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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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Thursday, 27 January 2022

(10.30 am)

(Proceedings delayed)

(10.40 am)

MS EMMA MIDDLETON (continued)

Cross-examination by MR RANDOLPH (continued)

MR RANDOLPH: Ms Middleton.

Could we go back to the table that we were looking at yesterday with the extracts from the defendants' contractual arrangements. We can find at that {G6/32}, and can you go to the second page, please {G6/32/2}.

Sorry, go back to the first page. I do apologise. {G6/32/1}. Item 12, we have looked at this:

"During the term of this agreement and subject to its terms, the Institution appoints the Supplier as the Institution's 'Official Robemaker and Supplier of Academic Dress' for the purposes of the Ceremonies and as its exclusive provider of the Services."

Yes?

A. Yes.

Q. Can we go to item 26, please, which will be on the following page, or the page after {G6/32/3}. Can you see that item 26 essentially is to:

"provide Academic Dress for hire by Students for each Ceremony or for purchase in accordance with

1 the Supplier's then-current standard terms of supply."

2 Yes? So that is the exclusive supply by  
3 Ede & Ravenscroft to provide Academic Dress for hire by  
4 students for each ceremony or for purchase in accordance  
5 with Ede & Ravenscroft's then-current standard terms of  
6 supply, yes?

7 A. It is to provide the academic dress hire for  
8 the students. I cannot remember whether that is one of  
9 the things in schedule 1 of the services.

10 Q. Okay, well, fine.

11 A. I am sorry, I cannot.

12 Q. I will take you through that in a moment.

13 A. Yes.

14 Q. It does not matter where I say they come from, I will  
15 show you where they come from, but they are taken from  
16 the contractual arrangements and these are from  
17 schedule 1 in those arrangements.

18 Item 21:

19 "The Supplier shall provide Academic Dress hire  
20 services and Photography services at and in respect of  
21 Ceremonies during the term of this agreement."

22 Yes?

23 A. Yes.

24 Q. So again, I am putting it to you and I will show you in  
25 a moment, in an actual agreement, but that is part of

1 the exclusive provision of services by  
2 Ede & Ravenscroft.

3 Just to be fair to you, in terms of photography  
4 services, can we go to paragraph 47(e) of your first  
5 witness statement, which can be found at {D4/2/15}.

6 Now, we are not going to read out the yellow bits,  
7 because they have been redacted. The first bit after  
8 the redaction is:

9 "Photography services are sometimes included as part  
10 of the graduation services OSA and sometimes  
11 the services are provided under separate contracts ..."

12 That is right, is it not?

13 A. It is, yes.

14 Q. Thank you.

15 Can we go to the 2018 OSA on E&R headed paper that  
16 we looked at yesterday, please, at {F2/67}, and the next  
17 page, please {F2/67/2}. If we could blow it up for  
18 Ms Middleton and I, or me.

19 You read to yourself the penultimate item on  
20 the left-hand side, which has a definition of that item,  
21 yes?

22 A. Yes.

23 Q. That is redacted.

24 Then can we go to internal page 10 of the document,  
25 which is {F2/67/10}. So this is schedule 1 "Services",

1 and then "Overview of Services", that is redacted. Can  
2 you read it to yourself, please.

3 A. Yes.

4 Q. The first sentence of that chimes with item 21, does it  
5 not, that we just looked at? If you want me to take you  
6 back to item 21, I am very happy to do so. Would you  
7 like that?

8 A. Yes, please.

9 Q. Yes, certainly. It is {G6/32/3}. There it is:

10 "The Supplier shall provide Academic Dress hire  
11 services and Photography services at and in respect of  
12 Ceremonies during the term of this agreement."

13 Then can we flip back to the agreement. You can see  
14 there, at 1, that first sentence?

15 A. Yes.

16 Q. Yes? So they chime.

17 A. Yes.

18 Q. Thank you.

19 Can we go to the 2017 OSA on E&R headed paper that  
20 we looked at yesterday. That is {F2/102}, and  
21 fortunately this is less redacted. Can we go to  
22 the second page, please {F2/102/2}. "Services" at  
23 the bottom, just above the bottom:

24 "means the services, set out in Schedule 1, to be  
25 provided by the Supplier under this agreement."

1 Yes?

2 A. Yes.

3 Q. This is its exclusive provision of those services.

4 Can we turn to schedule 1, please, which is internal  
5 page 10, like the earlier agreement we have just seen  
6 {F2/102/9}. Internal page 10.

7 Like the previous one, "Schedule 1", "Services".  
8 This is redacted. Can you read to yourself the first  
9 sentence of 1, and I cannot even tell you what the title  
10 is because that is redacted.

11 A. Yes.

12 Q. That chimes with item 21, does it not?

13 A. Yes.

14 Q. Thank you.

15 Can we go to 2016 OSA on E&R headed paper that we  
16 looked at yesterday that can be seen at {F2/144/1},  
17 please. Can we go to the next page {F2/144/2}.

18 Ms Middleton, do tell me, I have forgotten that you  
19 are on -- not you, but the screen is on a time lag, so  
20 do tell me when it is not up, because it is unfair.

21 There we can see, pleasantly unredacted:

22 "'Services' means the services, set out in  
23 Schedule 1, to be provided by the Supplier under this  
24 agreement."

25 Can we go on to internal page 10 {F2/144/10},

1 please.

2 Then, again, "Schedule 1", "Services", then "Overview  
3 of Services" this time is not redacted. Can you read  
4 the first sentence of that, please.

5 A. Yes, I have read that.

6 Q. Thank you.

7 That chimes with item 21?

8 A. Yes.

9 Q. Thank you very much.

10 So, pursuant to those three agreements that we have  
11 just looked at, E&R was appointed as the exclusive  
12 provider of academic dress hire services and photography  
13 services for those three institutions?

14 A. Yes.

15 Q. Thank you.

16 There was no choice, was there? E&R was appointed  
17 as the exclusive provider of academic dress hire  
18 services and photography services for those  
19 institutions; exclusive supplier of these services?

20 A. Well, this is an agreement between us and  
21 the institution, it is not an agreement between us and  
22 the students. It does not bind the student in any way.

23 Q. Okay, well, we will come to that in a moment.

24 Insofar as the institutions are concerned, you are  
25 the exclusive provider of the service, of the hire or

1 sale of academic dress and the provision of photography  
2 services, yes? You have agreed with that.

3 A. We are the appointed supplier.

4 Q. No -- okay, are you taking back your previous evidence?  
5 You agreed with me a minute ago that you were  
6 the exclusive provider --

7 A. Yes.

8 Q. -- of those services. I have taken you to the words.  
9 Do you agree with that?

10 A. I agree it says "exclusive", yes.

11 Q. Good, thank you. That is how the institutions  
12 understood the position.

13 Can we go to annex D, please, to Dr Maher's first  
14 witness statement, and Dr Maher, as we discussed  
15 yesterday, is the claimants' economic expert. That can  
16 be found at {E1/5/1}.

17 Now, I am crossing my fingers, not for my  
18 cross-examination but for -- exactly, this. What one  
19 has to do is to click on the link and that will bring up  
20 an Excel spreadsheet, I am hoping.

21 Perfect. Thank you so much. A useful run-through  
22 for next week.

23 Now, as you can see at the top, this is extracts  
24 from websites of the various institutions that are  
25 listed on the left-hand side. You can see that, yes?

1           You see that is what it says, yes?

2           A. Yes.

3           Q. Now, can I take you to row -- could the EPE operator go  
4           up, please, so that we get to 1. That is fine.

5           Can you look down at 7, which is Aston University.

6           Can you see that, Ms Middleton?

7           A. Yes, I can.

8           Q. Thank you.

9           So you go across and that is the Aston University  
10          website. None of this is redacted because it is public,  
11          it is on their website:

12          "All gowns should either be hired or purchased from  
13          Ede & Ravenscroft and not from any other supplier."

14          So this is on the website, seen by students.

15          Can you go down to row 15, please. This is  
16          Birmingham City University.

17          A. Sorry, I have not got there yet.

18          Q. I am so sorry.

19          A. I am there now, thank you.

20          Q. Good, thank you.

21          So this is Birmingham City University, and their  
22          website says:

23          "The University's gowns are exclusively provided by  
24          Ede & Ravenscroft."

25          So, again, on their website to be read by, amongst

1 others, their students.

2 Row 81, please. The University of Law:

3 "The University of Law uses a company called Ede &  
4 Ravenscroft to provide the academic dress. Your gown  
5 must be hired from them."

6 Row 91, please, University of Liverpool:

7 "Please ensure you order your gown, hood and mortar  
8 board from the University of Liverpool's official  
9 robe-makers only. The robe-makers to the University  
10 are: Ede and Ravenscroft Ltd."

11 Finally, row 175, please. This is the University of  
12 York:

13 "Our graduation attire is supplied by Ede and  
14 Ravenscroft. Only graduands wearing the correct  
15 Ede and Ravenscroft gown will be permitted to take full  
16 part in their ceremony."

17 Again, on their website.

18 So you would agree with me, would you not, that that  
19 is how those institutions view the agreements they have  
20 with you: students have to hire their dress from you,  
21 and in one instance they say, "If you do not, you cannot  
22 take full part in the ceremony".

23 A. Yes, I can see that those statements reflect that belief  
24 from the institutions. It is not something that we have  
25 been involved in or that we have requested. I can also

1 see from this sheet that other institutions do not use  
2 the same words.

3 Q. Yes, and I am sure in re-examination, if there is an  
4 institution that says, "Actually, you can use anybody,  
5 it does not really matter", you will be taken to it.

6 These are public statements on publicly available  
7 websites which you could have accessed. If at any time  
8 you disagreed with those statements, you could have said  
9 so, could you not? Did you?

10 A. We have not looked at the statements. We did not go to  
11 look at the statements. It is not something we would be  
12 involved in.

13 Q. Why?

14 A. It would not be -- we do not instruct the institutions  
15 how to deliver the communications to their students. It  
16 is not something that they would usually share with us.

17 Q. You are the official robemakers to and the exclusive  
18 suppliers of these services to these institutions. They  
19 are talking about what students can and cannot do  
20 pursuant to those agreements and you are saying you have  
21 no interest in what they are saying publicly?

22 A. We have not looked and reflected on those statements  
23 before, no.

24 Q. Fine.

25 Now, you refer in your exhibit EM2, which is

1 {F4/696} -- has that -- it has not popped up with me  
2 yet. I am not criticising you. Thank you very much.

3 For the EPE operator, that Excel spreadsheet, you  
4 can push on the cross button.

5 Now, this is something you refer to in your witness  
6 statement. Just to play you in, to use a cricketing  
7 analogy, shall we go to paragraph 123. This can be  
8 found at {D4/2/35}. If we could have it slightly  
9 enlarged. Perfect.

10 So this is you in your witness statement:

11 "Relatively recently a student at the Arts  
12 University Bournemouth ..."

13 It has not been redacted:

14 "... contacted E&R to complain about being required  
15 to hire his academic dress from us. I am not sure what  
16 his university told him but our response is at  
17 (...EM2)."

18 So can we go to EM2, please, which is, as I say, on  
19 {F4/696}.

20 Sorry, before we go there -- I do apologise -- could  
21 we go back to your witness statement at {D4/2/38}.

22 So it is the Arts University Bournemouth. So if we  
23 go to schedule 1. Thank you.

24 This is your schedule to your witness statement,  
25 setting out to the best of your knowledge and belief

1 the OSAs as at the present date. You can see there, if  
2 you go down about ten items, Arts University  
3 Bournemouth; yes?

4 A. Yes.

5 Q. So the Arts University Bournemouth has an OSA at  
6 the date of the witness statement that you signed in  
7 August 2021, yes?

8 A. Yes.

9 Q. Thank you.

10 Can we go back to {F4/696}.

11 Can you, EPE operator, go to the next page, please  
12 {F4/696/2}.

13 This has been redacted in part, so we are not going  
14 to mention the student's name, but we do know that this  
15 person, they went to the Arts University Bournemouth:

16 "Dear Jim ..."

17 The person to whom this email is being sent is  
18 Jim Doubleday. Who is Jim Doubleday?

19 A. He is the head of graduation services.

20 Q. At?

21 A. Ede & Ravenscroft.

22 Q. Thank you:

23 "Dear Jim,

24 "I hope you are well.

25 "My name is [X]. I supposed to graduate this month,

1 but I cannot attend it without hiring a gown  
2 specifically from Ede & Ravenscroft.

3 "I have no doubt that Ede & Ravenscroft have  
4 the finest range to select from, however, I just cannot  
5 afford it now, and therefore I planned to find an  
6 alternative provider.

7 "In 2019, Ede & Ravenscroft had provided a statement  
8 to the media that states:

9 "'The fact that we tender and win contracts to  
10 supply academic dress does not mean an institution's  
11 students are obliged to do business with us.

12 "'Students have the right to choose from where they  
13 hire or buy their academic dress'.

14 "However my University ..."

15 That is Arts University Bournemouth:

16 "... advised me the opposite.

17 "I was studying at Arts University Bournemouth for  
18 6 years. I did not attend my bachelor's Graduation  
19 celebration as I have decided rather save money for  
20 MA graduation and If I will receive a distinction I will  
21 attend my graduation. I did receive a distinction, but  
22 AUB refused to let me attend graduation, only due to not  
23 hiring a gown from Ede & Ravenscroft.

24 "I tend to believe that is highly inappropriate and  
25 it is against the Equality Act 2010, especially

1           considering that UK Universities fall behind in  
2           representing students from working-class background."  
3           Then he carries on.  
4           Now, can we go to the first page {F4/696/1} to see  
5           Mr Doubleday's reply to the student in question.  
6       A. I do not have it.  
7       Q. Sorry, do you have it now?  
8       A. I do now, yes.  
9       Q. Very good. I am reading from the middle, just under  
10       "CAUTION: This email originated ...":  
11       "Thank you for your email."  
12       So this is from Jim Doubleday, who was, as you say,  
13       head of?  
14       A. Graduation services.  
15       Q. Graduation services at E&R.  
16       So this is dated 24 June 2021, so after this claim  
17       started, yes?  
18       A. Yes.  
19       Q. "Thank you for your email. I apologise for the delay -  
20       I have been out of the office for much of the time over  
21       the last two weeks.  
22       "Our appointment as robemaker does not oblige  
23       students to hire or buy their academic dress from us.  
24       We are terribly sorry but your university sets its own  
25       academic dress requirements. We cannot speak on behalf

1 of your university and have no power over these matters.  
2 We suggest you take it up with your university."

3 Then the student replies:

4 "Dear Jim,

5 "I hope you are well.

6 "Thank you for area reply.

7 "My University advised me to contact The provider.

8 "I will try to get in touch with them again.

9 "Thank you again and all the best."

10 Can we go back to the second page again, just to  
11 refresh our memory {F4/696/2}.

12 So, this student said, in relation to the statement  
13 from Ede & Ravenscroft in 2019 that their official  
14 supplier agreements do not mean an institution's  
15 students are obliged to do business with us, students  
16 have the right to choose:

17 "However, my University advised me the opposite."

18 So his university, the Arts University of  
19 Bournemouth, advised him that actually they could not do  
20 that, students did not have the right to choose from  
21 where they hire or buy their academic dress, which must  
22 mean that they were forced to buy from  
23 Ede & Ravenscroft.

24 We have seen what happens. This student, who  
25 actually did get a distinction, could not attend

1 the graduation, because he could not hire the robe.

2 So, the institution is taking the position that  
3 I have set out to you, which is that you are  
4 the exclusive provider of services, which include  
5 the hire or sale of academic dress and/or photography  
6 services, and that they have no choice but to go with  
7 Ede & Ravenscroft, yes?

8 That is the position that I have taken and put to  
9 you, and that is the position that is taken by the Arts  
10 University of Bournemouth?

11 A. It would appear so, yes.

12 Q. Yes, thank you.

13 Can we go to the Arts University of Bournemouth  
14 agreement. {F2/83}.

15 I am very grateful to Mr Armitage, because he has  
16 clarified for us on this side that there are various  
17 shades of grey in this agreement. Only the darker ones  
18 count. So, that lighter colour that you can see on  
19 the front page, you should just not pay any attention to  
20 that, that is not redacted. I will point out,  
21 Ms Middleton, when we get to a redaction. It is  
22 slightly complex and we are all having to learn about  
23 shades of grey, but there we are.

24 So this is an agreement, 2013, and I think you said  
25 that this agreement is still in force, did you not, in

1 schedule 1?

2 A. Yes.

3 Q. Yes. It is a long-running agreement. An agreement  
4 between the Arts University and Ede & Ravenscroft.

5 Could we go to the next page, please {F2/83/2}.

6 Could we go to the next page {F2/83/3}. Could you blow  
7 that up very slightly.

8 You can see there in the middle of the page,  
9 Ms Middleton, which is not redacted, although it has  
10 a grey background. 1.1.12 "Services", yes. Sorry, it  
11 is probably not up on your screen yet?

12 A. Yes, it has just come through.

13 Q. So 1.1.12 "Services".

14 A. Yes.

15 Q. Do not read it out, but read to yourself what it says.

16 A. Yes.

17 Q. I am very happy to take you to clause 3.5, but it is  
18 actually a merchantable quality point, Sales of Goods  
19 Act, so not terribly interesting. If you want me to go  
20 there -- would you like me to go there?

21 A. Yes, please.

22 Q. Okay. Could we go to the next page {F2/83/4}, and  
23 the next page {F2/83/5}. So you can see 3.5. If you  
24 just read that to yourself. I am certainly not relying  
25 on that.

1 A. Yes.

2 Q. Brilliant, thank you.

3 Can we go back to where we were, a couple of pages  
4 earlier {F2/83/3}. Could you stay on the same page,  
5 could we blow that up very slightly. Thank you so much.

6 You see 2, "Grant of Rights"?

7 A. Yes.

8 Q. Can you read to yourself clause 2.1.

9 (Pause)

10 Yes?

11 A. Yes.

12 Q. Brilliant.

13 So how does that sit with Mr Doubleday's statement  
14 that students can hire from anyone, they are not bound  
15 to hire from Ede & Ravenscroft?

16 A. Mr Doubleday's statement reflects how we interpret  
17 the position.

18 Q. Okay, thank you.

19 So, yesterday, in evidence to the tribunal, you  
20 said -- and I will take you to it -- that other people  
21 can supply students even when you have an official  
22 supply status. That is at transcript {Day3/192/13-15}.

23 So I asked you --

24 A. I do not see it yet.

25 Q. I am so sorry. Is it up now?

1 A. It is, yes.

2 Q. Perfect.

3 So at line 6, I ask:

4 "So how do you define 'exclusive provider of  
5 services'?

6 "Answer: In the context of the agreements that we  
7 looked at --

8 "Question: Indeed.

9 "Answer: -- for the contracts that we looked at, we  
10 are the only official supplier of those contracts.

11 "Question: Can anybody else supply?

12 "Answer: Other people can supply students and are  
13 free to supply students, but we are the universities'  
14 only supplier -- appointed supplier."

15 Yes?

16 A. Yes.

17 Q. Having looked at the three agreements that we looked at  
18 yesterday and today, and the Arts University of  
19 Bournemouth agreement, all of which provide that E&R are  
20 appointed as the exclusive provider of the service of  
21 the hire or sale of academic dress and photography  
22 services, how can that be right? How can any other  
23 people -- you say "other people" -- supply students when  
24 you have a sole, exclusive right to provide those  
25 services? How does that work?

- 1       A. Our agreement is with the institution, it is not with  
2       the students. It has always been our position that  
3       whilst the university has only appointed us as  
4       the official supplier, that does not mean that all  
5       the students would have to hire from us. We have  
6       publicly stated that on many occasions.
- 7       Q. Fine. So tell me this: if an institution with whom you  
8       had an official supplier agreement -- what we would call  
9       an exclusivity agreement, but let us not quibble, had  
10      "an agreement" -- and they allowed a competitor on site  
11      and allowed them to provide all their students with  
12      robes and gowns for their graduation, are you saying  
13      that you would just let that go; you would not say, "Oi,  
14      I am terribly sorry, we have an exclusive right to  
15      provide services to you, why are you letting someone  
16      else do it"?
- 17      A. I think the difference is that we would expect to have  
18      sole access to the university campus because we are  
19      the university's official supplier and so we would  
20      expect the university to recommend us, we would not  
21      expect them to instruct the students to come to us, and  
22      there are other means by which students could obtain  
23      that academic dress other than from the academic dress  
24      official supplier.
- 25      Q. Well, this is going to be a matter for submission,

1 I think, because we have been round this block a few  
2 times.

3 You said in evidence yesterday when we were  
4 discussing the headed notepaper -- you remember that --

5 A. Yes.

6 Q. -- the discussion we had about headed notepaper -- that  
7 you created -- by "you", I mean the company -- created.

8 Just so you are not taken by surprise, transcript  
9 {Day3/182:9-11}. It may be the next page, sorry.

10 Forgive me one moment.

11 Is that page 182? Sorry, I do apologise. (Pause)

12 You agree making that comment, do you, that you  
13 created these documents?

14 A. After negotiation with --

15 Q. Absolutely, yes. I am not denying that. I am not  
16 questioning you about that; it is a question of  
17 creation.

18 So you created these documents. That is absolutely  
19 fine. So I assume that there is a template in your  
20 offices, because we have seen four agreements now that  
21 are very largely similar. You agree that they operate  
22 in a broadly similar fashion. Yes, there are  
23 differences, but there are very large similarities, so  
24 it would make eminent sense and be very efficient for  
25 there to be a template or a pro forma agreement sitting

1 on your servers at the office. So, is there one?

2 A. Yes, there is a template agreement with permutations.

3 Q. Perfect.

4 I do not think that we have seen that in disclosure.  
5 Those behind Mr Patton will have heard that answer and  
6 we would very much -- this is not a matter for you,  
7 Ms Middleton, but we will be asking for disclosure of  
8 that template.

9 Would you call it a template or a pro forma, or how  
10 would you describe it?

11 A. Template.

12 Q. No, that is fine. It is not a trick question, I just  
13 wanted to know how you called it. Thank you very much.  
14 That is useful.

15 Now, you said one of the means by which E&R secured  
16 OSAs is via a published public tender, and that is at  
17 paragraph 48 of your first witness statement {D4/2/16}.  
18 It probably has not popped up, but it does not matter  
19 because you have got it in hard copy, have you not? You  
20 have it in stereo.

21 So 48:

22 "During the claim period, one of the means by which  
23 E&R secured OSAs is via a published public tender."

24 Yes?

25 A. Yes.

1 Q. Great.

2 Then you helpfully give a breakdown of the various  
3 appointment methods, including tendering, for the year  
4 2018/2019, and that is over the page at paragraph 54  
5 {D4/2/17}, if we could blow the bottom up a bit.

6 Now, the numbers on the right are redacted, so we  
7 are not going mention those, but you will have them  
8 non-redacted in your hard copy.

9 A. Yes.

10 Q. So let us try and not mention them.

11 Let us look at the screen.

12 Those figures have been redacted, but you would  
13 agree, would you not, that, without going to  
14 the numbers, when you look at published public tender,  
15 which is what you were talking about at paragraph 48  
16 which we just looked at, that figure is less than  
17 a third of the agreements that came about following  
18 a published tender?

19 A. Sorry, could you just ...

20 Q. Sorry, yes.

21 That figure, which we cannot refer to --

22 A. For "Published Public tender"?

23 Q. Exactly, the one on the right, at the top.

24 A. Yes.

25 Q. Under "Number of institutions".

1 A. Is a third of?

2 Q. Yes.

3 A. What?

4 Q. Is a third of the total -- if you added all those three  
5 numbers up -- I am sorry, I can give you a calculator,  
6 if you like -- the total comes to 107.

7 A. Yes.

8 Q. Thank you.

9 I am intrigued that you just mention 2018/2019. If  
10 we look at the situation now of the 132 universities  
11 that are presently supplied by you, only 22 contracts  
12 were awarded after formal tender.

13 Now, to make that good, I will take you to  
14 Dr Maher's first expert report at {E1/1/51}. Do you  
15 have that?

16 A. Sorry, which paragraph?

17 Q. 212. So, this is Dr Maher's first expert report, and  
18 she says:

19 "Second, it is not the case ..."

20 This is talking under the title of:

21 "The procurement of graduation-ceremony services  
22 does not meet the criteria of a bidding market."

23 Then she says at 212:

24 "Second, it is not the case that tenders are used as  
25 a matter of course by universities in order to award

1 official supplier contracts. While tendering has become  
2 more prevalent recently, I find that of the 174  
3 institutions in the relevant markets 135 did not make  
4 use of a tender for their current supply and only  
5 39 institutions are known to have chosen their current  
6 supplier by conducting a formal tender process."

7 Then this is the sentence on which I am relying:

8 "Of the 132 universities currently supplied by  
9 the E&R Undertaking, the E&R Undertaking has indicated  
10 that at least 38 of the most recent contracts were  
11 awarded on the basis of bilateral negotiation;  
12 35 universities were supplied on the basis of ad hoc ...  
13 and only 22 ... were awarded after a formal tender."

14 Do you see that?

15 A. I see that that is what it says, yes.

16 Q. Have you any reason to dispute that?

17 A. The figures, without looking at how she has categorised  
18 the relevant -- the institution, the number of  
19 institutions and the markets, I cannot really comment.  
20 They are not figures that I recognise, but I have not --  
21 without the analysis, her analysis, I cannot comment on  
22 that.

23 Q. That is fair, that is fair, but you would agree with me  
24 that if her figures were wrong -- this is her first  
25 report -- they would have been targeted and examined and

1 criticized by Dr Niels, your expert, in his responsive  
2 report to Dr Maher's report, yes, if the figures were  
3 wrong? You would expect that?

4 A. I would have expected it, yes.

5 Q. Yes, okay. Well, we will leave it there. If your  
6 counsel wants to take you to anything in Dr Niels' that  
7 goes to those figures, he can; but you would agree with  
8 me on the basis of those figures, which you quite  
9 correctly say you cannot comment on because you have not  
10 seen the underlying data, 22 out of 132 comes  
11 mathematically to 16%? Will you take that from me?

12 A. Yes, I will take that from you.

13 Q. Thank you.

14 Then you appear to "double down", if I can say that,  
15 on your position on tendering, asserting at  
16 paragraph 118 in your witness statement at {D4/2/34} --  
17 and again, Ms Middleton, the first sentence, which I am  
18 not going to take you to, is redacted, so we are not  
19 going to go there:

20 "For many years ..."

21 This is about another individual. Let us go to  
22 the third sentence starting "Most ..."; do you have  
23 that?

24 A. Yes.

25 Q. "Most institutions run a tender or other competitive

1 process well in advance of graduation season."

2 Yes?

3 A. Yes.

4 Q. Now, you produce no underlying data to support that  
5 assertion, do you?

6 A. Well, I think, going back to the table in paragraph 54,  
7 all of those processes are competitive processes. It is  
8 not correct to assume that an institution has not tested  
9 the market, whether -- whichever method it chooses to  
10 approach its procurement basis, and we know that  
11 the universities do test the market, from  
12 the conversations that we have and the processes that  
13 take place.

14 Q. Indeed, but when we go back to paragraph 48, you say:  
15 {D4/2/16}

16 "During the claim period, one of the means by which  
17 E&R secured OSAs is via a published public tender."

18 Then we went to the table at 54: {D4/2/17}

19 "Published Public tender. Tender published on  
20 procurement platform. Outcome: contract for specified  
21 term and scope."

22 Yes? Then you refer to requests for proposals and  
23 bilateral negotiations, but 48 is dealing with published  
24 public tenders and that is what we were exploring.

25 Then I took you to paragraph ...

1 A. 118.

2 Q. Yes, over the page, exactly, 118 {D4/2/34}, and there  
3 you are talking about -- just to clarify the position  
4 for me, so when you say:

5 "Most institutions run a tender or other competitive  
6 process well in advance ..."

7 So, "run a tender". "A tender", I assume, and have  
8 assumed, that refers to the first item that you were  
9 discussing in 48 and 54; in other words a published  
10 public tender?

11 A. Yes, correct.

12 Q. Good.

13 Then "other competitive process", would that include  
14 bilaterals?

15 A. Yes.

16 Q. So just you and it, you and the university?

17 A. Well, it is still -- because the institution, whilst we  
18 might be negotiating with the institution, they still  
19 market test. They have a responsibility to get the best  
20 options for their students and for themselves and they  
21 still refer to other competitors.

22 There is also the LUPC framework, which is  
23 the London Universities Purchasing Consortium framework,  
24 which was implemented at the end of -- it was tendered  
25 first in 2017 and published in 2018 and we are not part

1 of the framework, but several other gown hire suppliers  
2 are, and within that framework you have access to basic  
3 pricing information and other terms that they would  
4 offer, and that is publicly available. All of  
5 the purchasing consortium in the United Kingdom,  
6 universities purchasing consortium, have access to and  
7 have adopted the LUPC framework, so there is ready  
8 information about what other companies offer.

9 Q. Good, thank you.

10 Can you go back to MM1, please, and I know you  
11 cannot comment on this; your counsel will take you to  
12 anything that he wants to in terms of what Dr Niels may  
13 or may not have said. So that is 212, {E1/1/51}.

14 So 212. I will put this to you and you can say what  
15 you will:

16 "Second, it is not the case that tenders are used as  
17 a matter of course by universities ... While tendering  
18 has become more prevalent ... I find that of the 174 ...  
19 135 did not make use of a tender for their current  
20 supply and only 39 institutions are known to have chosen  
21 their current supplier by conducting a formal tender  
22 process."

23 I note that you say that obviously there are  
24 different processes, but formal tender processes, only  
25 39:

1           "Of the 132 ... E&R ... has indicated that 38 of the  
2 most recent contracts were awarded on the basis of  
3 bilateral[s] ... 35 ... on the basis of ad hoc ...  
4 and... 22 ... were awarded after a formal tender."

5           So if you do the maths on that, you have 38 plus 35  
6 plus 22 equals you have some 95 institutions, but of  
7 that, only 22 were awarded after a formal tender.

8           I think we have agreed you are not going to comment  
9 any more on that. That is the position, I have put it  
10 to you and we can move on; yes?

11       A. No, I cannot comment on that.

12       Q. No, exactly.

13       A. What I can say is the analysis that I have done is in  
14 paragraph 54 and there would not be much difference  
15 between the years '18/'19 and the following years  
16 because of COVID.

17       Q. What about previous years? What about '16/'17?

18       A. I do not have those -- I cannot -- I do not have those  
19 figures --

20       Q. Because?

21       A. -- now with me.

22       Q. No, no, I understand that, but you keep those figures?

23       A. Yes, we would have them --

24       Q. Right.

25       A. -- and we provided them to Dr Niels.

1 Q. Right, but you did not put them in your witness  
2 statement?

3 A. No, because we were referring to the year '18/'19, which  
4 was the year that the claim form referenced.

5 Q. But the claim runs back to 2016 and you knew that,  
6 because you mentioned -- I took you to your section  
7 dealing with OSAs in different periods and you mentioned  
8 the claim period. You mentioned '18/'19, but you also  
9 mentioned the claim period.

10 So did you take a deliberate decision not to  
11 include '16/'17? You have the data.

12 A. No, I think the picture would overall be the same.

13 Q. You think the picture would overall be the same?

14 A. Yes.

15 Q. Very good; all right.

16 I just want to hop back to your evidence about --  
17 sorry, I am going to have to move between there and  
18 there -- Ede & Ravenscroft not monitoring university  
19 websites in relation to academic dress and photography  
20 and ceremonies. Your evidence was you do not monitor  
21 them?

22 A. No, I do not.

23 Q. Can I take you to {F3/358}, please, and can we go -- is  
24 that the only page on this? Yes, essentially, it is.

25 So this is from Rick Macleod? Who is Rick Macleod?

1 A. He is a client manager.

2 Q. He is a client manager?

3 A. He is an institution -- he liaises with the institution.

4 Q. Institution or institutions?

5 A. Institutions. Academic institutions.

6 Q. So he is the point person for the universities, so they

7 would contact him and he would contact them?

8 A. Within a certain region. He is a liaison point for

9 ceremony operations, largely.

10 Q. So we have an email from Mr Macleod, so the point person

11 for institutions at Ede & Ravenscroft, on 5 April 2017:

12 "Afternoon [X]

13 "I hope all is good with you?

14 "I have been asked to forward the attached letter to

15 you, regarding the Australian company who have now taken

16 it upon themselves to enter the market for graduation

17 attire.

18 "I don't know how much business they hope to

19 generate by this incursion, however hopefully this

20 letter will make our position clear.

21 "Feel free to forward this to any interested parties

22 within the university, and please get back to me if you

23 wish to discuss this any further."

24 Then the person to whom this was sent -- and you can

25 see the academic institution, because it is GCU. That

1 is?

2 A. Glasgow Caledonian University.

3 Q. Thank you:

4 "Dear Rick.

5 "Many thanks for sending this over.

6 "We have updated our website to make it clear that  
7 Ede & Ravenscroft are the only official supplier of  
8 gowns for GCU. Hopefully that will deter anyone hiring  
9 from Churchill.

10 "Hope you have a good weekend!"

11 Then Rick says:

12 "No problem ...

13 "This offering is a little problematic, because it  
14 appears that they are now not only trying to sell  
15 students black gowns with no hoods (because they have  
16 neither the stock nor the knowledge of how to make the  
17 stock) which means that we may have a number of students  
18 rocking up to ceremonies this summer with weird-looking  
19 black gowns and no hoods, and there is every chance that  
20 they will not realise that they don't have the correct  
21 outfit!

22 "We shall wait and see .....

23 "Regards,

24 "Rick."

25 So there we have an email communication pursuant to

1           which there is reference further to input from  
2           Mr Macleod, the point person at E&R, that essentially  
3           has led to Glasgow Caledonian University updating its  
4           website. So there is a clear communication, link,  
5           between Ede & Ravenscroft and the institutions which  
6           lead to material being placed onto the institution's  
7           website; that is correct, is it not?

8           A. I think the background to this is the email that  
9           Churchill sent in March 2017, which had caused some  
10          universities to contact us and they were concerned for  
11          a number of reasons that ranged from incorrect dress or  
12          incorrect dates on the website.

13                 I believe at the time the Churchill websites did  
14          not -- made it look like they were -- or did not say  
15          they were not officially representing the university,  
16          and so the universities were concerned following  
17          the email where it was said that Churchill Gowns would  
18          be contacting their students; they were concerned that  
19          the students would purchase from the Churchill website  
20          and the dress would be incomplete or incorrect, and  
21          following that email, we sent a -- following the email  
22          that Churchill sent, we also had some queries about  
23          the position on copyright that Churchill had mentioned  
24          in that email, and as a result of that, we sent  
25          a letter. We gained some advice from lawyers and sent

1 a letter, just to put our position on the copyright  
2 matter and nothing else, and that is the letter that  
3 Mr Macleod is referring to in his first email.

4 So the institution's response is a response to  
5 the letter that had been -- or the email that had been  
6 sent from Churchill and the concern they had about the  
7 impact of that on the ceremonies that were coming up.

8 Q. Perfect, Ms Middleton, you must be reading my mind  
9 because I am going to be coming to that letter in just  
10 a moment.

11 You deal with B2C marketing in your second witness  
12 statement {D4/5/1}.

13 Sorry, has that popped up?

14 A. Not yet.

15 Q. Can we go to paragraph 13, please, which is at {D4/5/3}.

16 I will just -- oh, you have it in hard copy. There is  
17 one figure that has been redacted on the screen, maybe  
18 not on your --

19 A. No, yes.

20 Q. It is or it is not?

21 A. No, I can see on the screen.

22 Q. Good, but it is not in your hard copy?

23 A. No, it is on my hard copy.

24 Q. Oh good, excellent, perfect, joined-up.

25 So:

1           "Digital B2C marketing and promotions are overseen  
2           by our Group Ecommerce and Digital Manager, Alex  
3           Bohea ..."

4           A. Bohea.

5           Q. "... working with business unit heads (the cost ...)."

6           We are not going to mention that:

7           "He works full time for the E&R group and I would  
8           estimate that since he has joined 70-80% of his time is  
9           spent in relation to graduation services ..."

10          He joined at the end of July 2019?

11         A. Yes, he did.

12         Q. Can we go to his social media planners, which you  
13         exhibit at {F3/2662/2}.

14                 So you can see at the top "06/07/2020" and then 07,  
15                 08, 09. So they start on 6 July. There is nothing  
16                 before that?

17         A. There could have been something.

18         Q. Well, if he started at the beginning of July?

19         A. Oh, I am sorry, yes, no.

20         Q. No, there would not have been. Good.

21         A. He started in July 2019.

22         Q. Oh, I see, he started in 2019.

23         A. Yes.

24         Q. Fair enough, but all we have here is 2020, so maybe he  
25         took a year to get in.

1 A. I think previously he had not put it into a plan --

2 Q. Okay.

3 A. -- in this format.

4 Q. The only evidence we have before us that the tribunal

5 has is these entries on his social media planner

6 starting on 6 July 2020.

7 You also exhibit variation social media screenshots.

8 Can we go to 24, please {F3/2662/24}, in the same

9 document. Thank you.

10 Could you turn to 28 {F3/2662/28}. Can you see,

11 halfway down the right-hand side there is a rating

12 from ...

13 A. It is not very clear.

14 Q. It is not very clear, is it.

15 A. I cannot actually ... Trustpilot?

16 Q. Yes, it is very difficult to see.

17 If you want to take it from me, but I do not really

18 want to -- well, it is -- I have seen the original, it

19 is from Trustpilot, and all I was going to say is you

20 can see it has two stars there, can you not?

21 A. Yes, I can see --

22 Q. You see "People", two stars?

23 A. Yes, two dark stars.

24 Q. Two stars. Can we go to the next page, please

25 {F3/2662/29}. Blow it up a bit. So you can see the two

1 stars again there?

2 A. It has not come through. I am sorry.

3 Q. Oh, I am so sorry.

4 A. Yes, it has come through.

5 Q. Two stars?

6 A. Yes.

7 Q. This is in relation to the post that is saying:

8 "Ede & Ravenscroft Graduation Services.

9 "You can now book your gown ..."

10 So this is a review of that.

11 If we go to the next page {F3/2662/30}, you can see

12 the two stars.

13 Has it come up, sorry? Do you see that?

14 A. Yes, I am not sure whether it is a Trustpilot review,

15 though, is it?

16 Q. Okay, well, I was told it was Trustpilot and I have seen

17 the original and I seem to recall it was Trustpilot.

18 Anyway, as it is not coming up well, we can leave that

19 there.

20 Insofar as it is a review, whoever it is from, two

21 stars out of five, it is not terribly impressive, is it?

22 A. I think it is likes, actually, is it not? I think it is

23 so many likes? I do not know what the --

24 Q. Okay, fine. Fair enough, if you do not know, you do not

25 know.

1 A. Sorry.

2 Q. No, do not apologise. It is much better to say that you  
3 do not know something than to say something else.

4 Now, Ms Middleton, looking at the time, I am going  
5 to put to you some statements that you may or may not  
6 agree with; okay? You will not necessarily enjoy  
7 hearing them, but I am going to put them to you.

8 Ede & Ravenscroft did everything they could to  
9 jeopardise Churchill's entry into the market, did they  
10 not?

11 A. No, they did not.

12 Q. Right.

13 Could we go to {F4/541}, please. Just let me know  
14 when you ...

15 A. Yes, I have it.

16 Q. Perfect. Could we blow it up a wee bit. Thank you so  
17 much.

18 We will go to the bottom. So this is from you to  
19 client managers and then a bunch of other people, all in  
20 Ede & Ravenscroft. Apropos Churchill Gowns:

21 "Please find attached a letter that can be forwarded  
22 to your university contacts ..."

23 Just pausing there, is this the letter that you were  
24 referring to a moment ago in your response?

25 A. Yes, it is the letter that I provide.

1 Q. Thank you:

2 "We have sought legal advice on what we can and  
3 can't say and we need to be careful that we are not  
4 offering formal advice. Our lawyers have reflected this  
5 in the letter. We are conscious the letter could come  
6 across as very formal and we suggest to balance this  
7 that you make your cover email more aligned to  
8 the client relationship.

9 "In various correspondence we can see that Churchill  
10 continues to push that

11 "There are no IP rights ...

12 "They will be selling academic dress to students.

13 "It's counter to competition law to prevent  
14 Churchill ..."

15 Blah, blah, blah.

16 Then can we drop down to the next page {F4/541/2}:

17 "The letter addresses the IP issues, but with  
18 regards to the CMA's 2015 letter on school uniforms,  
19 the lawyers suggest that if the universities raise  
20 a concern about this, we can tell them not to worry and  
21 ignore it. If pressed further, we could tell  
22 the universities verbally that

23 "'the CMA has not investigated or issued any  
24 concerns or decisions in relation to the "graduation  
25 services market". We understand that the CMA might have

1 issued guidance about the school uniform market, but  
2 this is a different market to the "graduation services  
3 market" and so the guidance does not apply'."

4 "I appreciate this is a complex topic, so if you  
5 have any queries or concerns about the letter, please  
6 get in contact with me, or one of the other directors.

7 "Many thanks,

8 "[You]."

9 Could we go back to the first page, please.

10 {F4/541/1}.

11 So Rick -- and we have seen Rick before, have we  
12 not? Rick is the point person for the institutions?

13 A. In Scotland.

14 Q. In Scotland. Good.

15 Who is the points person in England?

16 A. There are five other client managers.

17 Q. Okay, but Rick, Mr Macleod, is in charge of Scotland.

18 He says:

19 "Thanks for this Emma.

20 "Is it acceptable to only send this to clients who  
21 have specifically requested a formal response, or would  
22 you like this sent to everybody regardless?

23 "Many thanks.

24 "Rick."

25 Your response is:

1           "Hi Rick

2           "We think this should go to all contacts."

3           So your instruction -- I mean, you are his boss,  
4           I assume -- is that he should send the letter that is  
5           drafted that is pushing back and is a response to  
6           Mr Adkins' initial letter saying, "Hi, we are  
7           Churchill"; you are coordinating the push-back on behalf  
8           of the institutions and you are saying to Rick Macleod,  
9           the point person for Scotland, "Send it to everybody, it  
10          does not matter that they have not asked, just send it  
11          to everybody"; yes?

12          A. No, I am not. Firstly, we were not coordinating it on  
13          behalf of the institutions. The letter that went out  
14          clarified our understanding and position on copyright,  
15          and the context of the email is that there had been  
16          conversations going on as well as emails and Rick had  
17          mentioned that some people had contacted him and raised  
18          concern but not necessarily asked for a formal response.  
19          My response to him saying it should go to all contacts  
20          is perhaps badly worded, but meant to all people who had  
21          made contact with him, and in fact Rick Macleod,  
22          I think, sent it to maybe six institutions where we do  
23          not have an email trail of them contacting us first, so  
24          it certainly was not to all contacts in Scotland, which  
25          was his area.

1 Q. Okay. All right.

2 This letter goes out to all contacts who had either  
3 formally or informally contacted Ede & Ravenscroft, yes?  
4 That is your evidence?

5 A. Yes.

6 Q. That was setting out a letter that should be sent out by  
7 the institution back to Churchill, tweaked in  
8 the covering letter, or covering --

9 A. No. No, I am sorry, I do not think so. This letter --  
10 this email just refers to the letter that we sent  
11 clarifying our understanding about copyright. It was  
12 our letter to the institutions.

13 Q. Well, can we just drop down a bit on this page. Thank  
14 you.

15 So we saw:

16 "Please find attached a letter that can be forwarded  
17 to your university contacts who have asked us to  
18 comment ..."

19 So:

20 "We have sought legal advice on what we can and  
21 can't say ... we are not offering formal advice."

22 So this is sent out to all your university contacts  
23 formally or informally in contact with you:

24 "We are conscious the letter could come across as  
25 very formal and we suggest to balance this that you make

1 your cover email more aligned ..."

2 So yes, you are right, it is your client managers  
3 tweaking their covering email to align to your client  
4 relationship.

5 Then, essentially:

6 "In various correspondence we can see that Churchill  
7 continues to push that ..."

8 We have seen that.

9 Then we can go to the next page, please {F4/541/2}:

10 "The letter addresses ... IP ... but with regards to  
11 the CMA's 2015 letter on school uniforms, the lawyers  
12 suggest that if the universities raise a concern about  
13 this, we can tell them not to worry and ignore it."

14 So that is when you are telling them: if the  
15 universities raise a concern about this, E&R's client  
16 managers can write back to the universities and say, "Do  
17 not worry about it, if pressed further, we could tell  
18 the universities verbally".

19 So this is the E&R approach to be taken to  
20 the universities, yes?

21 A. Yes, if the institutions -- so Churchill Gowns had sent  
22 some information about the CMA's 2015 letter on school  
23 uniforms and some institutions had forwarded that on  
24 to us as a concern and asked for comment, and this was  
25 our response in case they asked again.

1 Q. Thank you.

2 E&R viewed Churchill as "typical Australians" and  
3 "hardnosed and arrogant" and a "thorn in [their] side".  
4 Now, I am going to take you to the document in which  
5 that was said. {F4/574/1}, please.

6 So, this is an email from Michael Middleton, your  
7 father, on 24 March 2017. That is about the time when  
8 Oliver Adkins wrote to all the universities and it is  
9 about the time when the letter that we have just looked  
10 at, or the email dealing with that letter -- it is about  
11 this period, March/April 2017, yes?

12 A. Yes.

13 Q. So this is your father:

14 "I am trying to get a financial report on  
15 Churchill Gowns Australia.

16 "They seem to be typical Australians and hardnosed  
17 and arrogant.

18 "The company in Australia was only formed in  
19 October 2015 so my guess not strong but a thorn in our  
20 side and the universities ..."

21 So, it is interesting: "a thorn in our side and  
22 the universities":

23 "... because they are wanting to sell direct to  
24 the students, and if then passed down to the following  
25 year hires and [X] to the universities will be affected.

1            "I will let you know any info that I get, but [it]  
2            seems that they are web orientated and make themselves  
3            look big, when that may not be the situation."

4            Is that the end of the email? It is, thank you.

5            So you were copied in to this email, by the look of  
6            it, because we can see from Jo Sunderland -- who is she?

7            A. She is a client manager for another region.

8            Q. In England this time?

9            A. In England, yes.

10          Q. Okay, and all the other people named, so you have got  
11          Jim Doubleday, John Cormack?

12          A. Yes, so actually, it will not be Jim Doubleday, that  
13          would have been Tony Thornton, but because Jim Doubleday  
14          took over Tony Thornton's email address, sometimes  
15          Tony Thornton's email appears as Jim Doubleday.

16          Q. Right.

17          A. I am sorry.

18          Q. No, no, whatever.

19          So when we see Tony Thornton's emails, sometimes --  
20          and I am not saying anything bad about this, this sort  
21          of thing happens, but sometimes the actual author of  
22          that would have been Jim Doubleday rather than Tony  
23          Thornton?

24          A. No. It will always be Tony Thornton who will have been  
25          the author. It is just that when Tony Thornton left,

1 Jim Doubleday took over his email address, so all of his  
2 emails were directed, and so when we have been doing  
3 the searches, sometimes Tony's email is now being  
4 replaced with Jim's email.

5 Q. Right, which has a practical effect of what?

6 A. Nothing, other than I was just clarifying that it was  
7 not actually Jim Doubleday; it would have been a Tony  
8 Thornton email address on this email.

9 Q. Right, so, just in terms of time, I cannot recall and we  
10 do not need to go into Tony Thornton, but when did he  
11 leave?

12 A. Tony -- Jim Doubleday joined us in 2018, autumn 2018,  
13 and Tony Thornton was effectively out of the business  
14 from --

15 Q. I see.

16 A. -- (inaudible).

17 Q. So that is why this does not actually make sense,  
18 because in 2018 Jim Doubleday was not actually with you?

19 A. Exactly.

20 Q. But mechanically, because Jim Doubleday took over  
21 Tony Thornton, it has just been overwritten?

22 A. Exactly.

23 Q. Well, that is useful to know. I am not going to be  
24 taking that any further; I do not think it is relevant.

25 In any event, we have the statement, you are copied

1 in. Jo Sunderland, we have heard, is a manager for one  
2 of the areas of England; various other people:

3 "Hi Michael ..."

4 That is to your father, I assume?

5 A. Yes.

6 Q. "I can't believe that they are stating that they will be  
7 bidding for the tenders when just a few months ago they  
8 were sending emails threatening to take clients to court  
9 for not complying to the FOI act! I will be reminding  
10 my clients of this.

11 "Thank you."

12 So we have this push-back from the chairman of  
13 Ede & Ravenscroft, your father, "typical Australians",  
14 "hardnosed and arrogant" and "a thorn in our side",  
15 whose entry into the market would impact on X, on hires  
16 and X, which the tribunal and you can read but I cannot  
17 speak.

18 We know from your father's evidence that he later  
19 employed subterfuge -- and I use that word advisedly --  
20 to order gowns from Churchill. Can we go to  
21 paragraph 67 of your father's witness statement, please  
22 {D4/1/20}.

23 Has that come up? Actually, you may have it in hard  
24 copy.

25 A. It has come up on the screen.

1 Q. You are now there:  
2 "I asked a friend to email Ruth Nicholls of  
3 the Claimants in late 2020 to order some gowns ..."  
4 Were you in court when Mr Muff was being  
5 cross-examined?  
6 A. No.  
7 Q. Okay. Were you in court at all during any of  
8 the cross-examination?  
9 A. I think for some, I think.  
10 Q. Okay. Do you recall reference to this and the Alison  
11 set of emails?  
12 A. No.  
13 Q. Okay, fine. Well, if you cannot comment on that, there  
14 is not any point in taking that particular point any  
15 further.  
16 Your brother saw them as a threat, did he not, and  
17 beating Ede & Ravenscroft to market with new  
18 innovations. Can we go to {F4/648/1}. We have seen  
19 this document before and you have given evidence on it  
20 but I am just putting this to you. Pages {F4/648/3} and  
21 {F/648/4}, please, so 3 and then 4.  
22 This is under "Threats" and the grey is redacted, so  
23 can you just read that to yourself under "Threats",  
24 especially the second item, and then when you have  
25 finished that little box -- have you finished?

- 1 A. Yes.
- 2 Q. Thank you.
- 3 Can we go over the page {F4/648/4}, please. Thank
- 4 you.
- 5 The four items at the top, particularly the first.
- 6 Yes?
- 7 A. Yes. I do not think he was meaning -- this is 2018,
- 8 I think, and the latter reference was a reference to
- 9 Graduation Attire, and the first reference, I think it
- 10 was to other overseas companies, actually from India and
- 11 South Asia, who were looking to come into the market.
- 12 In 2018, we would not have considered Churchill to be an
- 13 overseas.
- 14 Q. Okay, and have those overseas companies come in?
- 15 A. They are definitely doing some direct sales as well, as
- 16 far as I know.
- 17 Q. In 2018?
- 18 A. Were -- sorry, I am not quite sure what the question is?
- 19 Q. In 2018, were they in the market? Were they present on
- 20 the market?
- 21 A. Were who?
- 22 Q. The people you have just mentioned that you say are
- 23 the overseas competitors.
- 24 A. Yes, I think that is what this paper was --
- 25 Q. They were in the market, were they?

1 A. They were selling direct to students from overseas.

2 Q. Okay, thank you.

3 E&R is a family-run business, is it not?

4 A. It is, yes.

5 Q. It is run on those lines. That is not a criticism, it  
6 is run on those lines. I will take you to it. It is  
7 Mr Telfer's witness statement at paragraph 10 {D3/4/3}.  
8 It is just a fact.

9 So paragraph 10. This is Mr Telfer. Mr Telfer is?

10 A. Group Financial Controller.

11 Q. Thank you:

12 "I have been asked by the Defendants' solicitors to  
13 give evidence on my role ... Before summarising my  
14 approach below, I should explain that the process is  
15 perhaps more informal than is the case in other  
16 businesses. E&R is a family business and is run as  
17 such."

18 Would you agree with that?

19 A. I agree that we are a family business and that that  
20 sometimes runs differently. Mr Telfer will have to  
21 explain exactly what he means by that statement.

22 Q. I am sure he does not mean it in a critical sense, but  
23 I will take it that it is a family business.

24 At least four members we know are engaged in  
25 the business, your father, your mother, your brother and

1           yourself?

2           A. No, that is not correct.

3           Q. Okay, your mother is not?

4           A. No, she is not involved.

5           Q. Okay, but she is a director?

6           A. Non-executive.

7           Q. She is a non-executive director. So she is involved as  
8           a non-executive director, yes?

9           A. Practically, she does not get very involved at all.

10          Q. Right, well, I am not going to tread on -- because  
11          non-exec directors have certain responsibilities, but we  
12          do not need to go there. She has a link to  
13          the business.

14                 So this claim, Ms Middleton, is personal, is it not,  
15          to the family? That is why there is a concern and that  
16          is why Ede & Ravenscroft are acting in the way that they  
17          have, abusing their dominant position and excluding  
18          Churchill from the market?

19          A. No. The family does own Ede & Ravenscroft, but the  
20          family has a number of interests, and we try to run  
21          the business in a professional way. It is not just  
22          family members in the business. We have a strong  
23          management team, we have a strong board, and we run  
24          the business in the most efficient way we can, with  
25          external expertise when we need it.

1 MR RANDOLPH: Ms Middleton, thank you very much. Please  
2 stay there, because I think your counsel may wish to  
3 re-examine, but equally, I have looked at the time.

4 THE CHAIRMAN: Yes, we will take a break in a moment.

5 Before we do, I just have one follow-up question.

6 MR RANDOLPH: I am sorry.

7 Questions by THE TRIBUNAL

8 THE CHAIRMAN: Can we go back to the Arts University of  
9 Bournemouth, so it is {F4/696}, if you can be shown that  
10 on screen, just to remind you what this was about.

11 MR RANDOLPH: {F2/83}, I think. Arts University  
12 Bournemouth? No, I am so sorry, I do apologise.

13 THE CHAIRMAN: {F4/696} is the email exchange between  
14 a student and Jim Doubleday in relation to the Arts  
15 University of Bournemouth. Is that up?

16 A. Yes.

17 THE CHAIRMAN: Do you remember that exchange? You were  
18 asked about it earlier this morning.

19 A. Yes, I remember being asked about it this morning.

20 THE CHAIRMAN: The upshot was that, well, you can see,  
21 I think, on that page, Jim Doubleday's response to  
22 the student was to say:

23 "Our appointment as robemaker does not oblige  
24 students to hire or buy their academic dress from us.  
25 We are terribly sorry but your university sets its own

1 academic dress requirements."

2 Then suggests that he take it up with  
3 the university.

4 So my question was just this: was there any  
5 follow-up between you and the university, having  
6 received this exchange?

7 A. Yes, I believe Mr Doubleday spoke to his contact and  
8 made clear to them that we were not expecting -- at  
9 the university, and made it clear to them that  
10 the student had contacted us and the response that he  
11 was giving and that we did not know what they had said  
12 but that our position was as Jim had stated.

13 THE CHAIRMAN: Right.

14 Any questions out of that perhaps we will leave  
15 until after of the break.

16 MR RANDOLPH: The only question is that I do not think that  
17 is in the disclosure, but we will take that up away from  
18 that.

19 Sir, the only point I would make about the break is  
20 that I understand, as a matter of technicality, that  
21 Opus wish to set up a screen somewhere, so maybe  
22 five minutes might not be -- could we possibly go for  
23 ten?

24 THE CHAIRMAN: Will that be sufficient for Opus?

25 THE OPUS TECHNICIAN: We can do it in five. It will be

1 quick.

2 THE CHAIRMAN: Well, we will take five or six minutes'

3 break. If it is not finished, let us know.

4 (11.58 am)

5 (A short break)

6 (12.11 pm)

7 MR PATTON: My Lord, there is no re-examination.

8 THE CHAIRMAN: There are just a couple more questions from  
9 the tribunal.

10 MR LOMAS: I have one question.

11 We spent some time on the schedule of extracts from  
12 your contractual arrangements, and at line 12, there was  
13 a term. Is it possible to pull that up?

14 MR RANDOLPH: It is {G6/32}, sir.

15 MR LOMAS: We spent some time on line 12 and the "Official  
16 Robemaker and Supplier of Academic Dress" designation.  
17 Can we park that and look at the second element of that,  
18 so the position of being an "exclusive provider of  
19 the Services".

20 I think you were taken in cross-examination  
21 essentially through that door to line 26, which is on  
22 page 3 {G6/32/3}, which includes the requirement,  
23 the exclusive right under those services, to:

24 "... provide Academic Dress for hire by Students for  
25 each Ceremony or for purchase ..."

1 Et cetera, and we talked about that.

2 What I was slightly unclear about, and I am  
3 certainly not asking you to interpret any contract from  
4 a legal perspective, but commercially, from the point of  
5 view of Ede & Ravenscroft, what value do you think  
6 the business gets out of having that right that is  
7 enshrined in line 26? How does it support your  
8 business? What value do you get from it?

9 A. As being the official supplier --

10 MR LOMAS: No.

11 A. -- do you mean? No.

12 MR LOMAS: That is my point. Not on the first part. You  
13 answered a number of questions from the perspective of  
14 being the official supplier.

15 If you go back to line 12 {G6/32/1}, it has two  
16 parts. It has an official supplier, and the exclusive  
17 right to provide the services. One of those services is  
18 what is in line 26. So, forget the official supplier.  
19 Line B: you have the exclusive right to provide  
20 the services, which includes the right in line 26.

21 What I am trying to understand is what commercial  
22 benefit does Ede & Ravenscroft think it gets from having  
23 that contractual requirement which is in your standard  
24 pro forma template?

25 A. I am sorry, I am not quite sure I am understanding your

1 question.

2 MR LOMAS: Let me try and rephrase it.

3 The contractual structure, which we have been taken  
4 to and which seems to be embedded in your template,  
5 gives you the exclusive right to provide academic dress  
6 for hire or for purchase as set out in the wording in  
7 line 26. That is the position.

8 What I am trying to get at is what commercial  
9 benefits do you think Ede & Ravenscroft gets from that  
10 exclusive right?

11 A. I think that it allows us to have an expected level of  
12 revenue from it, because the institutions will point  
13 the students in our direction, and that then allows us  
14 to justify the investments we have to make, because our  
15 responsibility to the institution under the contract is  
16 that we will make sure that we have enough  
17 academic dress of the right type and size for every  
18 potential graduate that may be graduating in a year, and  
19 the number of qualifiers is not the number of people who  
20 actually graduate. So in order for us to have the -- in  
21 order for us to cater for that, there is a lot of  
22 investment that has to be made, together with the other  
23 services that we will provide on the day, such as  
24 staffing and the other aspects of those services. They  
25 require a lot of upfront infrastructure, working towards

1 a peak period, which is very short in time, and so to  
2 justify those investments that we have to make, which  
3 are often upfront, I think we believe that the contract  
4 gives us an expected level of revenue. Not a guaranteed  
5 level of revenue, but an expected level of revenue and  
6 I think that was the aim.

7 MR LOMAS: So would it be fair to describe it in your mind  
8 commercially as a sort of form of planning tool?

9 A. Yes.

10 MR LOMAS: Without putting words in your mouth.

11 A. Yes, it allows us to justify the investment, because it  
12 is, you know, to cater for every potential graduate, and  
13 we do not necessarily know when the timings of those  
14 ceremonies are going to be, so, because it is a very  
15 concentrated graduation period, a shift of one day can  
16 make a very large impact in terms of staffing, in terms  
17 of transport, in terms of the investment in stock that  
18 we would have to make, because we will not be able to  
19 reutilise the stock, for example, over that period. So  
20 it gives us an expected level of revenue to justify  
21 the investments that we would be making.

22 MR LOMAS: Right.

23 From your experience, how do you think  
24 the institutions deliver on their side of that  
25 obligation to give you the exclusivity?

1           A. I do not think that there is a lot -- you know, they  
2           name us as their official supplier, they will distribute  
3           leaflets for us, or put a link -- you know, put some  
4           social media up for us, and they will give us sole  
5           access to the venue, and that is -- that is it.  
6           You know, that is the extent of their obligations.

7           MR LOMAS: Okay, thank you.

8           MR RIDYARD: I had two questions.

9                     The first one is about B2C operators generally, and  
10           I think it probably makes sense to ask this question  
11           with respect to 2019, so before the COVID situation sort  
12           of messed up the market.

13                    Obviously we know about Churchill Gowns, we have  
14           some idea of the significance of their operations in  
15           the UK. Can you give us some indications about  
16           the other people who are operating B2C, so who are  
17           hiring or selling gowns direct to UK graduands and how  
18           significant they are in the marketplace?

19           A. They are not very significant, but they tend to be  
20           online businesses who are either overseas and they will  
21           ship it in, or they have set up locally. I do not have  
22           any data for how many firm direct hires there are.  
23           There is also eBay and Amazon, where you can -- you  
24           know, if you Google search "graduation attire", quite  
25           a few come up, so, you know, options come up

1           There is also, actually, with some students  
2           purchasing, if they have purchased their gown and then  
3           they sell it on to the year below.

4           So that is the extent of the B2C, as far as I am  
5           aware.

6           MR RIDYARD: Can you give an impression of their  
7           significance relative to Churchill Gowns? Are they more  
8           or less significant than Churchill Gowns?

9           A. I do not know, honestly.

10          MR RIDYARD: So you have no handle on that question?

11          A. No.

12          MR RIDYARD: Okay, thanks.

13                 The second question I had is much more specific. In  
14                 your witness statement, I think it is in paragraph 31 --  
15                 maybe it helps to bring this up {D4/2/8} -- there is  
16                 a reference to one agreement with a university, whose  
17                 name is confidential, which does not have any commission  
18                 in it, in the contract, in the OSA you have with them.

19                 What impact does that have on the deal to  
20                 the graduand? Does it affect the pricing of  
21                 the academic dress hire to the graduand?

22          A. The price is reduced, lower than in some instances, but  
23                 it is not the lowest price.

24          MR RIDYARD: So you think the absence of the commission in  
25                 that case does reduce the price that the graduand paid,

1 compared to if there was a typical commission in that  
2 agreement?

3 A. Yes, it would, in that particular case.

4 MR RIDYARD: Thank you, yes.

5 THE CHAIRMAN: Any follow-up on that from either of you?  
6 No.

7 Thank you very much, Ms Middleton, you can stand  
8 down again. Thank you for your assistance to  
9 the tribunal.

10 (The witness withdrew)

11 MR ARMITAGE: The defendants are calling Mr Halls next.

12 THE CHAIRMAN: Mr Halls, come forward.

13 MR ADRIAN HALLS (affirmed)

14 Examination-in-chief by MR ARMITAGE

15 MR ARMITAGE: Do sit down, please.

16 I hope, Mr Halls, you have a copy of your witness  
17 statement somewhere to hand.

18 For the EPE, that is at {D4/3/1}. Is this your  
19 witness statement?

20 A. Yes.

21 Q. If you look on the first page, you give your address and  
22 I think you may have a correction?

23 A. Yes, there is a typo there. It says "Land" and it  
24 should say "Lane".

25 Q. If we could go to page 5, please {D4/3/5}, paragraph 16.

1 I think it is the eighth line, you may have a comment  
2 about that as well?

3 A. Yes, I seem to have repeated the same sentence twice,  
4 and I apologise.

5 Q. If we could turn to page 6 {D4/3/6}.

6 A. Yes. Yes, sir.

7 Q. Is that your signature?

8 A. Yes.

9 Q. Is the witness statement true?

10 A. Yes.

11 MR ARMITAGE: Can you stay there. I believe Mr Spitz may  
12 have some questions for you.

13 Cross-examination by MR SPITZ

14 MR SPITZ: Thank you very much.

15 Good afternoon, Mr Halls.

16 A. Good afternoon.

17 Q. I think if you keep your witness statement open and go  
18 to paragraph 11, which is, for the bundle referencing,  
19 {D4/3/3}.

20 You say there that you are a non-executive director  
21 of Ede & Ravenscroft. That is correct, is it not?

22 A. Yes.

23 Q. If you look at the same paragraph, you are also  
24 a director of Northams, and Northams is the third  
25 defendant in these proceedings?

1 A. Yes.

2 Q. You have been a director of Northams since early 2018,  
3 as you say in paragraph 11 of your witness statement?

4 A. Sorry I missed that, sorry.

5 Q. You say in paragraph 11 of your witness statement that  
6 you have been a director of Northams since early 2018?

7 A. Yes, that is correct.

8 Q. Your role there is also as a non-executive director?

9 A. Yes.

10 Q. Do you also have a role with the second defendant, that  
11 is Radcliffe & Taylor Limited?

12 A. Yes, I am the company secretary there and I have helped  
13 Mr Middleton with some of the functions of that company.

14 MR SPITZ: If it is possible -- we are struggling a little  
15 bit to hear you.

16 WITNESS: Sorry.

17 MR SPITZ: If it is possible just to speak a little bit  
18 louder, that would be helpful.

19 WITNESS: Yes.

20 Is that any better?

21 THE CHAIRMAN: Could you just raise your voice?

22 WITNESS: Yes, okay. I am sorry, sir.

23 MR SPITZ: Thank you, that is helpful.

24 So you were saying you have done some other work for  
25 Radcliffe & Taylor?

- 1 A. Yes, I have.
- 2 Q. What work is that?
- 3 A. That is mostly -- Radcliffe & Taylor is predominantly  
4 a property business, and I have, over the years, helped  
5 with various bits of advice and consulting and  
6 accounting type advice for Radcliffe & Taylor Limited.
- 7 Q. That is after your retirement from Ashgate in 2014?
- 8 A. That would not be quite correct, because prior to that,  
9 as I was at Ashgates, I would have been involved with  
10 some of that work.
- 11 Q. In other words, your work would have continued? Some of  
12 the work would have been done while you were at Ashgates  
13 and some of that would have continued thereafter --
- 14 A. Yes.
- 15 Q. -- as a consultant to Radcliffe & Taylor?
- 16 A. That is correct, yes.
- 17 Q. So you are currently the company secretary of  
18 Radcliffe & Taylor, as you said, and as paragraph 11  
19 records.
- 20 Am I right that you were also, very, very briefly,  
21 a director of Radcliffe & Taylor?
- 22 A. Yes, that is correct. It was for a -- I forget  
23 the exact number of days. It was for a short number of  
24 days, and I believe it was to sign a legal document.
- 25 Q. I mean, you are quite right, it was for a matter of

1 days, and that is at {F3/2996}. You will see your  
2 appointment -- I will wait for it to come up on your  
3 screen. You will see it there. You were appointed on  
4 1 March 2018 as a director to the second defendant?

5 A. Yes.

6 Q. Then if you are shown {F3/2997}.

7 A. Sorry, I do not believe it has arrived.

8 Q. I think if you go back a page, please {F3/2997/1}.

9 You will see from that document that the appointment  
10 was terminated on 12 March 2018; do you see that?

11 A. Yes.

12 Q. So as you say, it was really a matter of days that you  
13 were a director. What was all of that about, if you  
14 could tell the tribunal?

15 A. I believe -- I cannot recall exactly, but I believe it  
16 was to sign a document, but I do not recall.

17 Q. It was not that there was a mistake in your appointment,  
18 the appointment was intentional; is that right?

19 A. I believe so, yes.

20 Q. The decision to terminate the appointment, can you  
21 recall what that was about?

22 A. I was not required any longer. No longer required.

23 Q. What were you required to do then that led to  
24 the appointment in the first place?

25 A. I believe it was to do with signing a document, but I do

1 not recall what that document was.

2 Q. Do you have any recollection of what that document was?

3 A. No. Sorry, sir, no.

4 Q. Was there anyone else, as far as you can recall, who  
5 would have been able to sign that document?

6 A. The only other person that can sign documents as  
7 a director would be Mr Middleton.

8 Q. Any reason why he was not able to sign the document?

9 A. I do not recall.

10 Q. Okay.

11 So, it is the case that your role at both  
12 Ede & Ravenscroft and Northams is a non-operational  
13 role; is that correct?

14 A. Yes, yes.

15 Q. At paragraph 10 of your witness statement, if you just  
16 have a look at that {D4/3/3}, you say you are not  
17 involved in any operational matters at  
18 Ede & Ravenscroft; correct?

19 A. That is what I have said, yes.

20 Q. Exactly.

21 In paragraph 10, you are also not involved in client  
22 relationships at Ede & Ravenscroft?

23 A. Yes, that is correct.

24 Q. How would you describe operational matters at  
25 Ede & Ravenscroft, in the sense of giving the tribunal

- 1 a flavour of what operational matters involve?
- 2 A. The operational matters for me are the sort of
- 3 day-to-day running/organising of the affairs. You know,
- 4 we have heard Ms Middleton refer to the client managers.
- 5 You know, it is their relationships with the clients,
- 6 organising the stock, managing the retail stores,
- 7 day-to-day operations.
- 8 Q. Client relationships at Ede & Ravenscroft, what did
- 9 those involve?
- 10 A. To me, client relationships would be -- if we are
- 11 dealing with the ceremonies, that would be arranging
- 12 the dates, arranging what stock is going to be there, it
- 13 could be contractual arrangements. That would be
- 14 a client engagement matter.
- 15 Q. You are not responsible for any of those matters, as
- 16 I understand your evidence; is that right?
- 17 A. I am not responsible for those matters.
- 18 Q. Who is responsible for negotiating agreements between
- 19 Ede & Ravenscroft and the universities?
- 20 A. I would ... Jim Doubleday currently would be -- would
- 21 head up the -- our head of graduation services -- would
- 22 be the point of contact.
- 23 Q. Anyone else?
- 24 A. I do not -- well, previously, Tony Thornton.
- 25 Q. Tony Thornton.

- 1 A. In the main, it will be a single point of contact.
- 2 Q. What about for the preparation of tenders -- and we are  
3 talking about Ede & Ravenscroft? Who at  
4 Ede & Ravenscroft is responsible for preparing  
5 the tenders?
- 6 A. That would largely be -- the responsible person would be  
7 Jim Doubleday.
- 8 Q. Who would be responsible for negotiating and agreeing  
9 commissions at Ede & Ravenscroft?
- 10 A. The responsible person would ultimately be  
11 Jim Doubleday.
- 12 Q. So he would negotiate the level of commissions with  
13 the institutions; is that correct?
- 14 A. With commissions, if we are dealing with tenders, which  
15 I am probably a little bit more familiar with -- as in,  
16 a tender -- Jim Doubleday will consult with my finance  
17 team, I will be on copy emails, and there would be  
18 a debate on what commission level we would wish to set  
19 as -- because, you know, we have to come up with  
20 a commission rate that we are prepared to pay, and in  
21 tenders, it is -- the highest commission on that  
22 particular scoring mark would give rise to the best  
23 score. So, Jim Doubleday would consult with the finance  
24 team and with other directors and -- yes, primarily.
- 25 Q. So you would say Jim Doubleday, would you, is the most

1 hands-on person, as it were, at Ede & Ravenscroft for  
2 the negotiating of commissions?

3 A. I would say he is the most -- he would be the central  
4 point, but the commissions, there is always a debate on  
5 what commission rate we should apply. There is always  
6 a debate.

7 Q. Who would be the client-facing person? I am not at all  
8 trying to catch you out in any way, I am just trying to  
9 develop, because I think that it is not fully developed  
10 in the witness statements, some sort of a flavour for  
11 the tribunal of who the individuals are and really what  
12 they did, because you have produced your witness  
13 statement, and it is very clear from your witness  
14 statement that you are a non-operational person, so that  
15 is why I am asking some of those questions.

16 A. So, it would be my understanding that the central point  
17 would be Mr Jim Doubleday, and he would be  
18 coordinating -- he would be the person that would upload  
19 the tender application. He would be responsible for  
20 organising the timetable to discuss and agree a tender  
21 application.

22 Q. Okay.

23 If we turn then to Northams for a moment. You say  
24 at paragraph 11 {D4/3/3} that you have not been involved  
25 in operational matters at Northams either?

1 A. Correct.

2 Q. Have you been involved in client relationship matters  
3 there?

4 A. Not at all.

5 Q. Not at all.

6 Let us start with the operational matters. Do  
7 the operational matters at Northams involve the same  
8 sort of activities as they do at Ede & Ravenscroft?

9 A. I would say yes, obviously on a much smaller scale.

10 Q. Do the client relationship matters involve the same  
11 sorts of activities at both entities?

12 A. I would say yes.

13 Q. At Northams, who is responsible for negotiating  
14 the agreements between Northams and the universities?

15 A. I would ultimately say that would be Mr Chris Bottley.

16 Q. Chris Bottley?

17 A. Chris Bottley.

18 Q. Is that B-O-T-T-L-E-Y?

19 A. L-E-Y.

20 I think one or more of his staff might also be  
21 a point of contact with the institutions.

22 Q. Who might that other staff member or staff members be?

23 A. I recall a name of Shaun Buckley as a client --

24 Q. Shaun Buckley?

25 A. -- liaison manager.

1 Q. What about drafting the agreements once they have been  
2 concluded? Who would be the person who drafts  
3 the agreements --

4 A. I am sorry, I do not know.

5 Q. -- at Northams?

6 A. I am sorry, I do not know who would actually do that.  
7 I would presume it would be Mr Bottley, or one of his  
8 team.

9 Q. So it could be Mr Bottley, or it could be Shaun Buckley,  
10 or another member of the team?

11 A. Yes.

12 Q. Do you know at all whether there is a template for  
13 the agreements that Northams uses?

14 A. I am sorry, I do not know.

15 Q. You have not seen a template?

16 A. I have never seen a tender.

17 Q. A template, not a tender. A template.

18 A. Sorry, I am slightly hard of hearing.

19 Q. Of course. Of course.

20 A. No. No, I have not.

21 Q. Would the same individuals be responsible for  
22 the preparation of tenders? Mr Bottley, perhaps  
23 Mr Buckley? Would they be responsible for  
24 the preparation of tenders?

25 A. I would think so, yes.

1 Q. What about negotiating and agreeing commissions?

2 A. I would believe that Mr Bottley would lead that.

3 Q. Okay.

4 I see from paragraph 13 of your witness statement,  
5 which is {D4/3/4}, that Northams' business includes  
6 sales of graduation photographs and frames; do you see  
7 that?

8 A. Yes.

9 Q. At paragraph 16 of your witness statement {D4/3/5} you  
10 say that:

11 "[Ede & Ravenscroft] has a number of lines of  
12 business some of which involve services to the Academic  
13 sector (such as Academic Dress and Graduation  
14 Photography) ..."

15 Do you see that?

16 A. Yes.

17 Q. So both companies, Northams and Ede & Ravenscroft,  
18 provide graduation photography, do they?

19 A. Yes.

20 Q. Now, as we understand it, the managing director of  
21 Northams is Mr Chris Bottley; is that correct?

22 A. Yes.

23 Q. He is in charge, and he has full authority to run all  
24 the operations of the business; correct?

25 A. That is correct.

- 1 Q. Does he give you details of contracts or other  
2 operational matters?
- 3 A. No.
- 4 Q. No. That is what you say in paragraph 12 {D4/3/4}.  
5 He does not report to you on the business operations  
6 either, as you say in paragraph 12 of your witness  
7 statement?
- 8 A. That is correct.
- 9 Q. Mr Bottley has not provided a witness statement in these  
10 proceedings, has he?
- 11 A. No.
- 12 Q. So if we wanted to hear directly from the person  
13 responsible for operations, client relationships,  
14 contracts and tenders at Northams, who should we be  
15 looking towards, as a witness, to help us with that?
- 16 A. As you have asked the question, I would assess that as  
17 Mr Bottley.
- 18 Q. Yes, and this is our difficulty, that Mr Bottley has not  
19 made a witness statement in these proceedings.
- 20 A. No, he has not.
- 21 Q. Nor has Mr Buckley.
- 22 A. Mr Buckley has retired from the business a couple  
23 of years ago.
- 24 Q. Right, so he has retired. Do you have any idea why  
25 Mr Bottley has not made a witness statement?

1 A. No, I do not.

2 Q. Because in a sense, from the claimants' point of view,  
3 when it comes to Northams, there is a missing witness on  
4 the defendants' side; is there not?

5 A. I cannot answer that. I am sorry, I cannot answer that.

6 Q. You cannot help us with operational matters, as you have  
7 made clear in your witness statement?

8 A. No, I cannot. I cannot, no.

9 Q. You cannot help us with client relationship matters or  
10 with the contracts that Northams conclude, can you?

11 A. No.

12 Q. I would like to just have a look at {F3/248} for  
13 a moment. This is an email of 24 March 2017. Has it  
14 come up on your screen?

15 A. It has, yes.

16 Q. I think, if you start from the bottom.

17 A. Yes.

18 Q. You will see some of the names have been blanked out,  
19 but it is to Shaun Buckley.

20 "Dear Shaun,

21 "We received the email below yesterday evening and  
22 I have subsequently received angry emails from a number  
23 of other universities who have also received it.

24 "You may have already seen it but I thought  
25 I [would] forward it in case you haven't.

1           "I've had a look at their website and the whole  
2           thing is misleading, the robes they are supplying are  
3           not University of Chichester robes and the image they  
4           have for us on their website isn't even of Chichester."

5           Do you see that?

6           A. I do.

7           Q. Any idea what that is about, from your personal  
8           knowledge?

9           A. Not a huge amount, no.

10          Q. Then you see, if we can go to the top part of the email,  
11          please, Shaun Buckley responds to this on the 24th. He  
12          says:

13                 "Hi Chris ..."

14                 Then there is something blanked out. Then he  
15                 continues:

16                 "... graduation team has been approached by  
17                 Churchill gowns (see below email trail).

18                 "They seem to be changing their statement/tactics.

19                 "Do we need to get Emma involved again?"

20                 Do you know what the reference to "Emma" is at  
21                 the bottom of that message?

22          A. I do not believe I do.

23          Q. Do you think that it may be Emma Middleton?

24          A. I would take that reference as Emma Middleton, yes.

25                 I am sorry, I was not trying to --

- 1 Q. No, I understand.
- 2 A. -- take it back. That I would believe to be  
3 Emma Middleton.
- 4 Q. So I know that this is not an email that you were copied  
5 in to, but it does appear, does it not, from this that  
6 Emma Middleton may have been involved with Northams  
7 before, prior to this?
- 8 A. That suggests that they should contact Emma Middleton,  
9 yes.
- 10 Q. Okay, I am not going to press it any further than that,  
11 because obviously it is not an email that you were  
12 copied in on, but it would have been helpful to be able  
13 to raise this question with Mr Buckley.
- 14 If we look at paragraph 11 again {D4/3/3}, you say:  
15 "... I was aware from my time as a director of [Ede  
16 & Ravenscroft] that there is an information 'wall'  
17 between Northams and [Ede & Ravenscroft] because they  
18 occasionally bid against each other in competitive  
19 tenders ..."
- 20 Do you see that?
- 21 A. Yes.
- 22 Q. Would you tell the tribunal a little bit about that  
23 information wall?
- 24 A. There is nothing in writing that I -- is there, it is  
25 just an understanding that William Northam operates

1 completely independently, or as independently as it can,  
2 and independently from Ede & Ravenscroft, and as they do  
3 compete, or both tender for contracts, that it would be  
4 incorrect to have an exchange of information between  
5 the parties. It is just a practice that has been there  
6 for quite a while, I would say.

7 Q. So it is an informal policy, is it?

8 A. I am not aware of it being in writing.

9 Q. No, we have searched and we could not find that  
10 document.

11 A. Sir, I would say it is an informal, because I do not  
12 have it in writing.

13 Q. What sorts of guidance does it provide, this policy?

14 A. There is no formal written guidance, so it is  
15 a practice. So, for instance, Mr Bottley would not --  
16 has never discussed any tender contracts or pricing  
17 directly with me, by way of an example.

18 Q. All right.

19 At paragraph 15 {D4/3/4}, you say:

20 "I have asked Mr Bottley to provide me with this  
21 information ..."

22 Sorry, let me take it from the first sentence:

23 "I have been asked to confirm the status of various  
24 of Northam's OSAs. I have asked Mr Bottley to provide  
25 me with this information without showing me copies of

1 the contracts or any of the bid documents."

2 Is that something that you stressed to Mr Bottley,  
3 that he should not show you copies of the contracts or  
4 any of the bid documents?

5 A. I did.

6 Q. Why was it important for you to stress that?

7 A. Just to make sure that he did not, on a mistake basis,  
8 hand over information that would be inappropriate for me  
9 to have.

10 Q. So is your evidence that you have ever seen the Northams  
11 contracts or the Northams bid documents?

12 A. Sorry?

13 Q. Have you ever seen the Northams contracts?

14 A. I have never seen a Northams contract.

15 Q. The Northams bid documents?

16 A. Or the Northams bid documents.

17 Q. You have never seen those either?

18 A. No.

19 Q. All right.

20 Have you ever been involved in preparing tenders for  
21 Northams?

22 A. I have never been involved in preparing tenders for  
23 Northams. I have, on one occasion, sent a template of  
24 pricing. A template of pricing that he might find  
25 useful.

1 Q. I think that you are right, if we look at {F4/248}.

2 This is a confidential document, so I do not propose to

3 read it out, but let us wait.

4 A. It has not come up yet.

5 Q. It is on your screen, is it?

6 A. No, not yet, sorry.

7 Q. Is it up there now?

8 A. Yes, it is. It is, yes.

9 Q. All right, let us look at it from the bottom then, if we

10 could go to the bottom of the document. This is

11 23 November 2018. It is from you to Mr Buckley:

12 "Hi Shaun ..."

13 I think, actually, let us go to the next page,

14 because I think that is probably where the chain starts

15 {F4/248/2}. Yes, thank you.

16 Mr Buckley writes to you on 23 November 2018:

17 "Hi Adrian.

18 "Leeds Beckett have now published their invitation

19 to tender (see below screenshot).

20 "As you will see their closing date is 20/12/18

21 which doesn't give us a great deal of time to spend on

22 this. In particular I should point out that I only have

23 7 working days left in the office this year."

24 You will read the rest.

25 Then if you could scroll up, please, to the next

1 page {F4/248/1}. Have a look at your answer.

2 I am told it is not redacted on the electronic  
3 version, so although it is in bundle 4, it appears not  
4 in fact to be a confidential document. I will refrain  
5 from reading it out if, for some reason, it is  
6 confidential?

7 MR ARMITAGE: No, I do not believe it is.

8 MR SPITZ: Thank you.

9 So, on 23 November then, you write to Mr Buckley:

10 "Hi Shaun,

11 "Yes the timing is against us. If you can get some  
12 of the documents together that will be great. If need  
13 be we will have to get some help in."

14 He writes:

15 "With regards help, if we need to enlist support it  
16 cannot come from E&R, there should not be any collusion  
17 when it comes to ender submissions.

18 "I'll let you know how I get on."

19 Then if we could scroll up a little, you say:

20 "Noted.

21 "Do we have any financial data to review?

22 "From my experience the trends currently seem to  
23 be 'value to the student' often conflicting with  
24 the income in commissions that an institution wants."

25 What do you mean by that?

1       A. From my observations, when there are tender invitations  
2       that I have seen, as a generality, they score the marks,  
3       so it could be quality, added value services, and then  
4       particularly the price to the student and the commission  
5       that you are going to pay, and there seems to be an  
6       emphasis on the value to the student, which would  
7       presumably reference to the price, and also the added  
8       value, for instance, free gowns for disadvantaged  
9       graduands. That, to me, conflicts with the fact that  
10      there are significant marks for commissions. So there,  
11      they are diametrically opposed. If the price goes down,  
12      the level of income will go down, and it is generally  
13      a percentage commission, therefore that will lower  
14      the income to the institution for them to deal with  
15      their costs. So there is a dichotomy, if that is  
16      the right word, between those two.

17             The general impression I get, which is what I have  
18      put there, is that the institutions are interested  
19      in value to the student.

20      Q. You say:

21             "I am attaching a template I have concocted of  
22      something we might use to see a) the value at  
23      the contribution level to us and b) the impact of  
24      changing variables."

25             What was that template?

1       A. I think it was a -- it could be two things. One, it  
2       could be a self-scoring system where we would look at  
3       where the scores are marked, you know, quality, value to  
4       the -- the price, the commission, added value,  
5       innovation, or whatever their categories are, and as we  
6       know who, broadly who our competitors are, in my view,  
7       we can try and self-mark to see where we sit on those:  
8       are we going to win on price, yes/no; are we going to  
9       come first/second. Then you can run that through and  
10      that would give you some guidance as to quite where we  
11      would fit, because clearly our objective is to win  
12      a tender. So it could be that, which is something  
13      I looked at.

14             It could also be an attempt to encourage Northams to  
15      look at assessing the actual income and what Northams'  
16      costs would be, what its direct costs would be. So for,  
17      you know, putting -- you have income that comes in and  
18      against that you have variable costs. Those variable  
19      costs would be your staff, your transport, and so on and  
20      so forth. So it will be an attempt to try and get them  
21      to look a little bit more scientifically at the -- at  
22      those models.

23             Sorry, does that answer your question, sir?

24      MR SPITZ: Yes, thank you, it does. Thank you very much.

25      THE CHAIRMAN: Any re-examination?

1 MR ARMITAGE: No.

2 THE CHAIRMAN: Thank you very much, Mr Halls. You can stand  
3 down.

4 A. Sorry, I was not quite as loud as I should be.

5 THE CHAIRMAN: That's fine; we all heard you. Thank you for  
6 your assistance.

7 A. Do I leave this here?

8 THE CHAIRMAN: Yes, please, yes.

9 (The witness withdrew)

10 THE CHAIRMAN: Right, we will break now. At two o'clock it  
11 is Mr Middleton, I think, is it not?

12 MR SPITZ: Yes.

13 THE CHAIRMAN: Right, 2 o'clock then. Thank you.  
14 (12.55 pm)

15 (The short adjournment)

16 (2.02 pm)

17 MR PATTON: Good afternoon, sir. May I call  
18 Michael Middleton, please.

19 MR MICHAEL MIDDLETON (affirmed)

20 Examination-in-chief by MR PATTON

21 THE CHAIRMAN: Do sit down.

22 WITNESS: Thank you.

23 MR PATTON: Good afternoon, Mr Middleton.

24 A. Good afternoon.

25 Q. Do you have in front of you a copy of a document

- 1           entitled "Witness statement of Michael Middleton"  
2           {D4/1/1}?
- 3       A.   Yes.
- 4       Q.   Is that your witness statement in these proceedings?
- 5       A.   Yes.
- 6       Q.   Could you turn to page 24 in that, please {D4/1/24},  
7           just very close to the end.
- 8       A.   I do not think there is a 24 here, is there?  23 -- oh,  
9           sorry.  Yes, 24, sorry.
- 10      Q.   Do you see towards the top of the page a statement of  
11         truth, and is that your signature underneath it?
- 12      A.   Yes.
- 13      Q.   Could you please turn to page 5 of the document  
14         {D4/1/5}.
- 15      A.   I have all the others mixed together in here, it seems.
- 16      Q.   Do not worry about it.  Do you have yours again?
- 17      A.   Yes.
- 18      Q.   Can you see, at the top of the page, paragraph 13?
- 19      A.   Yes.
- 20      Q.   Do you see at the end of the third line, you say:  
21           "The ultimate shareholders of the E&R group are  
22           myself and my wife holding 20% between us and six  
23           different trusts holding 80%."
- 24      A.   Yes.
- 25      Q.   I think you had a correction to make to that?

1 A. Yes, there should be four.

2 Q. Four rather than ...?

3 A. Six.

4 Q. I am grateful.

5 Subject to that correction, are the contents of this  
6 witness statement true?

7 A. Yes.

8 MR PATTON: Thank you very much. Mr Spitz will have some  
9 questions for you.

10 Cross-examination by MR SPITZ

11 MR SPITZ: Thank you very much.

12 Good afternoon, Mr Middleton.

13 A. Good afternoon.

14 Q. If you would keep your witness statement close at hand  
15 and open, please.

16 You are the chairman of Ede & Ravenscroft, which is  
17 the first defendant in these proceedings; is that  
18 correct?

19 A. Yes.

20 Q. How long have you occupied that position?

21 A. Over 45 years -- no, no, I have been with the company  
22 45 years. Maybe 30 years.

23 Q. 30 years?

24 A. I do not know exactly.

25 Q. Give or take?

- 1 A. Yes.
- 2 Q. Right.
- 3 If you have a look at paragraph 18 of your witness  
4 statement. It is, for the electronic reference,  
5 {D4/1/6}.
- 6 A. Yes.
- 7 Q. You say there that you are also a non-executive director  
8 of Ede & Ravenscroft and of Northams for some years?
- 9 A. Yes. Well, I do not -- am I a director of Northams?  
10 Well, if it is in the paperwork, it is true, but ...
- 11 Q. Let us look at it. I believe so. You say:  
12 "Whilst I have been a non-executive director of E&R  
13 and Northams for some years ..."
- 14 A. Yes. Yes, well, I would accept that.
- 15 Q. That is correct, is it?
- 16 A. Yes, I must accept it, yes. I just do not get actively  
17 involved at all with it.
- 18 Q. Not at all?
- 19 A. Not at all.
- 20 Q. You are also a director of the second defendant in these  
21 proceedings, that is Radcliffe & Taylor Limited?
- 22 A. Yes.
- 23 Q. In fact, I believe you are the sole director of  
24 Radcliffe & Taylor?
- 25 A. That is correct.

1 Q. Is that correct?

2 A. That is correct.

3 Q. As you say in paragraph 15 of your witness statement  
4 {D4/1/5} -- we will wait for it to come up on  
5 the screen:

6 "I am no longer heavily involved in the operations  
7 of [Ede & Ravenscroft] (having taken a step back from  
8 most day-to-day management tasks about 15 years ago) and  
9 only exercise high level oversight as the Chairman."

10 A. Yes, that is correct.

11 Q. That is correct?

12 A. Yes.

13 Q. You continue in paragraph 15, the second sentence:

14 "Those running [Ede & Ravenscroft's] business do  
15 call upon me for background information about things  
16 given my long history with the company but I pretty much  
17 leave operations to my daughter Emma who has overall  
18 executive control and to my son James who is  
19 the Academic Director."

20 A. Yes.

21 Q. Pausing there for a moment, what does the academic  
22 director do? What are his functions?

23 A. Emma's is overall management, and James looks after  
24 the academic, which involves the production -- the whole  
25 section relating to the universities, if I can put it

1           that way, and also, of course, the opening of Parliament  
2           and Knight of the Garter ceremonies, all those where we  
3           send people to manage, but at a higher level.

4       Q.    So the sale and hire of academic dress would fall under  
5           his portfolio, I would imagine?

6       A.    No, because he deals with the actual management of  
7           the thing, if I can put it that way, whereas Emma is  
8           overall operations.

9       Q.    She is overall operations across the board at  
10          Ede & Ravenscroft, is she not?

11      A.    Yes.

12      Q.    She has, I think we were told, the most accurate -- the  
13          clearest global picture?

14      A.    Yes.

15      Q.    Those are my words, not hers.

16      A.    Yes, she does that.

17      Q.    How would you distinguish her activities then from those  
18          of James, the academic director?

19      A.    Well, he is running -- the people in the academic side  
20          actually report to him from the point of view of  
21          the running of it, so even photography, you know,  
22          the whole section there; but he is not involved in  
23          shops, he is not involved with properties, he is not  
24          involved with other things.

25      Q.    Were you in court earlier this morning when we heard

1 from Mr Halls?

2 A. I was here, yes.

3 Q. You were here.

4 You would have heard then that he mentioned

5 Mr Jim Doubleday?

6 A. Yes, Mr Jim Doubleday would report to James as the -- on

7 the running of it, but overall, I mean, Jim Doubleday

8 is sort of the man who does the actual mechanics of it,

9 if I can put it that way.

10 Q. Jim Doubleday reports in, then, to James Middleton,

11 the academic director?

12 A. Yes -- well, he may also report to Emma. I do not know

13 how it works. I have not got any fingers on

14 the day-to-day as I used to, but they both run it, if

15 I put it that way.

16 Q. All right.

17 If you go then to have a look at paragraph 17, this

18 is where you make a further point about your lack of

19 involvement, and here you say you are: {D4/1/5}

20 "... not involved at all in the operations of

21 Northams or ILA."

22 Northams is the third defendant in these

23 proceedings.

24 A. Yes.

25 Q. ILA is the fourth defendant --

1 A. Yes.

2 Q. -- in these proceedings?

3 So you are not involved at all in their operations?

4 A. Yes, that is correct.

5 Q. Right.

6 A. I mean, you know, I may see things from Adrian Halls if

7 we are signing documents, but on the actual monthly

8 management meetings or anything like that, I have no

9 access, not that I should really at my age.

10 Q. Yes, indeed.

11 You then go on in paragraph 17, if that can be

12 called up. It is the second part of 17 {D4/1/6}. It is

13 the part that starts with the sentence

14 "Fortunately ..."; do you see that?

15 A. Where is it, sorry?

16 Q. It is probably a third of the way from the bottom of

17 paragraph 17, and the sentence begins --

18 A. Oh yes, I have got it:

19 "Fortunately, I do not have much information ..."

20 Q. If you keep reading.

21 A. "... that would have been any use to either in

22 a competitive tender. I believe E&R has won contracts

23 off Northams but I do not believe the reverse is true."

24 Q. Why do you say "fortunately" you do not have much

25 information that would be of any use to either in

1 a competitive tender?

2 A. It could be a mannerism, I do not know, because, you  
3 see, we acquired Northams, not from a strategic point of  
4 view, but because the person who owned it years back was  
5 an excellent person and we had him as our managing  
6 director. He came and moved over.

7 Northams, those days, was I think in Fetter Lane,  
8 very -- well, it is a lot smaller today than it was  
9 then, and it was transferred over to Oxford, to go above  
10 the Oxford shop and that is where it managed, and  
11 Mr Bottley, who was one of the managers of Halls, took  
12 it over to manage it.

13 So we parked it. It was never meant to be in  
14 the Ede & Ravenscroft area, and certainly, because we  
15 recruited Mr Keane(?) as the managing director, it was  
16 thought better to keep well away, and that is how it  
17 initially started.

18 Q. So just to ask you again, you say "fortunately", and  
19 I am wondering about the way you have chosen to express  
20 it:

21 "Fortunately, I do not have much information that  
22 would have been any use to either in a competitive  
23 tender."

24 The question was: why is that fortunate?

25 A. Well, we have kept it 100% apart. We have always done

1           that. In all the trading I have only known  
2           Ede & Ravenscroft to take one appointment off Northams,  
3           and as a Northams man was running it -- frankly,  
4           Mr Bottley runs it, if I can put it that way, and it is  
5           a very small company. It is not significant enough for  
6           us to get involved too much, but we just keep it  
7           separate.

8           Q. You say you keep it separate. It is a wholly owned  
9           subsidiary of Radcliffe & Taylor, is it not?

10          A. Yes, but Radcliffe & Taylor is not really interested in  
11          Northams. It is a small thing. Radcliffe & Taylor is  
12          interested more in property.

13          Q. Well, would it not be fair to say that  
14          Radcliffe & Taylor is interested in all of  
15          the subsidiaries that fall under the control of the  
16          holding company?

17          A. Well, obviously if it was losing money you would jump  
18          in.

19          Q. Of course.

20          A. But if it was ticking over at the small figures that it  
21          is doing, in some ways you would wind it up, but we  
22          never got round to dealing with that, that way.

23                 Whilst it is ticking, if I can put it that way, with  
24                 a small -- and keeping a person employed, we took it.  
25                 I mean, when it was in Oxford above the shop, it only

1           had two people working there, which was Mr Bottley and  
2           Shaun someone, who then moved over when we moved it back  
3           to Littleport.

4       Q.   Shaun Buckley?

5       A.   Shaun Buckley, yes.

6       Q.   He has retired now, has he?

7       A.   Sorry?

8       Q.   He has retired now, has he?

9       A.   Oh yes, yes. Mr Bottley recruited him in Oxford and he  
10       moved over to Littleport with him when they moved from  
11       above the shop and he has since retired.

12       Q.   All right, and ILA, that is the fourth defendant, is  
13       also a wholly owned subsidiary of the second defendant,  
14       Radcliffe & Taylor Limited; is that right?

15       A.   Yes, yes, but ILA, as the -- I am not sure -- I should  
16       imagine it is really because we have not got round to  
17       it, but the person -- the accountant running it there,  
18       who's a chartered accountant and has got his own  
19       practice, has advised us several times it will cost more  
20       to leave it and we should wind it up, but it is  
21       the effort of winding it up that has made us -- so we  
22       have not really got round to it. But again,  
23       Adrian Halls deals -- looks after that with Edwin and  
24       I never speak to Edwin.

25       Q.   But both of those entities are wholly owned subsidiaries

1           within the holding company, Radcliffe & Taylor Limited,  
2           is the position?

3           A.   Yes.   Yes.

4           Q.   Yes.   My leader points out you mentioned a person called  
5           Edwin a moment ago.

6           A.   Yes.

7           Q.   Who is that?

8           A.   I only know -- well, Mr Halls can give you the surname.  
9           I do not know it.

10          Q.   Oh, Adrian?

11          A.   Yes.

12          Q.   Adrian?

13          A.   No, he could tell you the surname of the person.   I am  
14          saying -- he is in a practice of his own in Ireland and  
15          I have just heard of him as being Edwin, but the  
16          information can be given to you by Mr Halls.

17          Q.   All right.

18                 Could you then have a look at paragraph 42 of your  
19          statement {D4/1/13} you say in that paragraph:

20                 "I have been asked by E&R's solicitors to comment on  
21          aspects of the business which could impact on  
22          the Claimants' ability to generate significant sales."

23                 Then, quite correctly, you say:

24                 "I cannot know or say for certain why the Claimants  
25          business has not been more successful or why they have

1 not made more sales in their quite short history and it  
2 is not for me to express an opinion."

3 Now, that is correct, is it not?

4 A. Yes.

5 Q. It is not your role to express an opinion on these  
6 matters?

7 A. It is not in detail. We are talking general here. If  
8 someone asks me, you know, is a business model a good  
9 one or a bad one, from the general experience we have  
10 got, I would then comment on what I perceive as being  
11 some of the weaknesses of it, but I would not --  
12 I cannot obviously go into the intimate details of how  
13 they run their business.

14 Q. You are not here as an industry expert, of course, are  
15 you?

16 A. In which area?

17 Q. In the area of academic dress and --

18 A. Well, I have been out of it a bit, but you know  
19 the industry you have been in. If you are a lawyer, you  
20 would know the industry. So to a point, I know it,  
21 although it has evolved and changed.

22 Q. You say that you have been out of the day activities for  
23 at least 15 years?

24 A. Yes, I only came back into the -- or got more actively  
25 involved because my family looked -- it was looked as

1           though they are a threat, because we were -- a Chinese  
2           company was taking our name over and trying to then use  
3           it here, and it took over 18 months of legal work and  
4           everything else to recover it back, and we were at risk  
5           here. Then all the Chinese stuff has gone since that.

6           Q. Sorry, the Chinese stuff has ...?

7           A. Well, what I mean by that is the people approaching us  
8           and wanting to sell products to us and all these sort of  
9           things, then finding out that they have actually got  
10          your own products with our names on, you know? So it  
11          seemed at the time -- it was quite a difficult time to  
12          go through and I did not want just to leave it to James  
13          and Emma to have to deal with this.

14          Q. All right.

15                 You understand, Mr Middleton, of course, that it is  
16          no function of yours to argue the case on behalf of  
17          the defendants? You understand that?

18          A. I am not arguing, I am commenting on, when asked: why do  
19          you think a thing would win or fail. I am just giving  
20          an observation. I am not telling the person how to run  
21          their business.

22          Q. All right, because as I say, you understand that it is  
23          not your function to argue the case, do you not?

24          A. Of course I would not argue their case.

25          Q. Precisely.

1           All right, now, you have laid out and we have been  
2           through some of the various limits on the extent of your  
3           knowledge, but of course there are several things that  
4           you clearly do know and I want to touch on some of those  
5           things.

6           A. Yes. So, I mean, obviously, I jump in and out these  
7           days. My job is really to poke and see a reaction and  
8           then I step back and leave them to make the decisions,  
9           but, you know, it is a change of what I used to do.  
10          Before, I used to manage and run and motivate and  
11          encourage people and stretch their capabilities to  
12          the maximum. Now I just sort of make cryptic notes and  
13          push and poke and see what happens.

14          Q. One of the things I would like to ask you about as an  
15          area that I think you clearly do know is contained in  
16          a confidential strategy document. I am going to call it  
17          up. You may recall that it was raised with  
18          Ms Middleton. It is at {F3/2990/1}.

19                 You will see, looking at the cover sheet, that it is  
20          from the academic director, James Middleton --

21          A. Yes.

22          Q. -- to several people, the first of which is to you?

23          A. Yes.

24          Q. 20 June 2018?

25          A. Yes.

- 1 Q. James says, as you can see:
- 2 "Dear All,
- 3 "Please find a document for perusal and discussion -
- 4 it's not polished, but designed instead to stimulate
- 5 debate."
- 6 A. Yes. Well, if your expertise can check it, you will
- 7 prove that I have never opened it. It has been sent to
- 8 me but I have never got round to it and I have never
- 9 opened it.
- 10 Q. Is that because of the hands-off approach that you take
- 11 these days?
- 12 A. Well, also I do not know if I would have agreed with it.
- 13 Let us put it a different way. He was going to prepare
- 14 something, a strategy of his own views, and we never got
- 15 round to it. I do not know if Emma has read it. I have
- 16 certainly not read it. That is all I can say.
- 17 Q. You say you did not read it because you do not know
- 18 whether you would have agreed with it?
- 19 A. Well, if I remember correctly -- and not going to
- 20 the document, but if I can remember correctly, he was
- 21 proposing -- he had been to India, or, I do not know,
- 22 Vietnam or somewhere, and he was thinking of opening
- 23 a factory there or something to that -- I do not -- if
- 24 this is the document; and I thought it was not relevant,
- 25 putting it bluntly.

1 Q. Is that often the case, that you take a different view  
2 to James Middleton on matters relating to  
3 Ede & Ravenscroft?

4 A. Well, he is -- yes, in some things, because he is  
5 really -- he expanded -- Emma is the overall strategist,  
6 in a way, with managing the business. My son has good  
7 views, nine times out of ten they are good, but when you  
8 are talking about (inaudible) developing elsewhere,  
9 because you have been there on holiday and think it is  
10 a marvellous idea, it is not the way I would  
11 necessarily -- but here, to be honest, I just did not  
12 read it.

13 Q. Okay, we will come to --

14 A. But I am not trying to give him -- I am just being  
15 honest with you, but I am not saying I treat him like  
16 that, in a wrong sense.

17 Q. No, absolutely, and we will come to the content of  
18 the document in a moment, but it is --

19 A. But I have not read it.

20 Q. I know, but I will show it to you and you will --

21 A. I do not think --

22 Q. I will give you a chance to read --

23 A. Well, there is no point in me commenting if I have not  
24 read it.

25 THE CHAIRMAN: Let us --

1 MR SPITZ: Well, let us see what is in there and it may not  
2 be an exhaustive exercise to read it.

3 A. Yes.

4 Q. We will have a look together.

5 Before we do, it was curious to me that the academic  
6 director did not produce a witness statement in these  
7 proceedings, and I wonder -- let me finish the question  
8 and then you can explain -- what the thought process was  
9 that led to the decision not to put James Middleton up  
10 as a witness in the proceedings?

11 MR PATTON: Sir, I am sorry, just before the witness answers  
12 that, I think to ask the witness to describe the thought  
13 process as to why someone was not a witness almost  
14 inevitably intrudes upon questions of privilege.

15 THE CHAIRMAN: Well, it certainly has a risk of that.

16 MR SPITZ: I see the risk and I do not want to go near  
17 the risk.

18 So to the extent that this was a decision that you  
19 had input into --

20 THE CHAIRMAN: Well, again, I think we need to make it clear  
21 that what you are not being asked to say anything about  
22 is any discussions with your lawyers about this.

23 Does that cover it?

24 MR SPITZ: That is helpful, thank you.

25 A. With our lawyer? Sorry, I do not understand.

1 THE CHAIRMAN: You are not being asked, in any question that  
2 Mr Spitz asks you, to talk about any discussions you had  
3 with Ede & Ravenscroft's lawyers in relation to this  
4 case. So obviously Ede & Ravenscroft --

5 A. In connection with this document?

6 THE CHAIRMAN: No, no, this case.

7 I think that is correct, is it not, Mr Patton?

8 MR PATTON: Mr Spitz has expressed his personal opinion  
9 about the absence of a particular witness and then he  
10 has asked this witness to explain what the thought  
11 process was as to why he has not been called.

12 It is quite common to ask a witness, are they aware  
13 of a good reason why someone could not have given  
14 evidence, and I have asked that question, I would have  
15 no objection to that question.

16 To describe the thought process in relation to  
17 the litigation, it is quite difficult to see how  
18 the witness could do that independently of the legal  
19 advice. It is quite difficult to ask a witness to set  
20 aside any discussions he has had with the lawyers and  
21 nevertheless describe some sort of thought process  
22 independently of that.

23 MR SPITZ: I am quite happy to take the formulation of it by  
24 Mr Patton. I am quite happy.

25 If you could then answer the question as my learned

1 friend put it: are you aware of any reason why  
2 Mr James Middleton did not file a witness statement in  
3 these proceedings?

4 A. No, because overall, as I say, Emma is completely in  
5 charge -- in management, is overall the person. I am  
6 chairman of it, I can backwards to say things of  
7 history, or some things of importance, and James would  
8 not necessarily have that information.

9 Q. All right.

10 I am going to then ask you to dip into this strategy  
11 document. I fully understand that you have told  
12 the tribunal you have not read it. You have not read it  
13 because you thought you might disagree with it, and I am  
14 going to ask you to look at --

15 A. Also, in fairness, I did not want to deflate people. It  
16 was better to leave it on the back-burner, if one uses  
17 that expression.

18 Q. Okay.

19 Document {F4/648/1}, please. You will see that  
20 there is some grey --

21 A. It has not come up, sorry. Oh. Yes?

22 Q. You will see that there is some grey shading --

23 A. Oh, it has gone, sorry. My screen has gone blank.

24 Q. Okay, let us wait a moment while it comes up. There is  
25 a time delay.

1 MR RANDOLPH: It may also be the sun, where it is coming in  
2 and it is hitting the screen. So it may be we should  
3 lower the blinds.

4 MR SPITZ: Yes, thank you.

5 WITNESS: It has gone into "safe mode", whatever that is.

6 THE CHAIRMAN: We will wait a minute until the blinds are  
7 down, then.

8 (Pause)

9 WITNESS: It has gone off.

10 (Pause)

11 Ah, it has come back. Thank you.

12 Yes?

13 MR SPITZ: So we are looking at {F4/648/1} and I was  
14 pointing out to you that there is some grey shading.  
15 The grey shading you are probably aware about. That is  
16 because these parts of the document are said to be  
17 confidential information in the hands of the defendants,  
18 so that is why the grey redaction.

19 A. Yes.

20 Q. If you have a look at the bottom of this page, there is  
21 a heading that is not redacted. It says "Current  
22 Position", and I am not going to, and neither should  
23 you, read out what is there aloud, but if you will  
24 read it to yourself.

25 A. I would have -- yes.

- 1 Q. Especially the first line and a half.
- 2 A. Yes.
- 3 Q. Now, you, I take it, would agree with that statement,  
4 would you not? It is an accurate statement of  
5 the position?
- 6 A. No. We are leaders. We are the market leaders.  
7 I would never say that, because we are the market  
8 leaders in "excellence", he has put it already on  
9 the top there, and we strive for excellence.
- 10 Q. If you turn --
- 11 A. But you do see this is a draft, in fairness to him.
- 12 Q. Absolutely.
- 13 If you turn to the next page {F4/648/2},  
14 under "Strengths", the word "Strengths" is not redacted,  
15 and then there is a list of perceived strengths of the  
16 company.
- 17 If you have a look at the fifth strength listed  
18 there, do not read it out, but you see that?
- 19 A. Yes.
- 20 Q. Would you agree with that?
- 21 A. Well, it is not expressing the true purpose. We are  
22 the leaders in the graduation market. We are not -- it  
23 is totally, totally wrong, I mean, and this is a draft.  
24 I think, certainly, we are not. We are not.
- 25 Q. You also say at paragraph 20 of your witness statement,

1 if you could go there, that is {D4/1/7}.

2 A. Sorry?

3 Q. Paragraph 20 of your witness statement. You say there  
4 that being appointed as an official robe maker means  
5 "a certain amount of guaranteed or assured revenue"; do  
6 you see that? It is three-quarters of the way down that  
7 paragraph. You say:

8 "It was ... something of a privilege to be appointed  
9 as an official robe maker and it meant that where E&R  
10 was appointed, it had a certain amount of guaranteed or  
11 assured revenue but also it had the responsibility of  
12 maintaining standards and ensuring sufficient investment  
13 and stock ..."

14 A. Yes.

15 Q. So that guaranteed or assured revenue, that follows,  
16 does it not, as a consequence of being appointed as an  
17 official robe maker?

18 A. Yes, it does.

19 Q. All right. Now, paragraph 24 of your witness statement  
20 {D4/1/8}, you know, do you not, that offering commission  
21 on a certain percentage of sales in order to be  
22 appointed as the sole supplier to an institution is an  
23 effective strategy from which it is possible to secure  
24 many appointments and to build up one's business  
25 considerably. That is correct, is it not?

1 A. I am just telling you what happened. That is factually  
2 what happened.

3 Q. I am asking you whether you agree that that is the case?

4 A. Well, it was the case, because he achieved  
5 the appointments.

6 Q. You think it is unique to him, do you?

7 A. Well, everyone today, everyone has to comply and put in  
8 tenders or -- yes, and negotiate, and the universities  
9 have obviously got enormous pressure. They control  
10 the market. The individual universities control it,  
11 because, you know, they extract the best possible terms  
12 for their students and for themselves. So that is  
13 really it. It is normal, to be honest.

14 Q. Well, let us take it in stages for a moment, shall we.

15 The first question is whether what you have said  
16 here, about the role of commissions, applies only to  
17 the person that you identify in this paragraph and not  
18 more generally?

19 A. I am talking about history here. I have discussed  
20 somewhere else, I believe, that when the universities  
21 got their procurement officers in, the market changed.  
22 In other words, originally, if I go back further than  
23 this, we were appointed robemakers and unless we did  
24 something wrong, they may -- large universities, such  
25 as London universities, years back, appointed two

1           robemakers, because you are talking about 18 or  
2           20 universities, what are now universities. But those  
3           days, we were appointed and we took pride in it and we  
4           did not pay commissions, it was a proper relationship.  
5           We had to keep the stock, we had to make sure that  
6           a person coming in could be robed immediately. We would  
7           attend, we would do all the various services, and then  
8           it developed.

9           It is not us that have changed the market; it is  
10          the way procurement, if I can put it that way, more  
11          professional people have got involved in the market.

12         Q. Well, you have not set out anywhere in your witness  
13          statement a detailed history of the development of  
14          Ede & Ravenscroft in the market, have you?

15         A. Ede & Ravenscroft, those days, was still a dominant, if  
16          you want to put it that way -- not dominant, but a large  
17          section of it, because people appointed them because of  
18          the quality and excellence they used to do those days.  
19          So they would appoint you as a robemaker.

20          Looking back, for example, a hundred years, our  
21          archives will show that there was over 500 different  
22          gowns at that time -- styles. So it is a market that  
23          has evolved, if I put it that way.

24         Q. Do you know, and if you do not know --

25         A. What I am saying there is, in fairness, we were

1 the robemakers in any event, you know, and obviously it  
2 has changed. The market has changed. But if people  
3 wanted to come to us, they would come to us.

4 Q. Have you set out anywhere a complete list of all of  
5 the OSAs that Ede & Ravenscroft has concluded, not only  
6 in the claim period but prior to the claim period?

7 A. I never got into those details. Before -- I mean, I was  
8 just -- even when I ran the business, there were other  
9 people who dealt with those areas. They were  
10 specialists in those areas.

11 Q. Did you have any details of how long the various  
12 claimants (sic) occupied a particular role as appointed  
13 garment-maker with each of the institutions? Did you  
14 have that detail?

15 A. No, because it was not as contractually like that. It  
16 was more of an appointment and you were proud to hold  
17 that appointment.

18 Q. I should have said "with the defendants"  
19 not "the claimants". I am just correcting  
20 the transcript, as Mr Patton correctly points out.

21 Have you been told or have you been aware of  
22 the number of times contractual agreements with each  
23 institution have been renewed? Did you know that  
24 information?

25 A. Not at that detailed level. No, it was not my job.

1           You know, I was overall. Obviously, if we lost an  
2           appointment, they would tell us and you would be sad  
3           about it, but I never kept at that level. I was at an  
4           overall position.

5           Q. What about the revenue generated under each of these  
6           agreements? I assume that your answer is the same?

7           A. I mean, the financial director at the monthly meetings  
8           would give a report, but it was overall in figures.  
9           I did not go down to those levels of which individual  
10          university -- although, of course, I was concerned when  
11          we lost appointments, I mean, but I never visited or  
12          went down to that point.

13          Q. Is there anyone in the business that you are aware of  
14          who would be able to put together a history of  
15          the contracts that Ede & Ravenscroft has concluded prior  
16          to the claims period and how long they held those  
17          contracts?

18          A. Prior to?

19          Q. Prior to the claims period, from 2016 onwards. Before  
20          then?

21          A. Well, there must be, you know -- not that it would be  
22          collated, but there must be some information. In my  
23          time there, I had an MD who ran it. He was an  
24          accountant and he ran it, and he would have these --  
25          most probably, these details. I do not know, but there

1           were tiers of management that went down. But overall we  
2           were just looking at top figures, if I am perfectly  
3           honest.

4       Q. I stand to be corrected, and no doubt I will be  
5           corrected if I am wrong, but we have not seen a history  
6           of the development of Ede & Ravenscroft in this market  
7           prior to the claims period.

8       A. Well, I -- well, you know, I would have to ask the  
9           others, to be frank. I do not know myself. You are  
10          asking me about things that I honestly do not know.

11       Q. Understood.

12                 What we have is a snapshot of the position from  
13                 2016.

14       A. Well, if you had asked -- let me put it a different way.  
15           If you had actually asked for it and it was -- you know,  
16           whatever you asked for, we provided. I am sure that we  
17           would not do things otherwise.

18       Q. Okay, I will move along then.

19                 Another thing that I think you know is that from  
20                 time to time Ede & Ravenscroft has sometimes assisted  
21                 the universities to whom it intends to tender, with  
22                 producing the terms of the tender itself. Do you know  
23                 about that?

24       A. Well, I do, now going back, because originally our  
25           paper -- some of these contracts were -- or if you call

1           them contracts, or understandings, where it is just one  
2           or two pages, like an exchange of a letter. I think it  
3           was our insurance companies who started wanting more  
4           formality for the liabilities, because we were going on  
5           other people's premises and they came more -- and  
6           I think the documents were not prepared by us as such,  
7           but by a lawyer at the time from our side, asking,  
8           because we were having to comply -- and then asked  
9           the universities to sign them.

10           Normally we would have done the reverse, but those  
11           days, with the insurance companies being more concerned,  
12           we had to have documents, you know, as best as possible  
13           at those times.

14           They never finally got all done, I do not think.  
15           I do not know if everyone has ever had a full, signed  
16           insurance thing, but the motivation at the time was  
17           because of pressure on us for insurance liability.  
18           I think that is what it was.

19           Q. Well, if you have a look at paragraph 25 of your witness  
20           statement {D4/1/8}, do you see, two-thirds of the way  
21           down that paragraph, on the right-hand side,  
22           the sentence beginning:

23                     "There have been occasions ..."

24           A. Mm-hm.

25           Q. I wonder if you would read that aloud, please.

1 A. I was shown -- and I have got to be perfectly frank  
2 here --

3 THE CHAIRMAN: The question was just can you read that  
4 aloud.

5 A. Oh, sorry.

6 THE CHAIRMAN: "There have been occasions ..."

7 A. "There have been occasions where we [have been] asked by  
8 a procurement person at an institution what sort of  
9 questions institutions generally ask in an invitation to  
10 tender and/or how other institutions approach particular  
11 issues. That is because the ... running [of  
12 the] procurement are not the same people as those who  
13 are involved with graduation ceremonies."

14 MR SPITZ: Do you recall more or less when these occasions  
15 may have been when you have been asked to --

16 A. In all honestly, I was shown a paper, and first of all,  
17 my witness statement, I was told I could not speak to  
18 anyone else, so it has got me. Then I was shown  
19 a document from Writtles University, I think it was. So  
20 that is a response to that, because Tony Thornton had  
21 communication with this university, which was just  
22 appointed. I think it has only had about 150 -- when  
23 I checked, it has only had about 150 hires per year, so  
24 it is very small. But it was started up, and  
25 the correspondence clearly showed that they were asking

1           him questions back, and obviously I answered it,  
2           you know, I had to put it there. There is no point  
3           saying it did not happen, because it did.

4       Q. I think we will have a look at the example that you have  
5           in mind.

6           If you turn up {F3/101/1}. It will appear on your  
7           screen in a moment. There it is. This is  
8           the non-confidential version of the document. There is  
9           also a confidential version. We will not go to that.

10          If you could be shown first where this discussion  
11          begins, which is eight pages in {F3/101/8}.

12       A. I have just got the top one.

13       Q. Sorry, let us go to page 9 {F3/101/9}. At the bottom of  
14          that email, you see it is to James, 7 September 2016?

15       A. Mm-hm.

16       Q. "... we were wondering if you would be able to put some  
17          ideas together for us for the design in robes for all  
18          levels of achievement?"

19          If you read from the bottom up in the email, to  
20          James' response to Rachel Abraham:

21          "... will be forwarding you some new designs we have  
22          created for you to look at later today or tomorrow after  
23          all final checks on colour options have been done."

24       A. Yes.

25       Q. The next page, if we could go one page back {F3/101/8},

1 and one further page back {F3/101/7}, if you have a look  
2 there at the top of the page:

3 "Dear James.

4 "Thank you for the designs we received via Rachel.

5 "You may already have been made aware by ..."

6 Then that is redacted:

7 "... it has been decided by Senior Management that  
8 with our change in identity and status, this is an  
9 opportune time to review or Robe supplier. Although we  
10 have been very happy with the service provided by  
11 Ede & Ravenscroft, as a public body we are obliged to  
12 test the market from time to time. A tender process  
13 will be conducted to commence from the first graduation  
14 as Writtle University College in 2018. We will be  
15 commencing work on tender shortly, as noted below it can  
16 take some time to undertake the design and production  
17 process.

18 "We would be very happy to invite Edes & Ravenscroft  
19 to be part of the re-tender process; would you also be  
20 our point of contact for the Tender exercise, along with  
21 any questions we may have whilst putting together  
22 a specification?

23 "Perhaps you would be kind enough to update Rachel  
24 on the situation?"

25 A. Yes.

1 Q. If you then can be shown one page back from that  
2 {F3/101/6}, James Middleton writes, and it is the second  
3 paragraph at the bottom that we should be looking at:

4 "I completely understand you are obliged to test  
5 the market from time to time ..."

6 Do you see that?

7 A. Yes, I can see it now.

8 Q. Thank you:

9 "... and the timing of the tender makes complete  
10 sense, particularly considering the costs of investing  
11 in new robes. Ede and Ravenscroft would be very happy  
12 to be part of the re-tender process, and I am happy to  
13 help in any way I can, but Tony Thornton would normally  
14 be our point of contact for the tender process. Tony is  
15 responsible for completing most of our tenders, and  
16 would probably be the best person to talk to if you have  
17 queries when putting together a specification."

18 A. Yes.

19 Q. If you look slightly up above that, there is an email  
20 from Tony Thornton saying:

21 "I am out of the office ..."

22 Then if you can be shown, again, one further page  
23 back {F3/101/5}, starting at the bottom:

24 "Hi Tony,

25 "Thank you for your email. We will be putting

1 together our spec in the next few weeks and potentially  
2 will need some information regarding our historical  
3 usage. It would also be helpful if you were able to  
4 provide a list of all the information you would require  
5 in order to provide an accurate price. At this stage,  
6 we would not require a meeting."

7 If you look at the top of that page, the response  
8 is:

9 "No problem, can I send you the --"

10 A. No, I have got:

11 "I am still out of the office ..."

12 Q. Okay.

13 MR RANDOLPH: Me too.

14 A. Oh, yes, I see, right at the top.

15 MR SPITZ: Right at the top:

16 "... can I send you the questions we need help with  
17 now and you can respond next week?"

18 On the previous page {F3/101/4}, Tony Thornton says:

19 "Yes, that's fine ..."

20 The previous page behind that {F3/101/3},

21 Tony Thornton then says:

22 "Yes, I will get this information for you next  
23 week."

24 Then if we turn to the last page of all of this,  
25 which is -- and I am sorry, working backwards this way

1 is not the most convenient way of following it, but if  
2 you look at the first page of this sequence of emails,  
3 {F3/101/1}, here what is said is:

4 "We would like to know whether the College wants  
5 a good commission rate or whether not interested in  
6 commission but only interested in quality of Service for  
7 their Graduates or the Hire price for their Graduates.

8 "I have attached a document with the kind of  
9 questions that most institutions use for tendering.

10 "If you need any further information from us, please  
11 let me know."

12 So, Ede & Ravenscroft is assisting Writtle  
13 University College in the formulation of its tender; is  
14 that correct?

15 A. No, he is giving advice here on which they have asked  
16 what sort of questions go into a tender, because this is  
17 a completely new college. I do not even think they have  
18 gone out for tender. I am not sure. We can check that.  
19 But at the time I was shown these documents, they had  
20 not gone out for tender, and we had been providing no  
21 more than 150 hires a year. It is a very small college.  
22 No doubt they were just asking, from a point of view  
23 that they are a young, you know, small team, for advice  
24 on what normally would go in a tender. Well, he should  
25 not really have got involved in it, but that is as it

1 is. But I do not know, I have seen nothing further.  
2 Maybe you can show me the questions he actually said.

3 Q. Well, I will put it to you and you are free to agree or  
4 disagree, but I will put it to you that this is an  
5 example, is it not --

6 A. I --

7 Q. -- of Ede & Ravenscroft -- sorry, let me finish  
8 the question.

9 A. I am sorry.

10 Q. I will give you ample opportunity to respond.

11 It is an example, is it not, of Ede & Ravenscroft  
12 assisting a university with the specifications for  
13 a tender document?

14 A. No, I find that offensive. We have never -- you are  
15 saying that is an example. We have never done it, and  
16 I hope you retract it.

17 Q. Well, I hear your answer.

18 A. This is the only thing I have ever seen.

19 Q. You disagree with me. I have put the proposition to  
20 you; you disagree with me.

21 A. I totally disagree.

22 Q. All right.

23 Let us then move on to another thing that you know,  
24 and that is that Ede & Ravenscroft bundle together their  
25 hoods, caps and gowns; that is correct, is it not?

1 A. Yes, it is totally correct.

2 Q. Yes. No exceptions?

3 A. We bundle them, if you want to call it that, because it  
4 is in the students' interests, it is in our interests,  
5 and it is in the universities' interests. We could not  
6 financially provide a competitive thing just supplying  
7 a hood, and furthermore, it would fail at the ceremony.  
8 You cannot have someone providing a gown and someone  
9 providing a hood and tracking them and everything else.  
10 That is why the OSAs, from that point of view, whoever  
11 gets them, if it is us or another, they should run  
12 the ceremony. Whoever takes over an appointment should  
13 run the ceremony themselves. You cannot have it running  
14 smoothly and expect a student to come up with a gown  
15 the wrong degree or a hood the wrong degree and then  
16 expect to keep changing them.

17 You know, at every ceremony, we supply about 20%  
18 full kits as surplus, because if a student, which  
19 invariably happens, has got the wrong hood, or has  
20 ordered the wrong hood, then we can change them, and  
21 that is how it works.

22 So it is the most economic and proper way to run  
23 a ceremony and we have done it for years that way.

24 Q. Let us have a look at the document {F3/2561}.

25 A. Sorry?

1 Q. It is {F3/2561}. Let us starts with page 2 of that  
2 document {F3/2561/2}.

3 A. It is not coming up, is it?

4 Q. There is always a little delay, you are quite right, and  
5 then it will be up.

6 So let us look at the bottom part of the document.

7 It is to Jo Sunderland, on 1 June 2019. Who is  
8 Jo Sunderland?

9 A. She is a university representative; one of our  
10 representatives who go to universities.

11 Q. Right, and it is from a person at the University of  
12 Keele, is it not?

13 A. Yes.

14 Q. That person says:

15 "I have spoken to our Directors about Churchill and  
16 the upset to students if their Academic Dress is  
17 incorrect. Although we will ensure ..."

18 Sorry, this is from Jo:

19 "I have spoken to our Directors about Churchill and  
20 the upset to students if their Academic Dress is  
21 incorrect. Although we will ensure that we bring enough  
22 gowns to re-dress the grads, the Directors feel it would  
23 be unfair to allow them the discounted online price,  
24 while charging other grads the higher price. I'm not  
25 sure where Churchill stands on refunds either, as

1 the statement of 'incorrect' could be subjective.

2 The Directors are also stating that we would not hire  
3 the hoods to go with a gown that was incorrect, as this  
4 contravenes our service agreement."

5 Pausing there, if the gown was not incorrect, in  
6 other words if the gown satisfied the requirements of  
7 the particular university, on that basis, would there be  
8 any objection to hiring the hood separately?

9 A. I think, in all honesty, we are flexible. What I am  
10 saying by that is, if a student had a father's gown or  
11 whatever, you are flexible, you are not that -- but as  
12 a rule, it would be economically not viable for us to  
13 have people attending the ceremonies and having what  
14 Churchill were doing at that time, and this is why this  
15 is all getting out of line, is that Churchill appeared  
16 to have had two or three different business models. One  
17 was just to supply hoods and hats, and the other one  
18 then that merged -- that changed to supplying some of  
19 the hoods. Well, that is fine, if they are doing that  
20 thing. But they have also changed recently  
21 the ambassadors in trying to also suggest the gowns --  
22 they supply the environmental-friendly gowns and we have  
23 to supply the hoods.

24 As a business model, we just could not do that.

25 So what I am saying is, yes, we are flexible. No

1           doubt you will see many emails where we have --  
2           you know, in the course of a year most probably quite  
3           a few people have just had hoods only. But it is not  
4           a policy. You try to be flexible, but when it comes to  
5           the rules, the real rule is we only supply outfits,  
6           because we cannot afford to have put 20% -- and that is  
7           on average what we send to a ceremony -- 20% more kit.  
8           If it is not taken up, we do not get paid for that, so  
9           we cannot afford to -- and also the streamlining and  
10          making the ceremony run efficient. Before we go to  
11          the ceremony, each person's name is -- and they are  
12          designated an outfit. It would be crazy to suddenly --  
13          some person just come up and if they have not got  
14          the right hood you have to try and get a new hood for  
15          them and put it on.

16                 So it is not a good business model. It would be  
17                 a mad business model.

18          Q. Let us stick with the example that we are looking at in  
19             the email.

20          A. Yes.

21          Q. Let us see what happened with that example, because  
22             the next part of the email, this is on the first page  
23             {F3/2561/1}, says:

24                     "Hi Jo ..."

25                     Then there is a redaction:

1            "... met with our senior managers at the tail end of  
2 last week to discuss a process going forward for gowns  
3 at graduation. They have asked for me to just double  
4 check whether you will be prepared to supply hoods for  
5 the awards we believe won't be catered for as a goodwill  
6 gesture?

7            "We'd really appreciate it if you could consider  
8 that."

9            You will see the answer at the top of this email:

10           "I am ... sorry, but I cannot get this decision  
11 changed."

12           A. I think, in fairness here, what she is trying --

13           Q. Mr Middleton, let me just --

14           A. I am sorry.

15           Q. Let me finish and then I promise I will give you  
16 the opportunity.

17           A. Fine.

18           Q. The response is:

19           "I am so sorry, but I cannot get this decision  
20 changed. Here is the response.

21           "'As discussed I think we need to stand firm and say  
22 that we do not hire hoods separately on the day for  
23 students who have hired incorrect academic dress from  
24 another supplier.

25           "'The Ede & Ravenscroft service is the guarantee of

1 the full correct academic dress (gown, hat and hood  
2 correct for institution, discipline and level of  
3 award) at those institutions where we have been  
4 appointed as the supplier of academic dress. Generally  
5 we can also cater for students who arrive on the day and  
6 require a late/on the day hire - but that would be for  
7 the full academic dress and is at the on the day/late  
8 hire ...'."

9 A. Yes.

10 Q. So I suggest to you that there is a firm rule and it is  
11 that the hoods and the gowns are bundled and you will  
12 not provide a hood separately from a gown, even when  
13 the gown complies with the university's requirements.

14 A. I think I have got to say here that it is very difficult  
15 to -- the full rule is, we only supply an outfit. In  
16 practice, there are many students who most probably have  
17 their father's gowns or other things, and we are  
18 flexible, and I think, most probably, if you look  
19 through it, you would see. But when it came to actually  
20 Churchill stating to all the universities, which caused  
21 us all the hoo-ha, that they are going to supply gowns  
22 and hats, well, the business, it's flawed. So when we  
23 made the decision we are not going to do it -- and even  
24 the universities were concerned because of the chaos it  
25 would cause at the university -- we have got to keep to

1           what was our proper policy, and our proper policy was,  
2           has always been, that you will supply a hat -- a gown,  
3           hood and hat, and we take surplus there to make sure  
4           the student has it, and if a student turns up and has  
5           never ordered, we still have to provide that capability  
6           to the university.

7           Q. The last question on this topic. If I can suggest to  
8           you that the reason that you do not hire hoods  
9           separately from gowns as a rule is that you would face  
10          competition on the more generic end of the market for  
11          hats and gowns, which can be fairly standard?

12          A. No one would provide a service, which we have to do,  
13          with just gowns and hats, and it is not even a service  
14          to the student. I mean, it is a crazy idea. Further,  
15          the other problem is, if you want to go into a detail,  
16          that the universities have -- for example, we had to  
17          retrofit our gowns with Velcro. The normal thing is,  
18          traditionally, you never had Velcro, but some of  
19          the universities have dictated this and we had to  
20          retrofit -- it cost us several hundred  
21          thousand pounds -- Velcro to the hood, to attach  
22          the hood to the gown to stop it slipping.

23                 We would have been in a nightmare without fulfilling  
24                 the requirements of the university. The university has  
25                 asked us to Velcro, we have retrofitted, and then you



1 A. Yes.

2 Q. It has come up on one or two separate occasions in  
3 the proceedings so far.

4 A. Yes, I have heard.

5 Q. It has not come up directly to you, so have a read  
6 through that.

7 A. I know it.

8 Q. You know it.

9 What is it? What are "typical Australians"?

10 A. Well, this comes from the time when Churchill sent an  
11 email or letter to all of the universities saying that  
12 they are going to supply gowns and hats, or to that  
13 effect, to the students that year, and it caused havoc  
14 to them because we were involved. It was not sent  
15 to us, but it came, because they could see the --  
16 I should not say "stupidity", but the problems that  
17 would happen at the ceremony. I thought: well, I had  
18 better look into this. So I actually -- this does not  
19 actually say it here, but I had enquired and looked into  
20 Australia, to their website. I had gone through about  
21 42, 43 universities, and there were other three that had  
22 hoods. All the rest were either sold out or something,  
23 or out of stock.

24 I looked at this and I thought: well, if this is  
25 the pattern, and they are coming here, just supplying

1 gowns and hats and expect us to do the other, it was  
2 ridiculous. Also financially we could not do it. There  
3 would be complete chaos at the ceremony, and I took  
4 the view that certainly they would be a thorn in our  
5 sides, because how on earth could we manage it if this  
6 was going to be the policy going forward, of us going to  
7 a ceremony and just supplying a hood, which would not  
8 even attach to the gown which the universities had  
9 spent -- we spent a fortune, actually, of taking  
10 the hoods to pieces, because you could not sew  
11 the Velcro through the hood because it would show  
12 the stitching, and the cost of all of that was several  
13 hundred thousand pounds and then they were coming up  
14 with this.

15 So I took it as being, you know, that. Also I would  
16 make the comment here that, following the logic, if they  
17 were to sell a gown and we were to go just to  
18 the university with a hood, which financially we could  
19 not do in any event, and then the next year the student  
20 sells to the next one and we are still standing there  
21 with the hood, it just would not work and as I said it  
22 affects us all.

23 Q. Exactly. It is not just you who would be affected,  
24 is it; it is the universities --

25 A. I do. I make the point that the universities -- in

1 effect it would affect the whole thing, because  
2 the universities use the commissions to fund the whole  
3 process at the event, the meals or whatever,  
4 the reception things they do, and if in fact they do not  
5 get it, you know, the funds to fund the thing, it is  
6 economically a nonsense for us to get involved with.

7 Q. All right. More in anger than in sorrow, I would say,  
8 this email?

9 A. Sorry?

10 Q. More in anger than in sorrow?

11 A. Not in sorrow, it is exasperation. We respect and take  
12 pride in our things. We expect to fulfil a service to  
13 the student as well. We expect to provide them with  
14 a service -- we try to -- second to none, and if we are  
15 going to end up with this sort of situation, just purely  
16 from one company trying to buy or do things and do not  
17 fulfil the whole service ... I mean, there were no PhDs,  
18 there were none of the other things to run a proper  
19 function.

20 Q. (inaudible) it will affect Ede & Ravenscroft and it will  
21 affect all the other universities, will it not?

22 A. It would affect what?

23 Q. Ede & Ravenscroft and it will affect --

24 A. Well, it would affect --

25 Q. -- all the universities, will it not?

1 A. No, sorry, it would affect all of us, including  
2 the student. It was a crazy situation.

3 Q. All right.

4 Then at the top of the email, just to complete it,  
5 Jo Sunderland writes to you, this is again about  
6 the gowns at Keele University, and she says: {F4/638/1}

7 "After speaking to Keele about this, it seems that  
8 Churchill is not providing the hoods. Keele has asked  
9 us not to supply hoods alone under [any]  
10 circumstances --"

11 MR PATTON: "Under the circumstances".

12 MR SPITZ: Sorry:

13 "... under the circumstances, I think that we should  
14 ensure that all CLs ..."

15 What are CLs?

16 A. I do not know.

17 Q. "... are told not to hire out hoods without the full  
18 AD."

19 Which is presumably "academic dress"?

20 A. Yes.

21 Q. "I know that several CLs hire out just hoods and  
22 stopping this could be a way to counter the attack."

23 Do you see that?

24 A. Yes, and what I am saying here indicates the flexibility  
25 that we really have. What we are saying is, our

1 rules -- or she is saying, but of course we were then  
2 getting into difficulties over this. Our rules were  
3 that we only supply a full kit. It is economic and it  
4 is in both interests of the student, the university and  
5 ourselves. If you -- we obviously do; we want to be  
6 reasonable and flexible with people, but when it is  
7 coming to an actual policy -- which is a total different  
8 thing, a policy -- of us just going there with  
9 the gowns, the university can also see the chaos. They  
10 want a ceremony which runs smoothly. They do not want  
11 a student coming, we do not have the right gown for  
12 them, or the right hood. It is crazy.

13 Q. I want to move on to a different topic now. It will  
14 take me some time to work through this topic.

15 As we have already discussed you are the sole  
16 director of the second defendant, Radcliffe & Taylor  
17 Limited?

18 A. Yes.

19 Q. Mr Adrian Halls was a director for a very short time,  
20 was he not?

21 A. Yes, and I think --

22 Q. Let me finish and then, as I say, I will give you  
23 the chance.

24 He was appointed on 1 March 2018, and then his  
25 appointment was terminated as a director on

1 12 March 2018. What was that about?

2 A. I think, if I am right in recalling it -- and I do  
3 not -- I have got -- I vaguely recall it -- I think we  
4 needed a document signed, I think it was an accountancy  
5 document, or a filing for Companies House, or something,  
6 and one of us either was not available or available --  
7 I do not know the full facts.

8 But I have also seen your solicitors, Churchill's  
9 solicitors' letter to our solicitors implying that there  
10 is something scurrilous about certain things. I just  
11 want to tell you that Radcliffe & Taylor has, in its  
12 property portfolio, companies that have been with us as  
13 tenants for over 20 years and are in the top 100 in the  
14 country listed. We have the lawyers acting for us  
15 within the top 10 of the country, and our accountants  
16 are in the top four, and I find it offensive, what you  
17 have been implying.

18 Q. Mr Middleton, I am not implying anything.

19 A. I am talking about your solicitors.

20 Q. I am simply asking you why Mr Halls was a director for  
21 all of 12 days, and his evidence was that he had to  
22 sign -- he was appointed so as to sign a document. What  
23 was that document?

24 A. At this stage, I cannot remember. It could well be that  
25 I was away, I just do not know, but it was a filing,

1           maybe at Companies House for a financial, you know,  
2           filing of things, you have to sign documents. I do not  
3           know.

4           He was a partner in a small firm, which your lawyers  
5           keep alluding to, that they are a small firm, when, as  
6           I have just told you now, we use reputable companies.  
7           Yes, they are a small firm when they audit here, but  
8           when we are doing other things, we do it properly and  
9           correct.

10          Q. We would be very grateful if overnight you could  
11           identify the document --

12          A. I am telling you -- there is no point asking me now.  
13           I am telling you I cannot honestly say what it was from  
14           then. It was an irrelevant thing.

15          Q. We would be very grateful --

16          A. I am telling you --

17          THE CHAIRMAN: Just let him finish what he is going to say,  
18           then you can answer.

19          MR SPITZ: We would be very grateful if you could undertake  
20           a reasonable and proportionate search overnight for  
21           that document and provide us with a copy or else an  
22           explanation as to why it is not available. Would that  
23           be possible?

24          A. Well, from me, it will not be, because I cannot even  
25           remember it, but you will have to ask -- Mr Halls should

1           be given that responsibility.

2           Q. Well, I will leave it to the defendants and their legal  
3           advisers to allocate the responsibility, but we would be  
4           very grateful --

5           A. Yes.

6           Q. -- for that.

7           THE CHAIRMAN: I think that is a request, party to party, is  
8           it not, for a document?

9           MR SPITZ: Indeed.

10          THE CHAIRMAN: Rather than to the witness, who will be in  
11          purdah overnight.

12          MR SPITZ: Indeed, yes.

13                 So, Mr Halls is currently the company secretary of  
14          Radcliffe & Taylor?

15          A. Yes.

16          Q. I am going to walk through a few quick points, which  
17          I really think will be common ground. There is nothing  
18          controversial in them, so I think we will be able to  
19          move through them quite quickly. Of course, if you  
20          disagree, feel free, but I would like to just go through  
21          that as the background to the questions that I would  
22          then like to discuss with you.

23                 So as we know, you are the chairman of  
24          Ede & Ravenscroft and the sole director of  
25          Radcliffe & Taylor?

- 1 A. Yes.
- 2 Q. Both the subsidiaries of Radcliffe & Taylor, Northams  
3 and ILA, operate in the business of the hire of  
4 academic dress?
- 5 A. Yes. Very small.
- 6 Q. WM Northam's principal activity is also robe-making?
- 7 A. Yes.
- 8 Q. Irish Legal's principal activity includes the sale of  
9 academic dress and photography services?
- 10 A. ILA does not do any photography as far as I am aware of,  
11 but I could be proven wrong.
- 12 Q. All right, well, I will show you that when we go through  
13 the document.
- 14 Finally, academic dress is one of the lines of  
15 business of Ede & Ravenscroft, the first defendant?
- 16 A. Yes.
- 17 Q. Self-evidently so.
- 18 I would like to spend some time with you now walking  
19 through Radcliffe & Taylor's annual report and financial  
20 statements for the year ended 31 December 2017. Those  
21 are at {F3/2995}. This document contains the results of  
22 the group for the period ended 31 December 2017; is that  
23 correct?
- 24 A. Well, it is on here, yes.
- 25 Q. Well, you know this document, do you not?

1 A. Well, I am not an accountant, I have advice, but yes, at  
2 a level, I can read --

3 Q. Yes.

4 A. -- you know, at a lower level than an accountant.

5 Q. Yes, because you are the sole director of the second  
6 defendant and this is the second defendant's  
7 consolidated --

8 A. Yes.

9 Q. -- financial statements and annual report.

10 A. Yes.

11 Q. If you turn to page 2 of the document {F3/2995/2} --  
12 actually, one further page, {F3/2995/3}, to  
13 "The principal activity of the group ..." It is on  
14 internal page 2 {F3/2995/4}.

15 A. It is not coming up. Oh, yes.

16 Q. It will in a moment. The next one {F3/2995/4}.

17 A. Company information? Contents is it you are  
18 referring to?

19 Q. It is the document headed "Strategic Report for  
20 the Year Ended 31 December ..."

21 A. Yes.

22 Q. You have it on your screen?

23 A. Yes.

24 Q. "The principal activity of the group is (i) property  
25 investment and development ..."

1 Do you see that?

2 A. Yes.

3 Q. "... and (ii) the sale and hire of garments."

4 A. Yes.

5 Q. That is correct, is it not?

6 A. Well, it is because there is Northams and ILA in it.

7 Q. Exactly.

8 Under the heading, "Fair review of the business":

9 "The results of the group for the period ended

10 31 December 2017 are set out on pages 10 to 12."

11 Internal page 4 {F3/2995/6} refers to

12 the consolidated financial statements, and you will see

13 the first sentence:

14 "The director ..."

15 That is you:

16 "... presents his report and the consolidated

17 financial statements for the year ended

18 31 December 2017."

19 A. Mm-hm.

20 Q. These are, of course, the consolidated financial

21 statements of all the members of the group?

22 A. Yes.

23 Q. Yes. If you stay on page 4 {F3/2995/6}, under the

24 "Statement of directors' responsibilities":

25 "The director is responsible for preparing

1 the Annual Report and the financial statements in  
2 accordance with applicable law and regulations."

3 You see that?

4 A. Where is it? Sorry, I am on page 4. Yes, where?

5 Q. Under, "Statement of directors' responsibilities".

6 A. Yes.

7 Q. As a director --

8 A. Yes.

9 Q. This is at the bottom of page 4. It says:

10 "The Director has overall responsibility for  
11 the establishment and oversight of the Groups risk  
12 management framework."

13 A. Yes.

14 Q. "The Group does not have a formal risk management policy  
15 program. The exposure to the above risks are monitored  
16 by the Board of Directors as part of its daily  
17 management of the Group activities."

18 Do you see that?

19 A. Yes.

20 Q. Then if you have a look at internal page 5 {F3/2995/7},  
21 a number of different kinds of risk are identified.

22 A. It has not come up.

23 Q. Has that come up for you?

24 A. No, it has not come up.

25 Q. Do you have it now?

1 A. Yes. I have got 5, yes, where I have signed it, yes.

2 Q. So on page 5, we have the credit risk?

3 A. Yes.

4 Q. The second sentence there describes it as follows:

5 "The Group has policies in place to ensure that

6 sales of products and services are made to customers

7 with an appropriate credit history and monitors on

8 a continuous basis the aging profile of its

9 receivables."

10 Do you see that?

11 A. Yes.

12 Q. That is correct, is it not?

13 A. Yes.

14 Q. Under, "Liquidity risk" --

15 A. Yes.

16 Q. -- the second sentence:

17 "The Group has procedures with the object of

18 minimising such losses such as maintaining sufficient

19 cash and other assets."

20 That is how the group manages liquidity risk, is it

21 not?

22 A. Well, yes, if it is here, it is here.

23 Q. You agree with it, do you not?

24 A. Currency is -- and risk -- well, yes, these are standard

25 forms that an accountant would put in and I go along

1 with the advice of the accountant.

2 Q. Quite so. As I have said before, there are no trick  
3 questions here. I am not trying to catch you out in any  
4 way. I am dealing with the various categories of risk  
5 that the group manages for all of its subsidiaries.  
6 That is the point that I am making.

7 A. Yes.

8 Q. "Interest rate risk" is the third type.

9 A. Yes.

10 Q. The last sentence there:

11 "The Groups management monitors the interest rate  
12 fluctuations on a continuous basis and acts  
13 accordingly."

14 You see that?

15 A. Yes.

16 Q. The fourth type of risk is the currency risk, and again,  
17 the last sentence is the relevant one:

18 "The Groups management monitors the exchange rate  
19 fluctuations on a continuous basis and acts  
20 accordingly."

21 So what is being said here is that price risk,  
22 credit risk, liquidity risk and cashflow risk, for all  
23 of the members of the group --

24 A. Yes.

25 Q. -- are managed by Radcliffe & Taylor Limited, by

1 the holding company?

2 A. Well, the companies which -- the investments we have got  
3 abroad are managed by the accountants, and as I have  
4 said, I will not give the name, but they are one of the  
5 top four in this country.

6 The lawyers we use are within the top ten of this  
7 country, the partner, in size, and therefore they do  
8 the work over there. The figures which they audit and  
9 approve come over to the UK, and therefore, as your  
10 lawyers are trying to insinuate, Ashgates are relatively  
11 small but all they do is they collate the information  
12 given by reputable companies, and our tenants are in  
13 the top 100 in the country.

14 Q. Mr Middleton, just to put you at your ease a little  
15 bit --

16 A. Well, I just do not understand what you are trying to --

17 Q. Let me --

18 A. You are making allusions which are --

19 THE CHAIRMAN: I think he has not actually asked you -- he  
20 has only asked you one question about this so far.

21 I think you need to wait until you hear what  
22 the question is?

23 WITNESS: Sorry.

24 THE CHAIRMAN: Can I just ask, though, Mr Spitz: I think you  
25 said that this page demonstrates that the various risks

1 of each of the companies are managed by R&T,  
2 Radcliffe & Taylor Limited. What is that based on?

3 MR SPITZ: I am going to come to that, but they are managed  
4 through this process, through the holding company and  
5 through the director.

6 THE CHAIRMAN: You are not saying that is stated on this  
7 page?

8 MR SPITZ: No, I am not saying that.

9 THE CHAIRMAN: Right, thank you.

10 MR SPITZ: Again, just because I think it will help us move  
11 through this at a convenient pace, where I am going with  
12 this, Mr Middleton, is simply this. We have said in our  
13 claim form that the various defendants constitute  
14 a single economic undertaking. That has been disputed  
15 in relation to the holding company, Radcliffe & Taylor.

16 A. Yes.

17 Q. These questions are relevant to that. They are relevant  
18 to the exercise by Radcliffe & Taylor of control over  
19 its subsidiaries. So there need not be any mystery  
20 about this and there is nothing scurrilous in what I am  
21 putting to you. Unfortunately, it is a pretty tedious  
22 exercise, but it has been put in dispute and that is why  
23 I would like to take the time walking through it.

24 A. Well, you can walk through it. All I am saying is I am  
25 not a lawyer and I am not an accountant, but if you were

1 to ask me, in all honesty, what Radcliffe & Taylor is to  
2 do with all the other sections, I just am at a loss to  
3 understand. I do not get involved with Northams, I do  
4 not get involved with the Irish section of these. As  
5 I have said, they are so small, it is irrelevant.

6 This company is at a proportion far different than  
7 what you are trying to allude to, and so I would just  
8 say to you that, no, Radcliffe & Taylor is totally  
9 independent as a group. You may go and say, well --  
10 I mean, I do not know the exhibit turnover of Northams,  
11 it would be interesting to pull it up, but it is  
12 minuscule, being compared to -- what you are trying to  
13 allege is that it is all part of Ede & Ravenscroft's  
14 group. It is not. It has been kept separate  
15 completely. It has got separate auditors and I just do  
16 not understand what you are trying to infer.

17 Q. I have sought to explain it, and we will go through  
18 the document and then I will make the relevant legal  
19 submissions at the appropriate time, but I need to do  
20 this because it has been put in issue and we do not have  
21 your accountant. The witness that we have is the sole  
22 director of the second defendant.

23 A. Yes.

24 Q. That is why I am putting these questions to you, because  
25 there is no one else --

1 A. Right.

2 Q. -- who can answer them.

3 A. Fine.

4 Q. Okay, so if you have a look at page 6 -- and you will  
5 tell me: if you think a question is unfair, if you think  
6 that you cannot answer is, you will tell me.

7 {F3/2995/8}.

8 Here is the independent auditor's report and its  
9 opinion:

10 "We have audited the financial statements of  
11 Radcliffe & Taylor Limited (the 'parent company') and  
12 its subsidiaries (the 'group') for the year ended  
13 31 December 2017, which comprise the Consolidated Profit  
14 and Loss Account, Consolidated Statement of  
15 Comprehensive Income, Consolidated Balance Sheet,  
16 Balance Sheet, Consolidated Statement of Changes in  
17 Equity, Statement of Changes in Equity, Consolidated  
18 Statement of Cash Flows, and Notes to the Financial  
19 Statements, including a summary of significant  
20 accounting policies."

21 The point I draw from this is that the financial  
22 statements are consolidated. All of the group companies  
23 have consolidated their financial statements into this  
24 document, as one would expect in a holding company  
25 situation.

1       A. You do, but in practice, surely there is a difference  
2       between accounts and actually what happens. Just  
3       because it holds the company in Ireland, which is doing  
4       a very small turnover, or in fact in here, and it is not  
5       connected to it, it has just got an investment in it,  
6       I am not a lawyer, I have not put this to our people,  
7       but I would say that Radcliffe & Taylor is totally  
8       independent from the thing, apart from this very small  
9       Northams thing and ILA. The turnover is minimal and we  
10      do not get -- surely the management of the company and  
11      the management of Northams would have to be interlinked  
12      to actually manage properly, and then, yes, I would  
13      agree with you. But what I am saying is it is like  
14      making an investment in a company and not even doing  
15      anything with it. You know, it is irrelevant really.  
16      The main thrust of this is that it is a property  
17      company.

18      THE CHAIRMAN: Mr Spitz, can we cut through this, perhaps,  
19      because there is obviously a legal issue here which is  
20      whether it is a single economic undertaking. That is  
21      not a debate you can have with Mr Middleton because, as  
22      he says, he is not a lawyer and he will not be able to  
23      answer that.

24                What this document says this document says, I very  
25      much doubt Mr Middleton is going to challenge that this

1 document says what it says.

2 I think the only matters you can get out of  
3 Mr Middleton are any particular facts you would then  
4 want to rely upon in the legal argument that are  
5 essential to your case on single economic undertaking.

6 MR SPITZ: Well, can we seek to do it this way. Can we get  
7 confirmation as to the correctness of the contents of  
8 this document, that there are no issues, qualifications,  
9 queries that are taken in relation to the document, even  
10 if that means a moment or two to get an instruction? If  
11 we can do that, that the document is true and correct,  
12 then we can move on and I can identify the handful of  
13 questions that I would like to ask.

14 As the tribunal appreciates, this is not the most  
15 riveting section of the case, but the point has been  
16 raised. We are told that the presumption of control is  
17 there, but it is rebutted.

18 THE CHAIRMAN: Maybe this is the way to do it.

19 Mr Patton, is any issue going to be taken that these  
20 accounts are not true and accurate?

21 MR PATTON: That is not our intention, no. I am not aware  
22 of anything in this document -- we are not advancing  
23 a positive case that there is anything in this document  
24 that is incorrect.

25 THE CHAIRMAN: Right.

1 MR SPITZ: So do I understand then that you do not require  
2 time to look at the document? I mean, the reason I ask  
3 that is that this document ought to have been in  
4 disclosure and it was not in disclosure.

5 MR PATTON: This is a public document.

6 MR SPITZ: Yes.

7 MR PATTON: So it is a public document. It has been filed.  
8 My understanding is that the second defendant regards it  
9 as an entirely accurate document.

10 If, as, sir, you put it, it is being suggested that  
11 there are any facts that Mr Middleton has personal  
12 knowledge of, then it may be appropriate for those to be  
13 put to him, but so far as what is said in the document,  
14 I accept that it is accurate. I say that not knowing  
15 what particular points Mr Spitz has in mind in  
16 the document, but I have no reason to think that there  
17 is something inaccurate in there.

18 MR SPITZ: Mr Randolph points out to me, and the point is  
19 well taken, that I probably should carry on and go  
20 through a little bit more of the document so that it  
21 cannot be raised in any way against me and also in  
22 fairness to the witness that I should do that and  
23 identify exactly what it is we rely on for  
24 the purposes --

25 THE CHAIRMAN: I am not going to stop you. I thought it

1           might be a shortcut, but it clearly is not.

2           MR SPITZ: Thank you. We are in very good time. We are  
3           ahead.

4           THE CHAIRMAN: Let us move on.

5           MR SPITZ: So, if you then look at internal page 7  
6           {F3/2995/9}, under the "Responsibilities of directors"?

7           A. Yes.

8           Q. You will see:

9                        "As explained more fully in the [set out on page 4],  
10           the directors are responsible for the preparation of  
11           the financial statements and for being satisfied that  
12           they give a true and fair view, and for such internal  
13           control as the directors determine is necessary to  
14           enable the preparation of the financial statements that  
15           are free from material misstatement, whether due to  
16           fraud or error."

17                        So those are internal controls that you are  
18           responsible to determine as necessary to prepare these  
19           financial statements?

20           A. Yes. What I am saying is, if our lawyers and our  
21           accounts are telling us this on there, I go along with  
22           this. I go along with everything on that. What I am  
23           just saying to you is that if we have got an investment  
24           in a small company in Ireland, you cannot make  
25           the consequences of the holding company liable for

1 a thing unless it has been actively involved and done  
2 something wrong -- unless it is wrong, I do not know,  
3 this is my view. I could be totally wrong.

4 Q. Yes, and you have set out that view in your witness  
5 statement and you have set it out --

6 A. Yes.

7 Q. -- now.

8 A. Well, you know, it saves a lot of time if we just accept  
9 that.

10 Q. You are also responsible in various specific ways for  
11 the subsidiaries that make up part of the group. One of  
12 the ways you are responsible is, in internal page 7:

13 "In preparing the financial statements,  
14 the directors ..."

15 That is you:

16 "... are responsible for assessing the group's and  
17 the parent company's ability to continue as a going  
18 concern ..."

19 A. Yes.

20 Q. So that is not just the holding company, that is  
21 the operational subsidiaries as well?

22 A. Yes, that is with professional advice. I could not say  
23 it myself without professional advice, and that is what  
24 we employ accountants and lawyers for.

25 Q. Then if you turn over onto page 9, that is

1 the consolidated profit and loss account {F3/2995/11}.  
2 You will see the turnover set out, and then you will see  
3 the cost of sales. The turnover obviously includes  
4 the turnover of Northams and ILA, does it not?

5 A. Well, it must do. These figures are done by auditors.

6 Q. They are consolidated?

7 A. Well, they must do.

8 Q. The cost of sales, the same applies? That applies to  
9 the cost of sales in the two subsidiaries as well?

10 A. Well, that would include all the expenses, I assume, of  
11 the group.

12 Q. Yes.

13 Similarly, the operating profit will extend across  
14 all of the subsidiaries of the group?

15 A. The losses too.

16 Q. Absolutely. Absolutely, thank you.

17 On page 11 {F3/2995/13}, the current assets,  
18 "Stocks", "Debtors due within one year", "Debtors due  
19 after more than one year", the same applies? This is  
20 a reflection of the various items for all of  
21 the subsidiaries?

22 A. Yes.

23 Q. Page 15 {F3/2995/17}, you will see the working capital  
24 adjustments, and then underneath that, you will see,  
25 "Decrease/(increase) in stocks", "Increase in trade and

1 other debtors", "Increase in trade in other creditors",  
2 and then, two lines down from that, "Cash generated from  
3 operations". The same point applies. That is  
4 the consolidated activities of all of the members of  
5 the group?

6 A. Yes.

7 Q. Did you say "yes"?

8 A. Look, I have got to go along with what the auditors and  
9 the lawyers say. If we are using them, we rely upon  
10 them. I am not here to -- I could not say,  
11 individually, these things are right or wrong, but I am  
12 saying they deal with it and I accept  
13 the responsibility.

14 THE CHAIRMAN: I think what counsel is suggesting is, at  
15 that each stage, this is representing the consolidated  
16 position of all the companies in the group.

17 A. Oh, I see. Yes, it is the same, sir.

18 THE CHAIRMAN: You accept that?

19 A. Yes.

20 MR SPITZ: At the bottom of page 16 {F3/2995/18}, here you  
21 are setting out your own reasonable expectation:

22 "The director has a reasonable expectation that  
23 the group has adequate resources to continue in  
24 operational existence for the foreseeable future."

25 So pausing there, you have made a judgment, have you

1 not, that the group has adequate resources to continue  
2 operational existence for the foreseeable future?

3 A. Yes, because --

4 Q. Yes.

5 A. -- it is here.

6 Q. It is a judgment that you are making as to the health of  
7 all of the members of the group?

8 A. No, overall I am looking at it. I mean, what I am  
9 trying to say is that if one failed and one succeeded --  
10 if one failed, obviously, have you got enough  
11 reserves overall to meet that failure. So what I am  
12 trying to say is I am just relying on the professionals  
13 to advise me if this is correct and I will put my  
14 signature to it.

15 Q. Well, I do not want to be pedantic, but it goes a little  
16 further than that in that it is a specific judgment that  
17 you are making as a director as to the financial health  
18 of the group, so to make that judgment you will have  
19 assessed the financial health of the various components  
20 of the group. That is the proposition that I am putting  
21 to you.

22 A. Well, if the lawyers and the accountants are telling me  
23 that this is the position, I accept it. What I am  
24 saying is that -- though what I think you are trying to  
25 infer is that the main company should take the -- if

1 I will just say this in a layman's term -- if the main  
2 company is -- something fails here, then it has got to  
3 immediately take the money up and have it deducted. Not  
4 necessarily, because they are limited companies. They  
5 are independent in their own form.

6 Q. If you then turn to page 17, which explains the basis of  
7 consolidation {F3/2995/19}.

8 A. If I could just interrupt there --

9 Q. Yes, of course.

10 A. -- to explain. What I mean by "form" is that,  
11 obviously, if there was, between the companies,  
12 something wrong and they had done some thing wrong,  
13 well, obviously they would both be connected into  
14 the problem. But if they are independent and they have  
15 done nothing wrong, if I can put it that way, and one  
16 fails, then the other one should not be responsible for  
17 the other. That is what I am trying to infer.

18 Q. I am not disputing with you that you rely on advice from  
19 your lawyers and accountants; I am accepting that that  
20 is the case. But what I am saying to you is that you,  
21 in your capacity as a director of Radcliffe & Taylor,  
22 make the judgment as to the cash position of these  
23 subsidiaries, all of them.

24 A. Obviously, yes, because I have got to -- there is an  
25 accountant in Ireland, there is an accountant somewhere

1           else, who is doing the audits, and they are then  
2           collated.

3       Q. We have got a definition, if we have a look at page 17,  
4           under the "Basis of consolidation":

5                 "The consolidated financial statements consolidate  
6           the financial statements of the company and its  
7           subsidiary undertakings drawn up to 31 December 2017.

8                 "A subsidiary is an entity controlled by  
9           the company."

10                You would agree with that, would you not?

11       A. Yes, because it is right from the point of view of: it  
12           has the overall control. But I do not know the position  
13           because I am not a lawyer, and you should really be  
14           discussing this with our lawyers and our accountants.  
15           I have to stand back from this.

16       Q. You are a director. You --

17       A. Yes, I am sorry, but I rely upon my lawyers and  
18           accountants, and this is way above me, what you are  
19           trying to ask me to do.

20       Q. Well, I am not sure that it is way beyond you. You were  
21           quite happy, in your witness statement, to divorce  
22           the two subsidiaries as far as you possibly could from  
23           the holding company, and I am suggesting to you that  
24           the nexus between the two subsidiaries and the holding  
25           company is far closer than your witness statement

1 suggests.

2 A. No. No, it is a load of nonsense. Basically we keep  
3 the Ede & Ravenscroft group totally separate, and for  
4 you to try to imply that I think is totally wrong.

5 Q. I am carrying on reading this definition, which says:

6 "Control is achieved where the company has the power  
7 to govern the financial and operating policies of an  
8 entity so as to obtain benefits from its activities."

9 That is correct, is it not?

10 A. Sorry, where is that you're putting to me?

11 Q. It is page 17.

12 A. Yes.

13 Q. The second full paragraph after the sentence:

14 "A subsidiary is an entity controlled by  
15 the company."

16 The document provides:

17 "Control is achieved where the company has the power  
18 to govern the financial and operating policies of an  
19 entity so as to obtain benefits from its activities."

20 A. If these have been put in by my professionals,  
21 I obviously take the full responsibility of it. I take  
22 the whole responsibility of that whole page. I am not  
23 denying that.

24 MR LOMAS: Can I just clarify one point and make sure we are  
25 all on common ground here in light of something

1 the witness last just said. This is a debate between  
2 defendants 2, 3 and 4, is it not, Radcliffe & Taylor,  
3 Northam and Irish Legal. It is not a debate about their  
4 relationship with Ede & Ravenscroft, at least where you  
5 are at the moment, and I think the witness is  
6 occasionally taking the view that this is a link to  
7 Ede & Ravenscroft and I do not think that is the point  
8 you are driving at.

9 MR SPITZ: Thank you. That is a very helpful clarification.  
10 That is quite right.

11 It is the relationship between the holding company  
12 and the two subsidiaries, Northams and ILA.

13 A. Yes, I take responsibility for that.

14 Q. So the proposition that I am putting to you is that  
15 the holding company -- on the basis of what I have read  
16 to you, the holding company has control over the two  
17 subsidiaries, and the reason that it has control is  
18 because it "has the power to govern the financial and  
19 operating policies of an entity so as to obtain benefits  
20 from its activities".

21 A. Yes, in respect to that nucleus, if I can put it that  
22 way.

23 Q. Right.

24 Then continuing on page 17:

25 "Inter-company transactions ..."

1           This is halfway down the page. It starts:

2           "Inter-company transactions ..."

3       A. Yes.

4       Q. "Inter-company transactions, balances and unrealised  
5       gains on transactions between the company and its  
6       subsidiaries, which are related parties, are eliminated  
7       in full."

8           So you will not see inter-company transactions  
9       between those entities, and the proposition that I am  
10       putting to you is, the reason you will not see them is  
11       because the two subsidiaries are under the control of  
12       the holding company. You would agree with that? We  
13       have just gone through that.

14       A. Look, this is a lawyers and this is an accountants  
15       thing, this is well above me. You know, this is  
16       a professional thing. If my auditor tells me to sign  
17       something, and it is covered properly and it is  
18       professionally done, I rely upon them.

19       Q. The same applies to intra-group losses on page 17. They  
20       are also eliminated, and under "Key sources of  
21       elimination uncertainty and judgments":

22           "In the application of the company's accounting  
23       policies, the directors ..."

24           That is you:

25           "... are required to make judgments, estimates and

1           assumptions about the carrying amounts of assets and  
2           liabilities that are not readily apparent from other  
3           sources."

4           Again, I appreciate that you are not an accountant.  
5           The point is a much simpler one than that. The point is  
6           simply that you are making judgments, estimates and  
7           assumptions about the assets and liabilities in all of  
8           the subsidiaries of the group?

9           A. Yes, I do, but the other thing is, it is pointless in  
10          thinking that these companies, which are limited  
11          companies, are interlinked, unless they are actually --  
12          unless they are doing things actively together and  
13          trading together and causing failure. Obviously  
14          a director has legal responsibilities, but if something  
15          happened and the property collapsed and it is in  
16          a separate -- and it is a part of the group but it is  
17          a separate company, then if you could not -- then it  
18          should not be linked to the whole group. That is what  
19          I am trying to say. Obviously if I knew about a thing  
20          being weak and then something happened, then obviously  
21          the whole thing would be liable. What I am trying to  
22          say is, these are independent limited companies.

23          Q. The proposition that I am putting to you is that those  
24          independent limited companies are controlled by  
25          Radcliffe & Taylor.

1 A. Yes, but what I am trying to say is, if someone was  
2 reckless in something and I did not know about it,  
3 obviously I would not be legally liable. That is what  
4 you have limited companies for. But if you are doing  
5 something wrong, or your accountant does something  
6 wrong, then obviously we are liable. But I do not  
7 understand what this is about when we are talking about  
8 gowns and hoods.

9 I could just add that, if in fact there was any  
10 query, I am quite -- outside this hearing, to get all of  
11 our accountants and let them discuss it and be  
12 responsible to it. It is above me, this sort of stuff.

13 Q. Let us move to your defence {B/7/1} and go to  
14 paragraph 6 of that defence {B/7/2}.

15 A. What page is that?

16 Q. It will come up on your screen.

17 A. Oh.

18 Q. It is {B/7/1}. If you go to the next page {B/7/2},  
19 paragraph 6, there the defendants have said, in  
20 the second sentence:

21 "It is denied that the Second Defendant is  
22 a necessary and proper party to the claim. The Second  
23 Defendant does not have (and has never had) any  
24 arrangements with Universities in relation to the supply  
25 of academic dress to students, and does not supply (and

1 has never supplied) academic dress to ... students."

2 Skipping out the deleted material:

3 "The claim against the Second Defendant is therefore  
4 liable to be struck out."

5 That is the case that we are meeting and that is  
6 the case that I will be making submissions on, on  
7 the basis of the material we have gone through.

8 The other paragraph to show you is at {B/7/68},  
9 paragraph 100.

10 A. Where, sorry? Where are you, sorry?

11 Q. It is paragraph 100.

12 A. Yes.

13 Q. Here you admit that:

14 "... the Second Defendant has been the ultimate  
15 parent of the Third ... and the Fourth Defendant."

16 You see that?

17 But you deny:

18 "... that the Second Defendant has in fact exercised  
19 decisive influence over either the conduct of the either  
20 the Third ... or the Fourth Defendant."

21 A. Well, this is lawyers' jargon, if I can put it that way,  
22 it is not mine. I have to rely upon those. In  
23 practical terms, if I can put it this way, which is  
24 a different issue -- and I do not know how lawyers  
25 act -- Radcliffe & Taylor has never had active influence

1 over Northams or ILA, let us put it that way. They have  
2 ran independently and I have never even been involved  
3 with them, and if you can show me numerous emails from  
4 myself on that aspect, then I would be grateful if you  
5 showed me them.

6 Q. Well --

7 A. They are run independently.

8 Q. What I will show you is the signature page of  
9 the pleading, which is {B/7/69}, and that is your  
10 signature --

11 A. Yes, I fully agree.

12 Q. -- under the statement of truth.

13 So, are you suggesting that you signed the statement  
14 of truth without understanding what was in the defence?

15 A. What I am saying -- and I am not denying a statement of  
16 truth or anything -- what I am saying is, this has been  
17 prepared professionally, I have signed it. I have had  
18 professional advice and I have signed it. What I am  
19 trying to point out separately is that whilst there is  
20 obviously legal and moral and accountancy requirements,  
21 which we may be well responsible for, we have never  
22 actively been involved in, if I can put it this way,  
23 gowns and the hire of gowns not by the parent company.  
24 It is totally -- it is a small thing. Unfortunately, if  
25 you think that, we should not have had it there, it is

1           irrelevant. But what I am getting at is, in the whole  
2           operation, it is nowhere near a major cog in this thing.

3       Q. Moving now to the second aspect of this inquiry, and now  
4           we are talking briefly about Ede & Ravenscroft, on  
5           the one hand, and the two subsidiaries and their holding  
6           company, on the other. This is the distinction that  
7           Mr Lomas was drawing a little bit earlier, so I am  
8           moving now to ask you just a couple of questions on  
9           the relationship between Ede & Ravenscroft and Northams,  
10          for example.

11       A. Yes.

12       Q. Would you tell the tribunal who the common directors are  
13          of those companies.

14       A. Well, if I am a director of Northams, and I have got to  
15          say, if it is in the papers -- you know, it shows how  
16          little I have been involved with it; but if I am  
17          a director of Northams, I am a director of Northams.  
18          I am not denying that. But what I am just saying to you  
19          is that there is no trading, and why on earth would we  
20          be responsible for the negligence -- if you want to say  
21          that, the negligence of, for example, Ede & Ravenscroft  
22          if it has been independently and honestly kept separate?  
23          I just do not understand what you are getting at with  
24          this tribunal. What we should really be talking about  
25          is what we have done wrong, in the tribunal, not

1 property aspects, which are totally irrelevant to it.

2 Q. Ede & Ravenscroft and Northams operate in the same  
3 business, in the same type of business, do they not?

4 A. Well, they are academic and robemakers. I am not  
5 disputing that. But what I am saying is that there is  
6 a complete separate link in the management of those.  
7 They may be loosely -- got the same common directors,  
8 but that does not mean to say the directors are actually  
9 actively running the company.

10 Housekeeping

11 MR SPITZ: Sir, that is what I wanted to say about this  
12 topic. There are some other topics to cover, but  
13 I think that we are, both with this witness and with  
14 the final witness, in good time, so that we will finish  
15 by lunchtime tomorrow.

16 On that basis, and given that it has been a long  
17 time in the witness box for Mr Middleton, I would  
18 suggest that we break now and resume tomorrow morning to  
19 finish this off.

20 THE CHAIRMAN: Yes, we are happy with that.

21 MR PATTON: Sir, could I just make one point briefly, just  
22 while it is live, and in case anyone were to complain  
23 about my not having made it, although that may be  
24 unlikely. As we have said at paragraphs 158 and 159 of  
25 our skeleton {A1/2/42}, we say that there is not

1           actually any pleaded case of Ede & Ravenscroft  
2           exercising decisive influence in relation to D3 or D4.  
3           So, just so that is clear. I am not waiving that  
4           position.

5       THE CHAIRMAN: Just one housekeeping point. I think there  
6           is at least a risk that we will not need the Thursday of  
7           next week in terms of cross-examination of the experts.  
8           There is a generous timetable for both hot-tubbing and  
9           cross-examination, which means we would have to come  
10          back on the Thursday for only one reason, which is  
11          the early insertion of -- I have forgotten his name.  
12          Who is the expert?

13       MR RANDOLPH: Chan.

14       THE CHAIRMAN: Yes. Is there any possibility of him being  
15          moved back a day or forward a day?

16       MR PATTON: We will make enquiries, sir. There was an  
17          issue. Chinese New Year, I think, is celebrated on  
18          the Monday of that week and he is in Hong Kong, but we  
19          will check whether the Wednesday is available for him.

20       MR RANDOLPH: I think there was another issue, if I seem to  
21          remember, that Dr Niels has to leave court at 3 pm on  
22          the Wednesday, which might impact on the timing.

23       THE CHAIRMAN: It might do. If we had to come back  
24          the Thursday because we had not finished Dr Niels, that  
25          would be another matter.

1 MR RANDOLPH: Indeed.

2 THE CHAIRMAN: I am not shutting out the Thursday, but if we  
3 are not here on the Thursday anyway, it would be a shame  
4 if we had then not taken the opportunity to finish clean  
5 on the Wednesday evening.

6 MR RANDOLPH: Absolutely. We will check as quickly as we  
7 can. I am grateful.

8 THE CHAIRMAN: Thank you. We will carry on at 10.30  
9 tomorrow.

10 Can I just remind Mr Middleton that you are in  
11 the middle of your evidence, so you are not allowed to  
12 talk to anybody about it overnight.

13 Thank you.

14 (4.11 pm)

15 (The Court adjourned until 10.30 am on Friday,  
16 28 January 2022)

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