" in; do you remember?

11 A. No.

12 Q. To be fair, I do not know, I mean, you had the broadest
13 knowledge, and the only other person put up in terms of
14 operational matters in this claim on your side is your
15 father, who I think is of an age and maybe not involved
16 in operational activities any more.

17 So would you be involved in negotiating OSAs?

18 A. Some of them, but not all of them.

19 Q. So can you remember who sought to put in "exclusive
20 provider of services"?

21 A. In the particular instances that --

22 Q. In any instance. In any instance. Or are you saying
23 that there are no such clauses any more?

24 A. No, the clauses exist.

25 Q. Yes, and so you do not know. It is fine; if you do not

1 know, you do not know. You do not know who wanted
2 the words "exclusive provider" to be put in?

3 A. I think both the university and Ede & Ravenscroft would
4 be keen to make sure that we were -- there was one
5 official supplier.

6 Q. One official exclusive supplier. That is what it says.
7 I am not making this up. It says --

8 A. No, I agree it says that, yes.

9 Q. -- "exclusive provider". Yes, thank you.

10 So you say, "Ah, well, you know, we hope to get as
11 many students as we can", despite the fact that you are
12 an exclusive provider.

13 Let us turn over to 13. Sorry, I do apologise. Not
14 a memory test. {G6/32/2}, item 13. We saw this in
15 the agreements as well, '16, '17 and '18:

16 "The Institution shall not, during the term of this
17 agreement, endorse or recommend any other provider to
18 supply and/or hire academic dress to Students ..."

19 Let us just pause there. So this is the university
20 in question, under these OSAs:

21 "... shall not, during the term of the agreement,
22 endorse or recommend any other provider to supply and/or
23 hire ..."

24 So that is fine. So you are the only one who can be
25 endorsed or recommended or indeed is there.

1 Then the next bit of item 13 is:

2 "The Institution shall not ... provide any Student
3 with the name or details of any other provider."

4 So that means, Ms Middleton, that if a student asks
5 the powers that be within the institution from which
6 they wish to graduate, "Oh, excuse me, can you let me
7 have the details of someone else apart from
8 Ede & Ravenscroft?", they are duty bound, pursuant to
9 this item, which we have seen is contained in at least
10 those three agreements that we have looked at, they are
11 duty bound not to provide the student with the name or
12 details of any other provider?

13 A. Yes.

14 Q. So it is rather more than a wish that you hope you can
15 get some students through the door. You are
16 the exclusive provider of services and -- so that is one
17 side -- the flip side is the institution cannot endorse,
18 recommend or otherwise mention another provider, another
19 competitor to E&R, so it cannot do that, and it cannot
20 respond to any student who is saying, "Excuse me, can
21 I have the name of someone else who might provide
22 the academic hire service". So it is a little more than
23 a hope. You have got exclusivity and you have got
24 the institution agreeing to essentially restrict
25 the students' access to anybody but you, because they

1 cannot tell the students -- if the students want, they
2 cannot tell them about anybody else.

3 A. The institutions never guarantee the number of students
4 that are going to attend, and the OSAs often provide
5 a clause that they would not guarantee the numbers. So
6 we have -- certainly we have a level of expectation and
7 we would hope to have that for the investment that we
8 are making, but I think students can search. There are
9 other means, other than via the institution, that
10 a student, a prospective(?) student can find out about
11 graduation attire.

12 Q. Thank you. But you would agree with me, would you not,
13 that the fact that the student -- if a student goes to
14 their administration in the institution saying, just
15 before -- or in the relevant time before the ceremony,
16 saying, "Look, you have sent me details of E&R because
17 they are the official provider, can you let me know
18 anybody else", you would agree that, pursuant to this
19 agreement, the institution is not entitled, not able to
20 provide the student with those details, and if it did
21 would be in breach of the terms of this agreement?

22 A. Yes.

23 Q. Thank you.

24 Now, you say at paragraph 120 of your first witness
25 statement {D4/2/34} -- you have got it?

1 A. Yes, I have.

2 Q. Okay, perfect.

3 It would be fair for you to see what your responding
4 to, paragraph 41 of the claim form, yes?

5 A. Yes.

6 Q. Yes, I think it would.

7 So shall we go to the claim form, which can be found
8 at {B/1/14}. Sorry, this goes on. This 40 is a very
9 long paragraph, I am afraid.

10 So this is what is being put by the claimants:

11 "It is to be inferred from the above that:

12 "(a) the Exclusivity Agreements, in addition to
13 conferring a right on E&R of exclusive supply, typically
14 impose obligations on the universities inter alia:

15 "(i) to instruct, direct or recommend their students
16 to hire academic dress ...

17 "(ii) to warn students against using academic dress
18 supplied by competitors ...

19 "(iii) to threaten such students with sanctions if
20 they do ... such as not being able to participate in
21 graduation ceremonies and/or receive their graduation
22 cert; and that.

23 "(b) pursuant to the brigades aforesaid,
24 the universities which are party to the Exclusivity
25 Agreements have done so."

1 So that is paragraph 41, yes? We will keep that up
2 on the screen, because that is what you are responding
3 to at -- and you can see on the hard copy --
4 paragraph 120 of your witness statement. Does that make
5 sense? You have got the --

6 A. Yes, thank you.

7 Q. It is a bit of a nightmare doing it sort of hard copy to
8 electronic.

9 So, we just looked at the allegations in
10 paragraph 41 {D4/2/34}, and you say:

11 "... [they] are substantially incorrect and do not
12 reflect any of the terms of any of our agreements with
13 any of our University customers. As outlined above,
14 some OSAs have limited obligations on institutions to
15 promote E&R as the official supplier, usually just by
16 sending out our leaflets with graduation information or
17 putting a link to our website ... We do not have an
18 agreement with any institution (whether as part of
19 the formal written terms or otherwise) that they must
20 'instruct' their students that they have to hire
21 academic dress from E&R."

22 In the light of what we have been discussing,
23 I think you would agree with me that item 13 that we
24 looked at, which was in the three agreements we looked
25 at {G6/32/2}:

1 "The Institution shall not, during the term of this
2 agreement, endorse or recommend any other provider ...
3 and ... [shall not] provide any Student with the name or
4 details of any other provider."

5 That clearly shuts off the students from access --
6 not complete access, you are right, there is
7 the internet, but from access direct, via
8 the university, to competitors. You would agree with
9 that, would you not? That is what item 13 says.

10 A. Yes, we were asking them not to endorse another supplier
11 when we have been appointed the official supplier.

12 Q. Yes, the official exclusive supplier.

13 Would you not think -- when you have got
14 the broadest view of Ede & Ravenscroft's operation and
15 you are trying to paint the picture, as you agreed at
16 the beginning, that is the fullest picture possible of
17 all relevant issues, would you not have thought it of
18 help and assistance to have referred to the fact that,
19 actually, in certain terms and conditions in your OSAs
20 that you are discussing here, specifically in relation
21 to when you are dealing with instruction of students,
22 would it not have been a fuller picture to have been
23 painted to say, "Oh, yes, well, while there is no actual
24 instruction that we have got to direct students, or
25 the institutions have to instruct their students that

1 they have to have academic dress, actually, in our terms
2 and conditions there is a clause that prohibits
3 the institutions from actually assisting the students
4 finding competitors"? Would that not have been a fuller
5 picture?

6 A. I do mention in my statement about not endorsing another
7 supplier. I am just trying to find the right paragraph.

8 (Pause)

9 Sorry.

10 MR RANDOLPH: Do not worry, honestly; you can have
11 overnight. There are many things one could do. One of
12 them may be to check your witness statement. Do not
13 take time now.

14 It is now 3.56, sir, and this might be a convenient
15 moment.

16 THE CHAIRMAN: How long? Have you finished? Are you moving
17 on to a new topic?

18 MR RANDOLPH: Yes, apart from that one point, but I do not
19 want poor Ms Middleton to be concerned. She can have
20 overnight.

21 THE CHAIRMAN: I do not know if Mr Patton can help.

22 MR PATTON: Yes, I have got the paragraph. I was not sure
23 if it would be appropriate --

24 THE CHAIRMAN: Well, since we are looking for a paragraph,
25 if you know where it is, let us shorten this.

1 MR PATTON: Are you putting that she has not mentioned it
2 in --

3 MR RANDOLPH: No, I am not putting that at all.

4 MR PATTON: Can I just draw attention to the top of page 10.
5 It is marked "confidential", so I am not going to read
6 it out.

7 Oh, I am sorry, it is not confidential. I have an
8 old marking.

9 THE CHAIRMAN: Yes, at the top of page 10, Ms Middleton; do
10 you see that? Of your statement, that is.

11 A. Yes.

12 MR RANDOLPH: Well, that is actually confidential in my --
13 well, in my version, it has been yellowed out.

14 MR PATTON: Yes, we have updated them in the relevant
15 statement and removed some of the confidential marking.
16 I printed mine off before that happened.

17 MR RANDOLPH: Ah, so have I done the same?

18 MR PATTON: You may have done.

19 MR RANDOLPH: Splendid. Good. Would it be possible -- is
20 it now on the ...?

21 MR PATTON: It has been on Magnum for a while.

22 MR RANDOLPH: Oh, it has been on Magnum, but you and I,
23 dinosaur counsel. Good, splendid. So that is now
24 unredacted {D4/2/10}.

25 I would like to check that, but it is fine. We have

1 now found the paragraph, so that is fine, but we have
2 reached a suitable moment, insofar as I am concerned.
3 I am not sure whether it is a suitable moment for
4 tribunal.

5 THE CHAIRMAN: We will pause there, but I just have a couple
6 of questions.

7 MR RANDOLPH: Yes.

8 THE CHAIRMAN: First of all, can we clarify Dr Niels' report
9 where you said that the relevant paragraph you were
10 looking at was confidential.

11 MR RANDOLPH: Ah. No, sorry, the paragraph itself probably
12 was not confidential. It was just --

13 THE CHAIRMAN: Some lines. Let us just go back to it. I do
14 not think it is. Those lines are both shaded and
15 unshaded in both the confidential and non-confidential
16 version.

17 MR RANDOLPH: Ah. Ah. Might we know the difference between
18 the shaded and unshaded, or is it just --

19 THE CHAIRMAN: It looks like it is just for ease of reading
20 it.

21 MR RANDOLPH: Just for ease of reading it. Splendid. Good.
22 Right.

23 THE CHAIRMAN: Good, well, that is cleared up.

24 MR RANDOLPH: Ease of reading.

25 MR PATTON: Confusingly.

1 MR RANDOLPH: Confusingly. Good.

2 THE CHAIRMAN: The other question was this. In terms of
3 progress, tomorrow, the timetable originally -- let us
4 just see whether we are just simply shifting
5 the timetable around. Let me just get the timetable up.
6 So Ms Middleton would have start tomorrow morning and
7 would have gone for half to three-quarters of a day.

8 MR RANDOLPH: Yes.

9 THE CHAIRMAN: So it is slightly less than half a day,
10 because we have had a two-hour session.

11 MR RANDOLPH: We have had a two-hour session.

12 THE CHAIRMAN: So there is the rest of that tomorrow
13 morning.

14 MR RANDOLPH: Yes.

15 THE CHAIRMAN: Then Mr Halls will still come immediately
16 after her, will he?

17 MR PATTON: Yes, sir, he will.

18 THE CHAIRMAN: Yes, and then Mr Michael Middleton presumably
19 will start tomorrow afternoon at some point?

20 MR PATTON: Yes.

21 THE CHAIRMAN: Good.

22 MR RANDOLPH: Yes, and I will trot through as quickly as
23 I can.

24 THE CHAIRMAN: Well, I am not suggesting you are not,
25 but~...

1 MR RANDOLPH: Good.

2 THE CHAIRMAN: 10.30 tomorrow. Thank you.

3 (4.00 pm)

4 (The Court adjourned until 10.30 am on Thursday,

5 27 January 2022)

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