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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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Friday, 28 January 2022

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(10.30 am)

THE CHAIRMAN: Good morning, Mr Patton.

MR PATTON: Good morning, sir. Mr Middleton is not yet back in court, he is just sitting outside, and there was something I thought I ought to tell the tribunal before he is brought back in.

THE CHAIRMAN: Yes.

MR PATTON: Yesterday evening, my instructing solicitor Ms Taylor sent Mr Middleton a reminder by email of the purdah --

THE CHAIRMAN: I am sorry, I missed the beginning of that sentence.

MR PATTON: Sorry.

Yesterday evening, my instructing solicitor Ms Taylor sent Mr Middleton a reminder by email of the requirement that he remain in purdah and provided him with details of the taxi arrangements for coming to the hearing.

This morning, Mr Middleton replied to that email chain and it may be a communication about his evidence.

Now, there has been no contact, obviously, from Ms Taylor in response to that, but I thought that was something that I ought to mention to the tribunal.

THE CHAIRMAN: So he has made a comment about his evidence

1 but no one has replied to it?

2 MR PATTON: Correct.

3 THE CHAIRMAN: Thank you.

4 MR PATTON: I am grateful.

5 Shall I ask him to come back?

6 MR MICHAEL MIDDLETON (continued)

7 THE CHAIRMAN: Good morning, Mr Middleton.

8 WITNESS: Good morning.

9 Sir, I want to make two statements, if I may. One
10 concerning Adrian Halls. Obviously I do not want to
11 embarrass him. The facts relating to that were that
12 the auditors were getting too slow and I was getting fed
13 up and threatening to get rid of them.

14 THE CHAIRMAN: Sorry, this is in relation to the document --

15 WITNESS: (overspeaking).

16 THE CHAIRMAN: -- that he signed?

17 WITNESS: Sorry?

18 THE CHAIRMAN: Is this in relation to his appointment as
19 a director?

20 WITNESS: Yes.

21 THE CHAIRMAN: Yes.

22 WITNESS: So it was suggested that he came on board and
23 dealt with them, because the payments were always
24 last-minute. It was also in case I fell under a bus.

25 So, it was discussed, but what happened was that

1 David Sykes(?), before I knew it, had registered him as
2 a director and I thought he had not officially done it,
3 so I told him to put it back. That is what really
4 happened.

5 There is two other points, sir -- no one other
6 point. I read my witness statement, and on clause 67,
7 I would just like to amend that slightly.

8 THE CHAIRMAN: We will just pick it up, shall we? So that
9 is {D4/1/20} in the confidential statement.

10 WITNESS: I would like it changed to:

11 "I asked my friend Wendy, who asked her friend
12 Alison to email ..."

13 THE CHAIRMAN: Right.

14 WITNESS: Thank you.

15 Cross-examination by MR SPITZ (continued)

16 MR SPITZ: Thank you very much. Good morning, Mr Middleton.

17 A. Good morning.

18 Q. On the first point that you raised, just to clarify
19 the position with you, is it then your evidence that
20 Mr Halls was not appointed as a director in order to
21 sign a document?

22 A. He was a partner with the old firm, but we were getting
23 last-minute -- because of the consolidation, it was
24 making it difficult, I think, with one accountant to
25 agree to the other, and it was taking too -- and we were

1 signing sort of a day before/two days before you should
2 really file them. I think that is what was happening,
3 and I was getting frustrated with it, because I am not
4 an accountant. So it was suggested that he should deal
5 with that area which, as a qualified man, that would
6 have been okay. I was happy to go along with it.

7 However, the real problem was -- and most probably
8 it is me getting a bit cussed, I do not know -- that he
9 thought that I had given approval, because we had
10 discussed it, but I thought I had not given approval, if
11 you know what I mean? It was a -- one had done it, and
12 so I said "Put it back", and that is how the problem
13 arose.

14 Q. So, as I understand it, it was to sign the statutory
15 accounts; is that --

16 A. Well, and also -- well, I do not know who is company
17 secretary, actually. I am so bad on these things.

18 Q. He is the company secretary --

19 A. Sorry?

20 Q. He is the company secretary --

21 A. Oh, yes.

22 Q. -- currently?

23 A. He is always still there(?), I think.

24 Q. Yes.

25 A. Well, he was coming as a director to liaise with

1 the accounts.

2 Q. All right, well, we have asked your legal
3 representatives to provide the document or documents
4 that he signed, so let us receive those and have a look
5 at that and let us take it from there.

6 A. Oh yes. I am just trying to explain, not the signing of
7 documents or whatever, I am just trying to explain
8 why he -- you know, it was a point of mine that I was --
9 I did not think I had officially told him, and you know,
10 "Put it back". That was the crux of the matter. That
11 is why it is such a close period. By the time I found
12 out, which was a few days later, I told him, you know,
13 "Put it back".

14 Q. Very well.

15 I would like to begin by referring you back to
16 paragraph 18 of your witness statement. {D4/1/6}. You
17 will recall the witness statement provides:

18 "Whilst I have been a non-executive director of E&R
19 and Northams for some years, when the Claimants
20 threatened claims under the Competition Act in 2018 ..."

21 Your evidence in that paragraph continues.

22 Now, quite properly, after court yesterday, your
23 legal representatives contacted me to point out that
24 that first line is in fact an error in your witness
25 statement, in the sense that you are not and you have

1 not been a non-executive director of Northams. So that
2 is a correction that they have brought to my attention.

3 For clarity then, we should have a look at
4 the relevant page of the transcript where this was dealt
5 with. It is page 86 of yesterday's transcript
6 {Day4/86}.

7 A. I ...

8 Q. Let us wait and it will be called up.

9 A. I never thought I was a director, but I was getting
10 confused.

11 Q. Well, as it turns out, you are correct. Has it come up
12 on your screen?

13 A. No ...

14 Q. Page 86, line 3 to 19. We are not going to spend a long
15 time with this, I just want to highlight the section.

16 MR PATTON: Day 4?

17 MR SPITZ: Day 4, yes, that is quite right. It is
18 {Day4/86:3-19}.

19 A. Page 4?

20 THE CHAIRMAN: Day 4. I think you should have it now.

21 Day 4's transcript. Does it start at the top, "Yes".

22 A. Yes, and where do you want me now to go down to?

23 MR SPITZ: Just have a quick look from line 3 to line 19.

24 I do not propose to ask you any questions on it; I just
25 want to identify it for the record so that it is all

1 clear.

2 (Pause)

3 A. Yes.

4 Q. Right, so that is the relevant portion of
5 the transcript, and I have shown you paragraph 18.

6 What I do want to ask you is, how did it come about
7 that you say in paragraph 18 that you are
8 a non-executive director of both Ede & Ravenscroft and
9 Northams?

10 A. It must have been a typing error, and you can see
11 things, and unless you register, you know, it is like
12 words going through you, if you see what I mean?
13 I mean, I have only picked up the last one -- to be
14 honest, I read my witness statement last night and
15 I still have not picked this up.

16 Q. Did you write your witness statement?

17 A. I dictated it -- well, they asked me and I did not write
18 it by hand, no. My solicitor took from me and asked me
19 questions and put verbatim down what I said.

20 Q. Because if you then turn to paragraph 6 of your witness
21 statement {D4/1/2}.

22 A. Where are we?

23 Q. Paragraph 6. You will see under the heading,
24 "Certification of conformity", paragraph 6 says:

25 "This witness statement sets out only my personal

1 knowledge and recollection, in my own words."

2 A. Yes.

3 Q. Does your witness statement do that?

4 A. Well, yes. I mean, basically, but obviously I did not
5 put that in, or if I did, you know, I have got muddled
6 in myself. I am not saying it was deliberate, or
7 anything else, because I should have -- you know,
8 I should have noticed.

9 Q. Do you recall whether you put those words in?

10 A. Well, I saw a draft and I have read it through and I saw
11 a draft. When you are dealing with so many things,
12 you know, when you get to my age, you may make the same
13 mistakes.

14 Q. Can you tell the tribunal what LUPC is? That is
15 L-U-P-C?

16 A. Yes, it is an organisation, London University
17 Procurement Consortium, or whatever it is, and they are
18 taking over. They made arrangements with all
19 the universities so that they are doing -- they are
20 acting as the goalkeeper, if I can put it that way, for
21 tenders. Eventually, it may just go that route, where
22 the universities have all the access to all the data and
23 they can then choose people.

24 We were going into it, we submitted a tender, our
25 tenders, and then we were advised that some of

1 the statements made in those they did not think were
2 wise for us to agree to. So we withdrew. That is what
3 really happened.

4 We have lost appointments because some of
5 the universities just decided to use LUPC, so we have
6 not been able to tender. All the universities, though,
7 got access to these tenders, or these details. They may
8 even have our one which we withdrew. From that they can
9 work out -- they do not necessarily have to go to
10 tender, there is three routes: either using LUPC, either
11 using LUPC and negotiation, or go to tender.

12 So the procurement people have got a very wide range
13 of knowledge, as well as, of course, most probably they
14 talk to themselves, I do not know, the various people.

15 So they use LUPC, which is going to be revised again
16 this year, I think, as a whole university business model
17 for, you know, for tenders.

18 Q. Now, we have heard your evidence and seen your witness
19 statement yesterday. Although you have said that you
20 had stepped back from most day-to-day management tasks
21 about five years ago, you personally took a decision for
22 Ede & Ravenscroft not to participate in LUPC; is that
23 correct?

24 A. Well, it was my influence, let us put it that way,
25 because we have submitted -- Tony Thornton, actually,

1 submitted a tender, and when we looked at the -- when we
2 looked at -- I think it was my daughter, maybe, who had
3 looked at some of the questions in it and wondered --
4 put an amber light on them. We went to -- she went to
5 the lawyers and we were advised, you know, we were in
6 a position where we most probably should not agree to
7 those.

8 Q. Have a look at paragraph 50 of your statement.

9 A. Sorry, what, 50?

10 Q. Paragraph 50 of your statement. {D4/1/15}.

11 A. Yes.

12 Q. The third line of that paragraph, you say:

13 "... I took the decision for E&R that we should
14 withdraw our bid and have nothing more to do with LUPC
15 because of, among other [things], concerns over
16 the competition law issues."

17 A. Yes.

18 Q. So it was you, was it not, who took that decision?

19 A. Well, if you say I am the chairman, yes I did. But I am
20 saying of course I had advice, and that was clear, that
21 we should withdraw from it.

22 Q. Where did the initiative to consider withdrawing from it
23 come from?

24 A. I think maybe my daughter raised the initial, when she
25 read the tender, you know, because Tony Thornton and

1 her, I think were -- I was in the background, obviously,
2 you know, asking things from a historic, what to do, but
3 I think they raised it and that is -- you know, I do not
4 know exactly now, because it is four/five years ago.

5 Q. You say in paragraph 50 that:

6 "... we did not consider the process to be
7 competitive and because some of the requirements of LUPC
8 were clearly not to the advantage of students ..."

9 What specifically did you have in mind then?

10 A. We took -- from speaking to my daughter, who also spoke
11 to the solicitors, and because I am not constantly in
12 touch with solicitors, they got advice.

13 MR PATTON: Just to make clear, you should not refer to
14 contents of the discussions with solicitors.

15 MR SPITZ: Indeed.

16 THE CHAIRMAN: You are not being asked to talk about
17 the discussions you had with your solicitors, so put
18 that aside. You can talk about discussions with your
19 daughter --

20 A. Yes.

21 THE CHAIRMAN: -- and your own reasons.

22 A. Yes.

23 MR SPITZ: That is what I am asking you. What specifically
24 did you have in mind in particular that made you feel
25 you did not want to be associated with LUPC?

1 A. If a lawyer tells you not to do something, you do not do
2 it, let us put it that way.

3 Q. You say that their requirements were "clearly not to
4 the advantage of students".

5 A. If I recall rightly, there was something about -- and
6 you are asking me things now out of the blue -- there
7 was something about that, out of the funding of, I think
8 it was -- was it -- it could have been video-streaming,
9 or something like that -- I have not got the actual
10 details here -- that the video-streaming was actually
11 coming out of the money actually received from
12 the student. It was something like that. Whereas we do
13 not do that. We are now -- we are doing our things. We
14 take it out of our profits. We do not -- this was
15 actually -- I think the wording was -- I am not
16 a lawyer, but there was something there. I mean, they
17 can provide it for you, not me.

18 Q. I mean, Mr Middleton, this evidence that you are giving
19 is your evidence. You are not saying what the lawyers
20 said. You are saying that you --

21 A. Well, I do say it, do I not?

22 Q. -- you --

23 A. Do I not say it?

24 THE CHAIRMAN: Let him finish the question, then answer it.

25 MR SPITZ: You are saying you:

1 "... did not consider the process to be competitive
2 ... because some of the requirements of LUPC were
3 clearly not to the advantage of students ..."

4 So --

5 A. Well, most probably my -- well, most probably my wording
6 is my wording and it is not how -- as explicit as it
7 should be. What I am saying is that we were advised --
8 we had submitted a tender. I think it was my daughter
9 who raised a query on it, I am not sure now, and she
10 took advice. I do not think I was even involved in
11 that, but when it came back that there was something in
12 the contract which was not clear, it was better for us
13 to not get involved.

14 I mean, I think there is a lawyer's letter
15 somewhere. I do not know.

16 Q. Were there other specific concerns that you had that you
17 did not like about the LUPC system?

18 A. Well, we would not have submitted a tender if we did not
19 like it. You know, we submitted a tender and withdrew.
20 I do not know -- I cannot -- it is four/five years back.
21 I mean, if it was a specific for me, you know, I would
22 have briefed myself up on it, but I am not au fait to
23 the details now.

24 Q. If you can turn to {F3/2989}.

25 A. Is it coming up?

1 Q. Now, this does not appear to be a privileged document,
2 but please correct me if I am wrong, because if it is,
3 I obviously will not refer to it.

4 No, it is not privileged. okay.

5 Well, this is a letter from Fladgate solicitors, and
6 if you look at page 2 of the letter, paragraph 4
7 {F3/2989/2}.

8 A. Page 1 at present.

9 Q. Perhaps I will just --

10 A. Okay.

11 Q. I will take the preamble to it first, Mr Middleton, so
12 we will start off on the first page {F3/2989/1}. What
13 you will see is that this is a letter from your
14 solicitors to LUPC, and the first paragraph says:

15 "We note LUPC has refused to give the information
16 requested about the statements made by Mr Bowman or
17 other representatives of LUPC ..."

18 That paragraph carries on.

19 Then two paragraphs down, the letter continues:

20 "Ede & Ravenscroft will be submitting a bid within
21 the time allowed."

22 Then it continues:

23 "However it is worth noting at this juncture that
24 our client has cause for concern about the manner in
25 which bids will be able to be assessed and scored given

- 1 the nature of the questions asked in the ITT."
- 2 Point number 1, I think, is the point that you
- 3 mentioned in your evidence, the suggestion that
- 4 the costs of filming, DVDs and live streaming would be
- 5 costs for the students to bear; do you see that?
- 6 A. Yes.
- 7 Q. Then if you turn over the page to point 4 {F3/2989/2},
- 8 point 4 says --
- 9 A. It has not come, sorry. Can it be a little bigger?
- 10 Q. Is that large enough?
- 11 A. "The case study ... Academic Gowns are provided ..."
- 12 (Pause)
- 13 Yes.
- 14 Q. So it seems that the concern there is that the cost of
- 15 academic gowns are described as being provided to
- 16 academics as free of charge, but in fact the costs of
- 17 those gowns under LUPC, the cost of those gowns is to be
- 18 "subsidised or covered by the prices charged by
- 19 the tenderer to the graduates to whom it hires gowns."
- 20 Do you see that?
- 21 A. Yes.
- 22 Q. That is the same system that Ede & Ravenscroft uses, is
- 23 it not?
- 24 A. No.
- 25 Q. Tell me why?

1 A. Because it is saying here the cost is included in
2 the student gowns. That is not the case. We have got
3 the student price and we actually pay for the cost of
4 the gowns ourselves out of our revenue, so it is split.
5 The student price basically is a price which -- we price
6 that out of our overhead costs. That is where these
7 other elements come to. That is why, sometimes, if we
8 are offering our streaming, which is really to
9 the benefit of the student as well, we pay for it out of
10 our contribution. So the basic price for the student is
11 always there.

12 Q. What is the revenue stream then that enables you to pay
13 for the academic gowns --

14 A. Well, it is overall income, but it is not -- but if you
15 were to argue the way you are doing, even the cost of
16 just the office, the student pays for it, is ridiculous.
17 We have an established price which we put in, but that
18 is not the students'. The overall income is separate.

19 Q. I think my question is a slightly different one. My
20 question is, what is the revenue source that enables you
21 to pay for --

22 A. Oh, right. It is --

23 Q. Let me finish the question --

24 A. -- graduation attire.

25 THE CHAIRMAN: Do let him finish the question. It is much

1 quicker if we do.

2 A. Yes.

3 MR SPITZ: What is the revenue source that enables you to
4 pay for the gowns for academics? Where does that
5 funding come from?

6 A. Well, it comes from the income paid for by, you know,
7 what we get from the income from the gown hire overall.

8 Q. To the students?

9 A. Well, if you want to put it that way, but it is not
10 the -- it is part of the management, I would have
11 thought, of the overall function of the place.

12 Q. Well, where else would the revenue come from if not from
13 the students?

14 A. Well, you do not say the students specifically. Well,
15 the whole event is for the student. It is --

16 Q. I am asking you a different question. I think you are
17 probably alive to the question that I am asking you.
18 Would you answer that question.

19 A. Well, we have an income for a gown hire fee. Whether
20 you want to apply it to the student or what, it is an
21 income, and out of that we have overheads which we have
22 to contribute.

23 Q. One of those overheads is to pay for free gowns for
24 the academics at graduation ceremonies?

25 A. Yes, but that is a demand -- that is a demand --

- 1 Q. I am just asking you whether the way I have stated it --
- 2 A. Yes, yes, but I am saying that that is a demand.
- 3 Q. Sorry --
- 4 A. Sorry.
- 5 Q. I am asking you whether the way I have stated it is
- 6 accurate or not?
- 7 A. Yes, but it is the university that are imposing these
- 8 conditions upon us as we actually tender.
- 9 Q. Do you tell the students when they hire academic gowns
- 10 from you, do you tell them that you provide free
- 11 academic gowns to the academics out of the revenue that
- 12 is derived from the students?
- 13 A. Well, there is -- it is the universities that have
- 14 the problem.
- 15 THE CHAIRMAN: Can you just answer the question, first, then
- 16 you can comment.
- 17 A. Yes. What is it that you are saying?
- 18 MR SPITZ: I am not asking for the origin of this; I am
- 19 asking you whether you tell the students who hire their
- 20 academic dress from you that part of the price of that
- 21 hire is used to provide free academic gowns to academics
- 22 at the graduation ceremonies. Do you tell them that?
- 23 A. Not -- obviously not blatantly. We do not split their
- 24 fee up, their income, no.
- 25 Q. No, you do not.

1 Let us go then to paragraph 46 of your witness
2 statement, because there you will see -- has that --
3 yes, you have that: {D4/1/14}

4 "E&R's business model [you say] and the things we
5 invest in and place emphasis on are in line with what we
6 see as the important issues for our customers ..."

7 Do you see that?

8 A. Yes.

9 Q. "... by which I mean the students who hire their garb
10 from us and the institutions who put on the events."

11 Do you see that?

12 A. Yes.

13 Q. Now, when the students hire their garb from you, do you
14 tell them that you pay commissions to the university?

15 A. I think it is an established thing.

16 Q. That is not what I am asking. I am asking --

17 A. We do not ourselves, because we are not the direct
18 involvement with the -- the university are the direct
19 involvement with the student. We are an agent, as it
20 were, if I can put it a different way. We tender.

21 The reason why the universities -- I mean,
22 historically, years ago, we used to give one gown in
23 15 hires for the academics to attend the thing, and
24 a lot of them were not coming, so the universities told
25 us a lot were not attending because they did not have

1 the outfits to -- and they were not going to,
2 presumably, pay for them. It was a question of
3 the students were not seeing their tutors, if I can put
4 it that way, as ceremonies.

5 So it was an inducement, an attraction, that
6 the event of the day had all the tutors there as well,
7 and that is how it has always been.

8 Q. So for clarity, I think we have established, have we,
9 that when the students hire their academic dress from
10 you, you, Ede & Ravenscroft, do not tell them that you
11 pay commissions to the university, do you?

12 A. Well, you do not publish it all over the place but it
13 is --

14 Q. No.

15 A. -- an accepted rule in the tenders.

16 Q. The revenue for the payment of those commissions is
17 derived from the students' payment to hire their
18 academic dress; is that not also the case?

19 A. Well, it is from the revenue from the graduation as
20 a whole for which we pay, yes, if you want to
21 technically split it down to the student.

22 Q. Yes, I do, I do, because that is part of what the case
23 is about.

24 A. Well, if that were the case, we would be half your
25 person's value, but anyway, let us forget it.

1 Q. Sorry, I did not understand the last bit.

2 A. What I am trying to say is that the revenue we receive
3 is a lot less than other people, if you work the figures
4 out. We are not excessive in our charges.

5 Q. So do you tell them, when they hire their garb from you,
6 do you tell them that in fact they are actually funding
7 those commissions through their garment hire?

8 A. Well, it is the students' event of the day. It is --

9 Q. That is not what I am asking you.

10 A. We do not tell -- what I am --

11 Q. Then let us put it this way --

12 A. -- saying is it is part of the ceremonial task --

13 Q. Mr Middleton, we can move through this quite quickly,
14 but let us --

15 THE CHAIRMAN: You did ask a question which he was answering
16 when you overspoke him. Let him finish that answer
17 first.

18 A. Well, I say it is part of the overall ceremonial cost.
19 The student, it is the -- today, it is going all for
20 the experience of the student. They tell me, and I do
21 not know about it because I am not in America, but they
22 tell me that these ceremonies are going more and more
23 like the American style. Whether that is true or false,
24 I do not know, but it is the event and experience for
25 the student.

1 Out of that, the university then obviously have
2 the cost of catering and all these sort of things. It
3 is not just -- and hiring of the hall and things like
4 that. It is not just -- it is more complex than your
5 simple suggestion that they are paying, that the student
6 is paying out of his gown hire technically that, when
7 the overall event is vast -- is a lot more, there is far
8 more cost.

9 MR SPITZ: Do you consider that the students hiring their
10 academic dress from you might wish to know that in fact
11 they are also funding commissions to the university in
12 the process?

13 A. Well, it is the way they do it. I do not know. All
14 I know is, if you take, for example, I think it is
15 Edinburgh, they are charging the student more for
16 the fee, the actual fee of the university costs, they
17 charge more there and they are including the ceremony
18 within those costs and not charging them -- not charging
19 commission on the day. So it is the way you dress it
20 up, I suppose.

21 If you take Edinburgh, they are still getting
22 the same amount, but what they are doing is they are
23 charging the -- I do not know the technical word -- you
24 should really look at it; but they are charging
25 the administration and the tutor costs and everything

1 else, they are putting that in that part and then
2 lowering the commission, but at the end of the day, they
3 are paying the same, because they pay more for the other
4 costs.

5 Q. Ede & Ravenscroft sponsors academic prizes at graduation
6 ceremonies from time to time, does it not?

7 A. Yes.

8 Q. When the students hire their academic dress from you, do
9 you tell them that those prizes are also actually paid
10 for by the students hiring their academic dress?

11 A. Well, it is the overall management again, but whichever
12 way you want to dress it, if you are saying our income
13 comes from gown hire and retail and everything else,
14 well, then, obviously it comes from there.

15 Q. Because the sponsorship of the prizes is embedded in
16 the price of the garment hire. That is a fair way of
17 putting it, is it not?

18 A. Well, it is how you want to dress it up.

19 Q. Sitting here today, do you think that this is something
20 that the students might wish to know about?

21 A. Well, they either have a ceremony or they do not and
22 that is the cost overall of it. You know, you are
23 trying to split hairs and say they have got to fund
24 everything. I mean, I am not a chartered or cost
25 accountant, it is not for me to say exactly how it

1 comes. I am just saying that the event costs a huge sum
2 of money, and out of that, if the university did not get
3 the commission, then they are going to get the money
4 back somewhere, you know.

5 I have illustrated with Edinburgh. All they have
6 done is reduced the cost of it and we do not have
7 commission there, do not have to pay commission, but the
8 cost of the actual -- I think the charge is elsewhere in
9 the actual management of the -- you know, what they pay
10 to enroll at the university. It is all in those costs.

11 Q. Let us turn now to the issue of the eco-claims in this
12 case.

13 A. Echo?

14 Q. What we have called "the eco-claims".

15 A. What page?

16 Q. Let us turn up first {F3/1405/4}.

17 Has that come up on your screen?

18 A. No.

19 THE EPE OPERATOR: Could I have the reference again, please?

20 MR SPITZ: It is {F3/1405/4}.

21 Now, Mr Middleton, is it there yet?

22 A. It still has not come up, sorry.

23 Q. This is exhibit RN1 to Ms Nicholls' statement. Have you
24 seen this exchange between Ruth Nicholls and a Mr Gareth
25 Heywood from a company known as Shirley Tech?

1 A. No -- well, I may have done, I do not know, it is --
2 but, yes, come on.

3 Q. All right. Well, let us take a moment.

4 A. "I am hoping ..."

5 Q. What she says is, at the top of the email -- it is
6 Monday, 4 January 2021. The subject is "Testing for
7 Recycled Materials in Polyester".

8 A. Yes.

9 Q. She says:

10 "Hi Gareth and Phil,

11 "I am looking into the possibility of getting some
12 polyester fabrics tested, to ascertain whether they
13 contain recycled PET. I understand that supply chains
14 can be audited to check the authenticity of recycled
15 materials, but am struggling to find out whether it's
16 possible to run a lab test on a swatch of polyester
17 fabric to find out whether it is composed of recycled or
18 virgin PET."

19 Then she asks:

20 "Do you know whether it is possible to conduct this
21 type of test on a sample and, if so, is this a service
22 that you can offer as a company?"

23 Underneath that you will see Mr Heywood's response:

24 "Good afternoon, Ruth --"

25 A. Sorry, I do not have it.

1 Q. Thank you:

2 "Good afternoon, Ruth ..."

3 Do you see that?

4 A. Yes, I accept this, but --

5 Q. Bear with me. Again, I will come to the question in

6 a moment:

7 "Good afternoon, Ruth,

8 "This is a very interesting field, but sadly it is

9 still very much in the research area. We are not

10 currently aware of any well-defined procedure to

11 determine if a polyester is made from recycled materials

12 using laboratory techniques."

13 A. Mm-hm.

14 Q. You say, yes, you would accept that?

15 A. No, not necessarily. I accept what you tell me here,

16 but I also contacted them --

17 Q. We will come to that.

18 A. -- and that came slightly different.

19 Q. All right, I will certainly give you the opportunity to

20 make that point.

21 Let us turn first to Ms Nicholls' first witness

22 statement. That is {D1/1/22} at paragraph 93.

23 A. I have not got it. 93?

24 Q. Perhaps it can be enlarged.

25 A. Mm-hm.

1 Q. Ms Nicholls says:

2 "I contacted four commercial testing labs, both in
3 the UK and overseas, to enquire whether we could do our
4 own testing of our gown fabric for the presence of
5 recycled PET. All of them came back and said this was
6 not possible. The fullest response came from a manager,
7 Gareth Heywood, at Shirley Tech, who stated that 'we are
8 not currently aware of any well-defined procedure to
9 determine if a polyester is made from recycled materials
10 using laboratory techniques'."

11 A. Mm-hm.

12 Q. Now, you have not filed a responsive witness statement
13 to that evidence, have you?

14 A. Well, to be honest, there was so much for me to read and
15 everything else, I have got enough to deal with. But
16 all I am really saying to you: please do not give
17 a fudge. The simple thing on this, regardless of
18 testing, is if a person honestly wants to promote an
19 article, you just put the proper label on it. You put
20 the label on the tin. You do not try and fudge and get
21 round the thing.

22 So what I am saying is, the laboratory tests, if
23 I can put it a way, is a way now that they can test.
24 They were not able to do it before, but they relied upon
25 the integrity of the people who, if you say you are

1 doing recycled polyester, you put the proper logo on it
2 and it is tracked. It was being able to track then.
3 There is no excuse whatsoever.

4 Q. Let us turn to tab {E5/18/1}, which will come up on your
5 screen. You see that is the report of the defendants'
6 fabrics expert. That is --

7 A. I have not got it.

8 Q. -- Mr Chan.

9 A. Yes.

10 Q. You will see that it is dated 12 November 2021, and if
11 you can be shown page 3 of that document {E5/18/3}, you
12 will see at the bottom the first question that he was
13 asked to opine on.

14 A. Where? What?

15 Q. At the bottom, paragraph 18.

16 A. 18:

17 "I have been asked to address the ... issues:

18 "In relation to ... Test ...

19 "Did Intertek test ... [enable] to test for the
20 presence of 'recycled ...'."

21 Yes?

22 Q. Yes:

23 "Did Intertek test and is it able to test for
24 the presence of 'recycled plastic'?"

25 A. Mm-hm.

1 Q. The answer is given at page {E5/18/4}, at the next page,
2 next to the heading "Issue 1".

3 A. Yes.

4 Q. "Intertek Hong Kong is not able to test if a textile
5 fabric/fibre is made from 'recycled plastic' generally,
6 such as nylon."

7 A. Yes.

8 Q. "It is ... not able to test if fabric/fibre is made from
9 other sources of PET materials, eg PET food packaging or
10 PET fabric (ie fabric made from recycled virgin
11 polyester)."

12 Now, that conclusion is consistent with the evidence
13 of Ms Nicholls that we looked at a moment ago.

14 A. Look, let me --

15 THE CHAIRMAN: Sorry, can I just intervene here. I am not
16 quite sure where this is going. There are obviously
17 questions for the expert. What evidence of Mr Middleton
18 are you seeking to challenge?

19 MR SPITZ: I will get there in two questions.

20 THE CHAIRMAN: Right.

21 MR SPITZ: Thank you.

22 So that conclusion is consistent with Ms Nicholls'
23 evidence, is it not?

24 A. Look, it might be helpful for me just to give
25 a background and then it may answer some of all these

1 other --

2 THE CHAIRMAN: Well, it might do, but I think let counsel
3 ask the questions --

4 A. Yes.

5 THE CHAIRMAN: -- in order, and we will go to the one which
6 then --

7 A. So what do you want answered?

8 MR SPITZ: That Mr Chan's evidence, expert evidence, is
9 consistent with what we saw in the email between
10 Ms Nicholls and Shirley Tech, is it not?

11 A. Yes, but you are doing apples and pears, if I can say
12 so.

13 Q. Well --

14 A. You see, let me explain. You are claiming to put
15 recycled PET -- recycled PET -- into a garment. Forget
16 the nonsense.

17 Recycled plastic, you have put on your labels "PET";
18 "PET 1" in the triangle. It is recycled plastic.
19 Mr Chan is telling you he is testing the recycled
20 plastic. Now, if you want to argue, as a good lawyer,
21 that, "Well, we put in recycled plastic", then what
22 recycled plastic is it? You have got a number from 1 to
23 7. Is it the plastic from a chair, or what is
24 the plastic? You have actually said specifically that
25 it is PET 1.

1 Now, the only difference is, if I can say that, and
2 he is going to be a professional man and he will not
3 waver from one side to the other, he has got to just
4 say, "Is it PET or not?" If you say, "Is it recycled
5 plastic?", he will say he cannot test, and it is
6 a professional and ethical way to do it.

7 But the other recycled plastic that you are talking
8 about is food trays, and food trays, and there is no
9 test I know of, no test I know of, and I am pretty --
10 well, I could have given my background, but it is
11 a different issue. There is no test I know of, of any
12 company making recycled thread for going into polyester
13 that uses food trays. The fundamental reason for that
14 is because they use only clear bottles. They do not use
15 coloured bottles. They do not use food trays.

16 The reason they do not use food trays and coloured
17 bottles is because it affects the take-up of the dye.

18 THE CHAIRMAN: I think this is straying into --

19 A. So what I am really saying is --

20 THE CHAIRMAN: I am about to ask my question.

21 A. -- is I am really saying that it is a nonsense to keep
22 putting on recycled plastic.

23 THE CHAIRMAN: Let us see where the questions go.

24 MR SPITZ: You say that you can tell the difference between
25 recycled polyester and virgin polyester just by looking

1 at it?

2 A. We have -- there is an element, and let me explain it.

3 Recycled polyester, there obviously must be

4 a difference, because you --

5 Q. Again, sir, sorry to interrupt --

6 A. -- need -- please --

7 Q. Let us do it this way. If you can answer that

8 question --

9 A. Yes.

10 Q. -- which calls for a "yes" or "no", and then go on to

11 explain.

12 A. Okay, I will tell you --

13 Q. So you say that you can tell the difference between

14 recycled polyester and virgin polyester just by looking

15 at it? Is that --

16 A. I am saying --

17 Q. -- what you say?

18 A. No, I am saying by the look and feel, and -- if I put it

19 a different way, we would not send a recycled polyester

20 gown with ordinary polyester. There is a difference.

21 It rustles, it -- there is obviously a difference

22 because there is a test now that proves there is

23 something in it.

24 What I am saying is, from our point of view, we will

25 send a recycled gown out if you ask it, but if we were

1 mixing them, we would not mix them, we would send all
2 out recycled polyester or the other.

3 There is a marked difference. It is perception,
4 admitted, but there is -- I could, at that time -- with
5 the walk and the feel of the gown and everything else,
6 I had my suspicions, let us put it that way.

7 Q. Paragraph 60 of your witness statement.

8 A. Sorry?

9 Q. Paragraph 60.

10 A. Yes.

11 Q. At the bottom of {D4/1/18}, you say:

12 "On inspecting the Claimants' items it was in my
13 view that they were made from plain ordinary polyester."

14 A. Yes.

15 Q. Now, your expert does not say anything like that.

16 A. He -- an expert would not define -- I am just giving you
17 a perception, the look and feel.

18 What I am saying is, if you were to ask an expert to
19 analyse, of course he would go back to basics. There
20 was no test, there was no proof. There was no proof,
21 and that is why we have had these problems.

22 When I saw the pleadings -- and this is why I came
23 on it -- when I saw the pleadings, at that time I was
24 more or less prepared to accept that your client was
25 producing gowns made from recycled bottles, because

1 the pleadings were so strong. But what threw me
2 completely and made me have suspicions was they even put
3 in the pleadings "hoods", in both places in
4 the pleadings, "a hood", and it was never changed. That
5 is why -- and I knew that was blatantly untrue. That is
6 why I made the further enquiries. I would not have made
7 the further enquiries if I had not known.

8 The claim also was that you had the viscose one,
9 which is now 65:30-whatever-it-was, the claim was that
10 that was also fully 100% polyester, and I could look at
11 that and tell, within reason, that it was a blend.
12 The simplest way to do a blend, because viscose is
13 fundamentally made from wood, so all you have to do is
14 put it in a bucket of water, see the moisture take-up
15 compared to the other and you see the difference. It is
16 elementary.

17 I mean, what was being proposed was not
18 straightforward and honest. That is what my concern
19 was.

20 Q. My question to you is simply this: your expert does not
21 say that you can tell the difference between recycled
22 and non-recycled polyester by looking at the garment.

23 A. He is an expert on analyst. He has not got
24 the perception of -- you know, what I am saying, it is
25 look and feel. The general feel, the general look. It

1 is stiffer. It rustles as you walk. There is various
2 aspects to it.

3 All I am saying is I was made suspicious, but what
4 really made me suspicious more was to claim that hoods
5 were -- and keep them in the pleadings -- that hoods
6 were made from recycled, and obviously they were not.

7 Q. I am putting to you that you have probably overstated
8 your case on this point, have you not?

9 A. No, because that was my perception at the time and I was
10 being honest about it. You do not think I would have
11 started looking elsewhere to look for a test if I was
12 not a hundred -- virtually sure that there was something
13 about it which was wrong.

14 You see, years ago, when I first joined
15 Ede & Ravenscroft, we had our own silk mill. We
16 produced silk for the hoods, we produced for
17 the QC gowns, we produced for the theatre, and we
18 dyed -- we had our silk dyed and we blended it, we could
19 tell. There is an element of that.

20 With polyester, it is woven in the grey and dyed
21 afterwards and that is why it is so important not to put
22 so-called recycled polyester -- recycled plastic in,
23 because it affects the dye take-up. But that is
24 a practical issue and a practical experience of
25 a person, and you are not going to get a chemist tell

1 you, "Well, that is recycled plastic", because they will
2 not tell you that.

3 You have claimed PET bottles. You have put number 1
4 in the triangle. You have put the advertisement of "PET
5 bottles". Polyester, for dyeing, for weaving, has to
6 have clear PET bottles. It does not have coloured
7 bottles, it does not have coloured food trays; it
8 affects the plastic, the colour, the take-up of the dye.
9 It is a bit of common sense really, when you think
10 about it. But the truth of the matter and the truth,
11 forgetting pressing me about this, the truth of
12 the matter is, if you are honest, you put what is
13 a label on the tin.

14 THE CHAIRMAN: All right, I think we have your answer on
15 this.

16 MR SPITZ: All right, then let us turn to the last point,
17 which is paragraph 67 --

18 A. Sorry, 67?

19 Q. -- of your witness statement. Paragraph 67. {D4/1/20}.
20 Here --

21 A. I have got -- sorry, I may be looking at -- let me look
22 here, sorry.

23 THE CHAIRMAN: It begins:

24 "I asked a friend ..."

25 The one you wanted corrected.

1 A. Oh, yes, yes.

2 MR SPITZ: You have corrected that --

3 A. I have corrected that, yes.

4 Q. -- to say:

5 "I asked a friend, Wendy, who asked her friend
6 Alison to email Ruth Nicholls ..."

7 A. Yes, mm-hm.

8 Q. It is correct, is it not, that Alison was pretending to
9 be interested in hiring a Churchill gown at your
10 instigation?

11 A. Yes, look, I am not a person who likes to deceive or do
12 anything that way. I think, or I hope to think that
13 I am reasonably straightforward. But I was going on
14 the pleadings of your client. Your client had put
15 a damage claim against us and you were pleading that
16 your hoods were made of recycled polyester. In two
17 cases you did it and you did not alter those pleadings.
18 I then found a test that could determine it, and I --

19 Q. I do not --

20 A. Just a minute.

21 I then asked my friend to ask some questions to
22 establish if -- and those questions were done in
23 a specific way to establish, was it genuine, was it
24 a genuine mistake or was it deliberate, and that was why
25 they were done.

1 Q. Yes. It was your idea then that this subterfuge should
2 be adopted, was it not?

3 A. I spoke to Wendy, who is an expert in materials and
4 production, and she got her friend to do -- ask for it.
5 But it was the consequence of a pleading that should
6 never have been pleaded. That is what I am saying.

7 THE CHAIRMAN: We know you say it is the consequence.

8 A. I get cross about it.

9 THE CHAIRMAN: The question is whether the idea to ask these
10 questions in this way --

11 A. Yes, I did ask, yes.

12 THE CHAIRMAN: -- came from you?

13 A. Yes, yes, and I have to accept it really went against
14 the grain to do this, but it was the only way to elicit
15 from the -- what your true intentions were.

16 MR SPITZ: Did you feel any discomfort at the time about
17 deciding to adopt this subterfuge?

18 A. I have told you, it goes against the grain with me, but
19 in consideration of all the other aspects, in
20 consideration that if you wanted to deal properly, you
21 would just put a proper label on it, rather than mislead
22 students that they were getting recycled polyester, they
23 were saving the planet, when in fact it was a total
24 sham.

25 Q. Do you feel any discomfort about it now?

1 A. No, I feel discomfort that it goes -- as I say, that
2 I had to go against the grain in order -- but in
3 fairness to me, the questions asked were quite clear,
4 and if you look at them, a normal person, if they had
5 made a mistake, they would put their hands up, and what
6 I am saying is I asked in such way that they could
7 correct themselves, put their hands up, "Oh, I have made
8 a mess -- mistake". That did not come over. It come
9 further deceit.

10 MR SPITZ: Thank you very much, Mr Middleton. Mr Patton may
11 have some questions for you.

12 MR PATTON: No re-examination, sir.

13 THE CHAIRMAN: No questions from us, Mr Middleton. That
14 means your evidence is finished. Thank you very much
15 for your assistance.

16 WITNESS: Thank you very much.

17 THE CHAIRMAN: You can stand down now.

18 MR PATTON: Sir, I think we are on to the final witness.

19 I do not know if you thought it appropriate to break
20 now?

21 THE CHAIRMAN: It would make sense to hear the final witness
22 in one go. We will certainly finish before lunch.

23 MR RANDOLPH: Yes, we will. There are just some minor
24 consequentials after that, but it will not take long.

25 THE CHAIRMAN: Yes, well, let us take a break for five or

1 ten minutes then.

2 MR RANDOLPH: Ten?

3 THE CHAIRMAN: Let us take ten minutes' break.

4 MR RANDOLPH: Yes, I am grateful.

5 (11.30 am)

6 (A short break)

7 (11.45 am)

8 MR ARMITAGE: Sir, the defendants call Andrew Telfer,
9 please.

10 MR ANDREW TELFER (affirmed)

11 Examination-in-chief by MR ARMITAGE

12 MR ARMITAGE: Good morning, Mr Telfer.

13 A. Good morning.

14 Q. Have you given a witness statement in these proceedings?

15 A. I have.

16 Q. Do you have that there with you in the box?

17 A. I do, yes.

18 Q. That is at {D4/4}, for the EPE operator.

19 Could you look at page 11 of the statement, please

20 {D4/4/11}.

21 A. Yes.

22 Q. Is that your signature on the page?

23 A. It is.

24 Q. I believe you have a couple of corrections. Could we
25 look first, please, at {D4/4/5}.

1 A. Yes.

2 Q. Subparagraph (f), towards the bottom, the final line on
3 the page, I am just going to read it out to locate us.
4 It reads:

5 "I then work out whether we are likely to recoup
6 this ..."

7 Then over the page {D4/4/6}:

8 "... investment over the term of the proposed
9 contract."

10 Then can you see some words at the end of that
11 sentence?

12 A. Yes, that says:

13 "happy to leave in but ... not stating the obvious?"

14 That is an editing note I made from a previous
15 draft. The previous sentence was corrected and deleted,
16 but the note was not.

17 Q. Just to be clear, whose words are they?

18 A. They are mine.

19 Q. Then on page 6 {D4/4/6} -- sorry, in fact the same page,
20 subparagraph (g), I make it the ninth line --

21 A. Yes.

22 Q. I will read it again:

23 "... possible to have stock cleared and ready for
24 use again..."

25 Was there a correction here?

- 1 A. That is a typo, it should say "cleaned".
- 2 Q. "... possible to have stock cleaned and ready for use
3 again ..."
- 4 A. Yes, that is right.
- 5 Q. Thank you. Then on page 10 {D4/4/10}, paragraph 31, on
6 the fifth line can you see the final word "can" and then
7 over on the next line. So it reads "can lose this bit".
8 Whose words are they?
- 9 A. They are mine. That is another editing point I typed
10 in, an edit note and it has not been deleted. So those
11 are my words.
- 12 Q. When you said "can lose this bit", what was that
13 a reference to?
- 14 A. That relates to a previous sentence that has been
15 altered and corrected from a previous draft but the
16 editing note has not been deleted.
- 17 Q. I am grateful.
18 Subject to those points, are the matters set out in
19 the witness statement true?
- 20 A. They are.
- 21 MR ARMITAGE: Mr Randolph will have some questions for you.
- 22 Cross-examination by MR RANDOLPH
- 23 MR RANDOLPH: Thank you.
24 Good morning, Mr Telfer.
- 25 A. Good morning.

1 Q. You have produced this witness statement in your own
2 words? Yes?

3 A. Yes.

4 Q. Can you not nod -- well, you can nod, but if you nod can
5 you say "yes" or "no", because the transcriber cannot
6 pick it up.

7 A. Yes.

8 Q. Yes?

9 A. Yes.

10 Q. From your own recollection?

11 A. From my own recollection, yes.

12 Q. So no prompting from others as to what you should or did
13 say?

14 A. No.

15 Q. Have you read the pleadings in this case?

16 A. I have read them through once. I do not particularly
17 remember them, but I have read them.

18 Q. Thank you.

19 You say at paragraph 9 of your witness statement --
20 for the EPE operator that is {D4/4/2}. Paragraph 9, do
21 you have that?

22 A. Yes.

23 Q. It is probably going to be easier if you do what you are
24 doing at the moment, which is work off the hard copy.
25 It is going to be quicker.

1 You do not deal directly with universities?

2 A. That is correct, no.

3 Q. Yes? That is for the graduation services team and bid
4 writers. So that is the penultimate sentence on
5 the following page {D4/4/3}:

6 "I do not deal directly with institutions or write
7 E&R's bids; that side of things is handled by our
8 Graduation Services team and bid writers."

9 A. That is correct.

10 Q. That is correct?

11 A. That is correct.

12 Q. You say:

13 "I give high level oversight of bids from a finance
14 perspective."

15 A. Yes.

16 Q. So you cannot comment and you do not have knowledge of
17 the contents of the bids and their aim and objective or
18 anything to do with that; that is for the bid writers
19 and the graduation services people?

20 A. I have an oversight of the tenders as they are
21 submitted. I finally read through them to check for
22 small spelling mistakes and what-have-you, but I do not
23 have any direct contact with the universities. The bid
24 itself is written by the bid writers.

25 Q. Yes, and your evidence, Mr Telfer, is clear. You have

1 a general high level oversight of bids from a finance
2 perspective. That is correct, is it not?

3 A. Yes.

4 Q. So not from any other perspective?

5 A. The only piece of -- the only detail I take any notice
6 of is the piece that I put in, and that is
7 the finance --

8 Q. Thank you.

9 A. -- side of things.

10 Q. Now, you say you are the group financial officer of E&R.
11 That is paragraph 1. That is your first paragraph
12 {D4/4/1}. What does that group comprise?

13 A. It is the Ede & Ravenscroft group of companies. I am
14 actually the group financial controller, not officer.

15 Q. Okay. Can you tell me who those companies are?

16 A. Ede & Ravenscroft, and as far as I am aware, that is
17 all, in that group. That is all I do day-to-day, is
18 Ede & Ravenscroft.

19 Q. So there are no subsidiaries in that group?

20 A. For Ede & Ravenscroft? Not as far as I am aware.

21 Q. So why is it called "group"?

22 A. There must be others, but I do not deal with them.

23 Q. Right, okay.

24 So when we come to your management accounts that you
25 have exhibited or referred to --

1 A. Yes.

2 Q. -- where there are references to subsidiaries, you know
3 nothing about them?

4 A. I do not do the subsidiary accounts. I do
5 the Ede & Ravenscroft management accounts.

6 Q. But you are the group financial officer?

7 A. I am the group financial controller, so I have oversight
8 of bank accounts that might feed into the group.
9 I authorise payments for other companies, but I am not
10 involved in the management accounts for those companies.

11 Q. So you cannot tell the tribunal who is part of that
12 group, apart from Ede & Ravenscroft?

13 A. I am afraid I do not have the company structure in front
14 of me. I am not familiar enough with it to talk to it,
15 I am afraid.

16 Q. Okay, but you do admit there are subsidiaries?

17 A. It is a group, so there must be.

18 Q. Yes, right.

19 You work for D3, do you not? By "D3", I mean
20 Northam.

21 A. No, I work for Ede & Ravenscroft.

22 Q. Okay, go to paragraph 33, please {D4/4/11}:
23 "As part of E&R's finance team I am involved to
24 a very limited extent in the management and statutory
25 accounting for Northams to which E&R provides some

1 centralised services ..."

2 A. Yes, that is correct.

3 Q. So you do have an involvement, albeit to a very limited
4 extent, according to you, in the management and
5 statutory accounting for Northams?

6 A. I oversee a member of staff who prepares Northams'
7 management accounts, I do not review them. They go to
8 the Northams staff. Northams is not part of E&R. It is
9 part of, I think, R&T.

10 Q. Yes. They share the same auditors, do they not, E&R and
11 Northams?

12 A. They do.

13 Q. Thank you.

14 Now, you list in paragraph 8 {D4/4/2} the documents
15 that you have looked at when preparing your statement,
16 yes? There are three documents there?

17 A. Yes, that is correct.

18 Q. Did you look at any other document?

19 A. Not that I remember, otherwise they would be referenced
20 in my statement.

21 Q. Yes, well, that is what I thought.

22 You mention at paragraph 10 that you: {D4/4/3}

23 "... have been asked by the Defendants' solicitors
24 to give evidence on my role in how E&R assess
25 the potential profitability of a proposed OSAs and on

1 how E&R records certain financial data."

2 So that is what you were asked to give evidence on?

3 A. Yes, that is correct.

4 Q. Yes.

5 How long is the claim period in this case?

6 A. I think it starts in 2016, I believe.

7 Q. Yes, it does.

8 You said just now that you have seen three documents
9 for the purpose of preparing your witness statement, and
10 the purpose of that witness statement is to give
11 evidence as to how E&R assess the potential
12 profitability of proposed OSAs. Those three documents
13 relate to 2019 and 2020, do they not?

14 A. Yes, they do.

15 Q. Yes, so why have you not seen or asked for any documents
16 relating to 2016 and 2017?

17 A. I am afraid I am not able to talk to documents that were
18 prepared by other staff. I joined E&R in February 2018.

19 Q. So you are giving evidence to this tribunal about
20 the proposed or the actual profitability of OSAs,
21 you know that the claim period goes back to 2016, and
22 yet you only rely on documents that have been produced
23 from the time when you were in post; is that right?

24 A. I can only talk to what I have been able to prepare
25 myself. I do not know -- I cannot talk to the documents

1 that staff before me have prepared.

2 Q. Why? They were prepared for Companies House purposes,
3 were they not?

4 A. No.

5 Q. They are statutory accounts?

6 A. No, they are not, they are management accounts.

7 Q. Okay, so, are you saying that you do not trust
8 the 2016/2017 management account?

9 A. I am not saying that at all, no.

10 Q. Okay, so we can cut to the chase. You cannot give any
11 evidence about the profitability or otherwise of
12 the OSAs in 2016 or 2017?

13 A. I think we are -- the management accounts I do not think
14 necessarily show the individual OSAs' profitability;
15 I think they show the overall profitability of
16 the company.

17 Q. Fine, well, you are the one who has exhibited management
18 accounts for 2019 and 2020.

19 What about the E&R profit per ceremony period
20 document? That is the first document in paragraph 8.

21 A. Yes.

22 Q. Who prepared that?

23 A. That is prepared by a gentleman called John Dean in our
24 Waterbeach offices. He looks after the individual
25 postings for ceremonies. He prepares a large

1 spreadsheet, institutions down one side, gowning,
2 photography, the deductions from that. They feed into
3 this profit per ceremony sheet. I put some -- look up
4 some what-have-you to bring individual OSAs and
5 institutions -- you can show an individual
6 profitability, rather than the management accounts,
7 which show the group profitability of those OSAs all
8 together.

9 Q. So you are happy to rely on Mr Dean's work on this?

10 A. Again, it has multiple tabs. I can only, again, say
11 that I have looked at '18 and '19. The others are on
12 there.

13 Q. They are? Sorry, by "others", do you mean 2016 and
14 2017?

15 A. I believe previous years are on there. I will not say
16 which years. I believe it goes back from '17, '18, '19,
17 but I do not think '16 is perhaps on there. I think
18 the format changed of the reporting.

19 Q. Okay; would there be an equivalent for 2016?

20 A. I could look for one. I have never seen one I remember,
21 but I am sure I could find one if I would ask.

22 Q. If you could look for something -- it does not have to
23 be exactly the same, but something that does the same
24 task for 2016, and you have said, you have given
25 evidence that Mr Dean would have prepared something for

1 2017; if you could look for that as well, please?

2 A. I can look, but it may not have been Mr Dean that
3 prepared it, but I shall certainly look.

4 Q. Whoever prepared it. Thank you. So 2016 and 2017.

5 That would be very kind, and given the fact that we are
6 mid-trial, I know you are in the witness box, but we
7 would be grateful if that could be done as soon as
8 possible once you have been released from the tribunal.

9 MR ARMITAGE: Sorry, I think if my learned friend's
10 solicitors have a request to make, that will be
11 considered. I am not sure it is fair to ask
12 the witness.

13 MR RANDOLPH: Well, he volunteered to produce the evidence.

14 THE CHAIRMAN: He did.

15 MR RANDOLPH: So I am afraid we are stuck with that, and he
16 will do his best, and I am going to come to documents
17 after Mr Telfer's witness has been finished.

18 THE CHAIRMAN: We can come back to this at the end.

19 MR RANDOLPH: We will.

20 So, you confirm that the three documents you have
21 looked at are 2018 and 2019.

22 Now, at paragraph 18 {D4/4/7} you refer to E&R's
23 management accounts, yes?

24 No, I am sorry. At paragraph 8, you refer, as we
25 saw, to your management accounts, and we have just

1 touched on those {D4/4/2}.

2 You have mentioned tabs and you will be delighted,
3 Mr Telfer, to know that we are going to go to a couple
4 of tabs. Can we go to the 2019 ones, please, which can
5 be found at {F4/557}.

6 Could the EPE operator click on the link, please.

7 Now, this should come up in an Excel spreadsheet.

8 You know what this looks like, do you not, Mr Telfer?

9 A. I believe I do, yes.

10 Q. Well, you exhibit it or you have referred to it, so
11 I hope that you do know.

12 A. It is yet to come up, I am afraid.

13 Q. Yes, as it is for me.

14 Now, if I could ask the EPE operator -- I am going
15 to have to bend down, apologies. Please do not zoom in,
16 because I will zoom out.

17 At the bottom, you can see a number of tabs, yes?

18 These are not questions to you, Mr Telfer, I am
19 talking to the EPE operator.

20 There is an arrow at the left-hand side, at
21 the bottom. Exactly. Can you click on that and keep on
22 clicking, gently, and again, and again, and again, and
23 again, and again, and again. Just keep on clicking
24 until I say "stop". There, right.

25 You can see "AC01 Summary", on the right-hand side

1 in green, hopefully. Could you click on that, please.

2 Do you have that on your screen, Mr Telfer?

3 A. Not yet, it is still coming up.

4 Q. Fine.

5 A. Yes.

6 Q. Good.

7 Item 35 on the left-hand side; can you see that?

8 A. Do you mean on row 35?

9 Q. Yes, row, sorry.

10 A. Yes, yes.

11 Q. You are an Excel person.

12 A. No. No, I am not. I have it.

13 Q. Row. Row 35, "Ceremony commissions". Can you read
14 across to "year-to-date", and this is year 2019, yes?

15 A. Yes, it is, top left-hand corner.

16 Q. So go to the -- can you see "year-to-date" is in
17 the middle of the page?

18 A. Yes.

19 Q. Then track it down across from row "Ceremony
20 commissions".

21 A. Yes.

22 Q. You can see that the actual commissions -- and these are
23 paid by Ede & Ravenscroft, are they not?

24 A. Yes.

25 Q. Yes?

1 A. They may not be paid yet, but they are certainly due.

2 Q. Paid or due: [redacted]?

3 A. That is correct, yes.

4 Q. It is in pounds, is it?

5 A. It is, yes.

6 Q. Thank you.

7 The budget was [redacted]?

8 A. Yes, it was, yes.

9 Q. Thank you.

10 Now, while we are in this document, can we go back

11 to the little arrow pointing right at the bottom.

12 Sorry, I am not being very technical here, but it is

13 the easiest way. Can the EPE operator gently click ...

14 yes. Just hang on a tick. What we are looking for is

15 A -- yes, just click again. Yes, hang on. You can see

16 in yellow, the third yellow, "AC01 Y ...", yes, that is

17 it. Oh yes, that is it.

18 Row 67, Mr Telfer. "[Redacted]". "Stock

19 purchases". What is that?

20 A. I would assume it is stock we have purchased in

21 [redacted].

22 Q. You assume?

23 A. It is not a tab I have ever used. I use the academic

24 summary tab. This is a pack that has been in use for

25 some years. These -- where it says "Manager info", I do

1 not think they update correctly, personally. I stop at
2 the academic summary and academic year-to-date tab.
3 These tabs are largely redundant. We do not use them at
4 all. I have never used them since I have been at E&R.

5 Q. Despite the fact that you are the chief financial
6 officer -- sorry, group financial controller?

7 A. Yes, because those are all linked in. This is a Jet
8 report that comes directly out of our system. I am not
9 a Jet expert, unfortunately, and deleting tabs tends to
10 have a knock-on effect to the reports, where numbers are
11 linked in and pulled through to other tabs, so these are
12 just not something I ever use.

13 Q. You have no reason to disbelieve the figures that are
14 set out here?

15 MR ARMITAGE: So sorry, Mr Randolph, I ought to have said
16 this earlier. This is actually a confidential document
17 in its entirety.

18 MR RANDOLPH: Oh, well, I was not told that. I do not think
19 I was told that.

20 MR ARMITAGE: Because it is in the F4 bundle.

21 MR RANDOLPH: Well, I deliberately asked -- I do apologise.
22 So the figures will have to be redacted. The mere fact
23 it happens to be in F4 does not mean, actually, that it
24 is completely redacted. I asked Mr Armitage yesterday
25 evening whether another document was, because it was

1 grey and non-grey, and this was not.

2 So this is completely redacted, but it is in your
3 witness statement and you have referred to it. So that
4 is fine.

5 We may well have to ... I do not know, I am in your
6 hands, sir, because (1) that is unfortunate that this
7 was not drawn to my attention, but maybe it is my fault;
8 but (2) these are documents that are specifically
9 referred to in the document, in the witness statement,
10 and Mr Telfer did not actually say -- his document did
11 not say that they were confidential. I am not going to
12 take that point. We are where we are.

13 THE CHAIRMAN: Are you going to carry on with this document
14 or are we finished with it now?

15 MR RANDOLPH: Well, no, there was -- well, I just asked -- I
16 mean, I asked about [redacted].

17 THE CHAIRMAN: Yes. You have the answer.

18 MR RANDOLPH: He gave me the answer, which is fine.

19 I was going to do exactly the same task with
20 the 2020 spreadsheet.

21 THE CHAIRMAN: The same questions?

22 MR RANDOLPH: The same questions, just to make the point.

23 But (1) I do not need to, except to ask Mr Telfer to
24 confirm that -- well, I would like to go to the 2020
25 document and show Mr Telfer row 35 without calling out

1 the number so that the tribunal can see the number.

2 THE CHAIRMAN: Let us do it that way.

3 MR RANDOLPH: Yes.

4 THE CHAIRMAN: I would be reluctant to go into private just
5 for one question.

6 MR RANDOLPH: Exactly. It is only for that. Yes.

7 Thank you very much, EPE operator.

8 Could we turn to {F4/806}. We will just wait for
9 a moment. We are going to go down to the little arrow
10 pointing right and we are going to go across to "AC01
11 summary", please, which will probably be in green.
12 There we are, it is in green.

13 Now, Mr Telfer, can you see row 35?

14 A. It is just being brought up, I think.

15 Q. Good.

16 A. Row 35, yes.

17 Q. Go across to the middle, where we went in the previous
18 one, actual and budget, and you can see the figures that
19 are mentioned there, yes?

20 A. Yes.

21 Q. The tribunal can see those figures.

22 You have said that you are going to try your best to
23 get the 2017 versions of these documents and if there is
24 a 2016 version or similar document that deals with these
25 matters, you will try your best to get those as well;

1 yes?

2 A. Yes.

3 Q. Thank you.

4 Now, at paragraph 13 {D4/4/4}, you refer to
5 a subset. So this is in your witness statement. You
6 refer to a subset of Ede & Ravenscroft management
7 accounts. This was the document I raised with
8 Mr Armitage, your counsel, yesterday evening and it has
9 been confirmed to me that it is in various shades of
10 grey, but this time it is all confidential. So first of
11 all, we are not going to mention the data in
12 the document, but the mere fact that there is a darker
13 shade of grey and a lighter shade of grey apparently
14 makes no difference, so you will just have to take it as
15 -- I will take you to the document, but essentially you
16 are not going to speak it out. Do you understand?

17 A. I think I follow.

18 Q. Just be very careful.

19 A. Okay.

20 Q. Do not blurt anything out. I am sure you would not
21 blurt anything out, but just look and answer
22 the questions I ask, and I am not going to ask you to
23 identify that which is in the document; yes?

24 A. Right, okay.

25 MR RANDOLPH: Good. Thank you.

1 I am right, am I?

2 MR ARMITAGE: Yes. I think the confusion with the last
3 document is because it required you to download
4 the native document, which does not have
5 the~"Confidential" --

6 MR RANDOLPH: I see, but this document I am going to --

7 MR ARMITAGE: This document I think is completely --

8 MR RANDOLPH: -- is completely -- thank you very much;
9 despite the various shades of grey.

10 So if we could go to {F4/550}.

11 THE CHAIRMAN: Sorry I missed that.

12 MR RANDOLPH: {F4/550}, sorry, sir.

13 First of all, can you confirm that this is the
14 document to which you are referring at paragraph 13?
15 Has it come up?

16 A. It has come up.

17 Q. It is a grey document.

18 A. Yes, it is quite hard to know from the front page.
19 Perhaps if I saw more of it. Yes, I think -- I believe
20 it is. If I could see another couple of pages, I can
21 definitely confirm it or deny it.

22 Q. Could we go to the next couple of pages. Thank you so
23 much.

24 A. Yes, it is.

25 Q. It is?

1 A. It is, yes.

2 Q. Thank you very much.

3 Could we just go back to the previous page you were
4 on {F4/550/1}.

5 A. Yes.

6 Q. Sorry, the next one {F4/550/2}. Thank you.

7 Now, given the fact that this is all confidential,
8 I am not going to ask you to read out the numbers or
9 indeed the descriptions, but what I would like you to
10 do, if you would, is you can either take it from me,
11 because I have done not the adding up of the figures,
12 but the number of rows that are filled in, but I will
13 say that first and if you want to check it yourself, you
14 are a financial controller, you can do that.

15 Could we raise it very slightly, just so that
16 Mr Telfer understands at the bottom of the page is
17 row 43. Just raise that slightly, or is that not
18 possible? Perfect. Excellent. So that is the end of
19 that.

20 Just to make sure could we go to the next page, just
21 so Mr Telfer does not think there is something else
22 {F4/550/3}. Thank you very much. Can we go back
23 {F4/550/2}.

24 Are you content to agree, Mr Telfer, that that table
25 in the middle, which we are not going to describe, has

1 rows from 16 to 43 numbered in it?

2 A. Yes, it does, yes.

3 Q. Thank you.

4 Of those rows, 16 to 43, there are 18 lines that

5 have actual numbers in them, because there are certain

6 lines that have a hyphen, in other words nothing?

7 A. That is correct, yes.

8 Q. Thank you.

9 Can you see there is the third column going down

10 vertically, yes?

11 A. Yes. Do you mean column E? It is at the top of

12 the page.

13 Q. No -- yes I do, actually. Yes, I do.

14 A. Yes.

15 Q. Perfect, because I had not worked out those alphabetical

16 numbers at the top. Very good.

17 Column E, you can see what that covers?

18 A. Yes.

19 Q. Do not say it, but you can see what it covers, yes?

20 A. Yes.

21 Q. Right.

22 Column F, you can see what that covers?

23 A. Yes, indeed, yes.

24 Q. In row 22, there is a word. I am not quite sure whether

25 my learned friend is going to -- whether I can refer to

1 that word, or whether he would rather I did not. 22.

2 THE CHAIRMAN: There cannot be anything confidential, can
3 there?

4 MR ARMITAGE: (Inaudible).

5 MR RANDOLPH: Thank you. There is a word, "joint".

6 A. There is, yes.

7 Q. Can I assume that "joint" means an amalgamation or an
8 addition of the item description in 23 and 18?

9 So "joint" means something that is described in 23 and
10 something that is described in 18? Would that be
11 a correct assumption?

12 A. Yes. Sorry, yes -- (overspeaking) --

13 Q. Sorry, I know we are being a bit --

14 A. -- (overspeaking) -- yes, sorry --

15 Q. We are dancing around --

16 A. -- (overspeaking) --

17 Q. -- but you understand?

18 A. Yes, now I do.

19 Q. Good, excellent, and I hope the tribunal understands,
20 and I apologise.

21 Again, I have happily spent the time doing this: of
22 the 18 lines that have numbers in, the items that are
23 covered by the description in row 23, there are three of
24 those, where just a number is given for that particular
25 item. So three for 23. There are three on their own

1 for item 18, which we have seen the description. Then
2 there are nine for "joint", which we have agreed is not
3 confidential.

4 Now, would you accept what? Do feel free -- it does
5 not take very long -- to do the line checks, but I am
6 not adding up any numbers; it is just columns being
7 filled?

8 A. I think in the interests of time I can probably accept
9 that.

10 Q. Thank you so much. I am very grateful.

11 Now, your counsel took you to two changes to your
12 witness statement. I will take you to the first, which
13 is internal page 6 {D4/4/6}. This is where you put at
14 the end of it, or rather at the end of paragraph (f),
15 you said:

16 "happy to leave in but is this not stating
17 the obvious?"

18 Sorry, this is at the top of the following page.

19 A. Yes.

20 Q. This is the matter that you said was an editing issue,
21 it had been in relation to a previous draft, it had not
22 been taken out, stuff happens?

23 A. Yes.

24 Q. There is a similar one further down. The same sort of
25 reason, or exactly the same reason?

1 A. Yes, the second correction is the same. The third was
2 a typo.

3 Q. What I want to explore with you, Mr Telfer, is this.
4 I get the "these things happen" point, it is an error,
5 but who were you -- and I do not want to know the nature
6 of the communications, but I want to know who you were
7 communicating with when you said, in this instance:

8 "happy to leave in but is this not stating
9 the obvious?"

10 A. The editor of the document.

11 Q. Who was that?

12 A. So we were interviewed -- or I was interviewed by our
13 lawyers. They asked me a series of questions. We
14 prepared a draft, which I then edited. Obviously we
15 need legal advice, so "stating the obvious" is my rather
16 crude term for what I had obviously written, which was
17 obviously making a fairly simple point, I believe.

18 Q. So it is your words and this is just simply an editing
19 process going back and forth between your lawyers? As
20 I say, I do not want to know what you said to your
21 lawyers and your lawyers back. So these are your words,
22 it was just your comments on a draft going back and
23 forth?

24 A. Yes, that is correct.

25 Q. Okay, fair enough.

1 Now, you assert at paragraph 14(h) -- we are on that
2 page, as it happens: {D4/4/6}

3 "When we are bidding for OSAs in a tender process,
4 the institutions specify the term of the proposed OSA
5 and E&R has no influence over this."

6 Yes?

7 A. That is my understanding, yes.

8 Q. But you see, that is exactly my problem, Mr Telfer: your
9 understanding. When we started having this
10 conversation, you made it clear, as is written in your
11 witness statement, that you had no involvement in
12 the bid processes, or indeed in the graduation ceremony
13 processes, and in your words, you:

14 "... give high level oversight of bids from
15 a finance perspective."

16 I asked you about that and you confirmed that was
17 the position.

18 So, given that high level oversight of bids and
19 given that the details of the bids and indeed the OSAs
20 are dealt with by the graduation services team and bid
21 writers, how can you give evidence that says:

22 "When we are bidding for OSAs in a tender process,
23 the institutions specify the term of the proposed
24 OSA ..."

25 How do you know?

1 A. Because we are given the tender document, which has
2 the terms in it, so obviously to produce a profit and
3 loss estimate for the term of the OSA. Either I receive
4 a summary of the terms that are in that OSA, or I see
5 a copy of the tender document so I am able to work up
6 the numbers.

7 Q. I see.

8 A. And the term of the -- the three-year term, or whatever,
9 is specified usually as one of the first lines of
10 the document.

11 Q. So you do see the tender --

12 A. I see the terms.

13 Q. You see all the tender documents, do you?

14 A. I see the terms of the tender, yes. What
15 the universities are requiring tenderers to provide,
16 the services to provide.

17 Q. So in fact when you say that you "give high level
18 oversight of bids from a finance perspective", you do
19 more than that?

20 A. I give the board a high level view of what the pricing
21 would produce in terms of a return on the investment.
22 I do not think that is incorrect.

23 Q. No, but you do look at all the tender documents, so it
24 is not just restricted to "from a finance perspective",
25 because what you --

1 A. I do not look at all the tender documents. Occasionally
2 I will look at some tender documents, but they will be
3 the ones that relate to the financial terms, in terms of
4 pricing, in terms of value to university, so that I can
5 work up a P&L that I can then give this high level view
6 of.

7 Q. You have said and confirmed that the purpose of giving
8 your witness statement, as asked by your solicitors, was
9 to assess the potential profitability of a proposed OSA?

10 A. That is correct, yes.

11 Q. So why do you then want to share with the world through
12 your witness statement that:

13 "When we are bidding for OSAs in a tender process,
14 the institutions specify the terms the proposed OSA ..."

15 What does that have to do with the profitability of
16 OSAs?

17 A. The length of the term it takes, how long you have to
18 pay back the investment in a stock you might have to buy
19 or replace over the course of that contract. So it is
20 fairly fundamental to whether an OSA can be profitable
21 or not.

22 Q. Indeed, but the specification, as you assert -- and we
23 do not necessarily agree with this -- you
24 say "the institutions specify the term". What does that
25 have to do with the profitability, or indeed the term?

1 The term is the term; it does not matter how it got
2 there.

3 A. Okay, yes, the term is the term. I am just saying that
4 the university specifies on a piece of paper, literally
5 in black and white, what the term of that OSA shall be.

6 Q. So you just threw that in? It has nothing to do with
7 profitability of OSAs?

8 A. Well, I think it has, because it sort of goes to
9 pay-back terms of the investment in stock one needs to
10 make at the start of an OSA.

11 Q. Yes, we have agreed that the term is the important point
12 in terms of profitability. How it has got there, how it
13 was negotiated, is entirely irrelevant, is it not?

14 A. I was asked to say how we approach OSAs and
15 profitability, et cetera, and the term, yes, I have told
16 in my witness statement how the term got there. I do
17 not know whether it is relevant or not, frankly.

18 Q. If you agree it is not relevant, it can be taken out.
19 You were asked specifically --

20 A. I did not agree -- I did not agree or disagree.
21 I said --

22 Q. Mr Telfer --

23 A. -- I do not know whether it is.

24 Q. Mr Telfer, you were asked specifically, paragraph 10:
25 {D4/4/3}

1 "I have been asked by the Defendants' solicitors to
2 give evidence on my role in how E&R assess the potential
3 profitability of a proposed OSAs and on how E&R records
4 certain financial data."

5 There was not a comma, "oh, and generally on OSAs",
6 was there?

7 A. No.

8 Q. No, thank you.

9 Now, you say what you say at (h) {D4/4/6}; in other
10 words that:

11 "... institutions specify the term ... and E&R has
12 no influence over this."

13 Can we go to {F3/101}, please. Now, this is
14 a document that has been put to another witness. Have
15 you been in court during this week?

16 A. I have.

17 Q. You have?

18 A. Yes.

19 Q. Every day?

20 A. Yes.

21 Q. So you have heard the evidence?

22 A. There will be small periods when I perhaps was not in,
23 but mostly I have been here, yes.

24 Q. Sure, mostly in. Yes. Good. So you may remember this.

25 Can we go to the bottom of this. Sorry,

1 by "bottom", I meant the bottom of the document,
2 I apologise, not the bottom of the page. {F3/101/10}.
3 Thanks so much.

4 So, can you see that? Do you have that, Mr Telfer,
5 page 10?

6 A. Yes.

7 Q. "Dear [blank]

8 "I understand from Alan ..."

9 This is from James Middleton, yes? Do you know him?

10 A. I do.

11 Q. "I understand from Alan that congratulations are in
12 order, and you now have your own degree awarding powers,
13 and as of August will be known as Writtle University
14 College."

15 Have you seen this document before?

16 A. I have not.

17 Q. You have not?

18 A. Only in the course of these proceedings.

19 MR RANDOLPH: Okay, well, in which case, sir, there is no
20 point asking the witness to comment on a document he has
21 not seen; that is a matter for submissions.

22 Thank you, Mr Telfer, I have no more questions.

23 Re-examination by MR ARMITAGE

24 MR ARMITAGE: Doing it this way for convenience, in relation
25 to the documents that came up, could we have {F4/812} on

1 the EPE, please. I fear this may require the download
2 of a native document, but this may be the swiftest way
3 of dealing with it.

4 Do you have that on your screen now, Mr Telfer?

5 A. It is just coming up, yes.

6 Q. So what are those documents -- what is that document?

7 A. That is the management pack -- management accounts pack.

8 That says "Quarter 4, FY2016" on the top left-hand
9 corner. It is in our usual format.

10 Q. What does "FY" mean?

11 A. Financial year.

12 Q. I am grateful.

13 Then can we also have, please {F4/811}, so it is
14 the previous document that I think, again, may require
15 a download.

16 Has that come up?

17 A. Not yet.

18 Q. You are slightly behind me, I think.

19 A. Yes, that is ...

20 Q. So, in the top left, what is that document?

21 A. That is a different tab of a similar format document,
22 but a different period. It says "Quarter ... 5,
23 FY2017".

24 Q. Again, "FY" is?

25 A. Financial year.

1 Perhaps I should explain why we get five quarters in
2 a year. In that financial period, the year end was
3 extended from June to September, so there is a fifth
4 quarter.

5 Q. Then, sorry, finally -- you probably see where I am
6 going with this -- {F4/810}.

7 Just tell me when that comes up on your screen.

8 A. That is there, yes.

9 Q. Again, what that document is?

10 A. That is, again, the same format document for a different
11 financial year. It is "FY2018", and "FY" means
12 "financial year" again.

13 MR ARMITAGE: I am grateful.

14 Questions by THE TRIBUNAL

15 THE CHAIRMAN: Mr Ridyard has a couple of questions for you.

16 A. Certainly.

17 MR RIDYARD: Just a couple of questions on the investment
18 appraisal, or the profit and loss appraisal that you do
19 and describe in your witness statement.

20 First of all, in those cases where Ede & Ravenscroft
21 provides the photography services as well as
22 the graduation gown services, in the mini profit and
23 loss assessment that you do, do you include both
24 the revenues from the photography and graduation gown
25 services in that evaluation?

1 A. No, not when looking at the investment in gowns, I stick
2 to, solely, the gown revenue that we would generate to
3 see if that pays back the investment in the stock that
4 we would use.

5 MR RIDYARD: Okay, so do you get involved in the photography
6 assessment as well?

7 A. There is not really so much of a photography assessment,
8 if I am honest, it is really the gowns, because the gown
9 side of things is fairly heavy investment,
10 the photography, we have photographers, we have all
11 the kit already. It is a sort of sunk cost, so
12 the investment is very different for photography. So it
13 is not as a heavy investment at the start of an OSA, as
14 a gowning contract would be.

15 MR RIDYARD: But would it come under the revenue part of
16 assessment?

17 A. We treat the two separately. So we look at -- obviously
18 we combine them both, as we have seen from some of those
19 spreadsheets, but for the investment point of view, we
20 solely look at the gowning revenue we would generate
21 from the investment in that stock that we would be
22 hiring out.

23 MR RIDYARD: The second question I had was, you talk in your
24 witness statement about two categories of appraisal.
25 One is where E&R is already the supplier and it is an

1 extension or a new contract for an existing client, and
2 the second category being where it is the possibility of
3 winning an OSA from a new university client.

4 Have you ever done any appraisal of whether
5 the second category is more or less profitable to you
6 than the first category?

7 A. Not specifically for that reason, but I think it
8 probably stands to reason that a new OSA would take
9 longer as a pay-back period than one that we were
10 already in the middle of, where we are -- unless there
11 was, you know, new degrees awarded and you need a lot of
12 stock, or a design change, an incumbent supplier is
13 obviously likely to be more profitable than a new one,
14 yes.

15 MR RIDYARD: Right, thank you.

16 THE CHAIRMAN: Thank you very much, Mr Telfer. No further
17 questions for you. Thank you for your assistance.

18 A. Thank you.

19 (The witness withdrew)

20 Application

21 Submissions by MR RANDOLPH

22 MR RANDOLPH: Sir, sorry, I mentioned before Mr Telfer was
23 called that there were some consequentials.

24 In the light of the cross-examination that has taken
25 place of the defendants' witnesses, various references

1 to documents that have been made in that
2 cross-examination and my solicitors have sought
3 the disclosure of that. I wanted to raise this now,
4 because we are in court and it is Friday and time is
5 ticking. There were four categories that we referred
6 to. I only need to deal with two of them.

7 The first was the template, the admission by
8 Ms Middleton that a template or pro forma version of
9 the OSAs used by E&R existed to create contracts with
10 the universities. The answer from the defendants'
11 solicitors is as follows:

12 "No documents matching this description have been
13 disclosed by our clients as they do not fall within any
14 of the categories of disclosure ordered by the tribunal
15 at annex B to the CMC order. We note that you did not
16 seek to include this category of documents in that order
17 and have not at any time prior questioned disclosure of
18 such documents. We do not see that your request is
19 relevant to any of the issues and you have not sought to
20 explain how they could be. Your request is refused on
21 that basis." [As read]

22 Sir, I would seek a direction from the tribunal that
23 that template or templates, or pro forma, or however you
24 want to describe them, be ordered to be disclosed
25 forthwith. It was referred to. It is relevant, clearly

1 relevant, to the issue of OSAs and whether there are
2 standard terms and whose documents really are they.
3 Very relevant. Ms Middleton admitted under
4 cross-examination that these pro forma/templates exist,
5 and therefore, the fact that they may not have appeared
6 in the disclosure list ordered by the tribunal at
7 the CMC some months ago is really neither here nor
8 there. So I would seek that direction, obviously almost
9 by return, because we are where we are.

10 I am not saying that we will need -- I am hoping
11 very much that we will not need to recall any of
12 the defendants' witnesses, but it is just we need to
13 have that document. So that is the first document.

14 The second document that we sought was in relation
15 to the ... Yes, sorry.

16 We heard yesterday, and today in fact, Mr Middleton
17 started his evidence today regarding the document that
18 Mr Halls had referred to being taken to -- or rather
19 the absence of a document -- that he was required to
20 sign, and Mr Middleton gave his evidence. The initial
21 evidence yesterday was no one could remember it;
22 Mr Halls could not remember what it was, Mr Middleton
23 could not remember what it was. Then overnight,
24 Mr Middleton did remember that it referred to what he
25 said was a slightly odd position taking place and so he

1 gave the explanation he gave.

2 It is still a relevant issue. There has been
3 a change of evidence from the witness. We do still seek
4 to have that disclosed, and the defendants' solicitors'
5 response to our request was:

6 "These matters do not have any relevance to any of
7 the issues in the proceedings and you have not sought to
8 contend otherwise. Accordingly, no disclosure
9 obligation arises." [As read]

10 Well, that is clearly not the case, and particularly
11 this is a fortiori, given the fact that, unasked,
12 Mr Middleton started his evidence, without having
13 actually been asked a question, by seeking to clarify
14 his evidence of yesterday, so it is clearly relevant to
15 him. It is relevant to our case insofar as we wish to
16 know, we wish to have confirmation in writing as to what
17 Mr Halls was doing as a director -- he has been put up
18 on that basis --

19 THE CHAIRMAN: Can you remind me the date of the document,
20 or the date of the episode?

21 MR RANDOLPH: March 2018, I am informed by Mr Spitz, between
22 the 3rd and the 12th, sir.

23 THE CHAIRMAN: To what issue in the case is it relevant?

24 MR RANDOLPH: Well, it is relevant to the issue of -- there
25 seems to be a dispute. Mr Halls was put up as

1 a director and --

2 THE CHAIRMAN: Put up?

3 MR RANDOLPH: Sorry, not put up. He is put up as a witness,
4 and part of his witness statement referred to his
5 position with the third defendant and it is relevant to
6 know what he was doing for that period.

7 We had evidence yesterday, which was: oh, well,
8 no one can remember, not even Mr Halls, and then
9 Mr Middleton, overnight, says, "Well, actually, I do now
10 remember, and it was all because there was a rush and
11 there were bits and bobs". We just seek confirmation of
12 that. The evidence was unclear yesterday, it has sought
13 to be clarified, there should be no reason. He has
14 given evidence about the circumstances of a document
15 that he has been questioned on. We have no proof of
16 that, to be frank. The evidence has changed, we would
17 like to have that proof. It will go not only to that
18 point but also to the weight that is to be given to
19 Mr Middleton's evidence.

20 Insofar as the first item is concerned,
21 the templates, that covered not only Ede & Ravenscroft
22 but also Northams, D3. It was both.

23 Those are my submissions, sir.

24 Submissions by MR PATTON

25 MR PATTON: Sir, so far as the template document is

1 concerned, my learned friend accepted, or at least did
2 not dispute, that that was not a document that fell
3 within any of the existing categories of disclosure.

4 THE CHAIRMAN: Did he? Did he accept that?

5 MR RANDOLPH: I said that that was the excuse that was
6 being -- that was the reason, shall I put it, being put
7 up.

8 MR PATTON: Well, what I had intended to say just now was
9 that he had accepted, or did not dispute, that it was
10 not within the existing categories of disclosure, which
11 is the position we have taken. So the question is what
12 is the issue in the case to which disclosure of that
13 document goes. What he said was it goes to the issue of
14 whose documents the OSAs really are, but I do not
15 understand what issue that is in the case.

16 When Ms Middleton was being cross-examined, you may
17 recall that Mr Randolph occasionally would say, "It is
18 your agreement", and I interrupted to seek clarification
19 of what point was actually being put there, and I think
20 you, Mr Chairman, gave some clarification and my learned
21 friend confirmed that all he was saying was it was on
22 their headed notepaper, but he was not challenging
23 the evidence that the agreements are the result of
24 negotiations with the university. So it is simply
25 unclear what is the issue to which this is said to be

1 relevant at all, and on that basis, if it is not
2 relevant to any of the issues, there is no reason to
3 order disclosure of it.

4 THE CHAIRMAN: Well, it might go to a question -- I am not
5 saying it is an issue at the moment -- as to whether
6 the terms in the OSAs that we see emanate from something
7 that the universities put forward or Ede & Ravenscroft
8 has put forward. Now, if it goes to that question, is
9 that a question which is relevant to an issue in
10 the case?

11 MR PATTON: Whether the terms emanate ...

12 Well, I mean, I have to say, it is difficult to see
13 how that is relevant.

14 THE CHAIRMAN: It is an issue which is mentioned in
15 the experts' reports as to who is the cause of --

16 MR PATTON: Who seeks the requirements. I mean, what you
17 would be getting, if disclosure is ordered, you would be
18 getting a copy of a template that exists now, as
19 I understand it, based on Ms Middleton's answer, and one
20 is concerned in a case where the OSAs have been
21 negotiated over a number of years, but it would tell you
22 what now is a template that is used by the defendants.
23 But anyway, that is my submission on that.

24 THE CHAIRMAN: There is no objection to producing it, other
25 than it is not relevant?

1 MR PATTON: I do not believe so, no.

2 Now, so far as R&T is concerned, it has obviously
3 always been a matter of public record ever since 2018
4 that Mr Halls was a director for a short period of time.
5 That has not been raised as part of the pleaded case, it
6 has not been raised in correspondence.

7 Mr Randolph said that he was being put forward as
8 a witness in his capacity as a director -- of
9 Radcliffe & Taylor, presumably, is what he meant -- and
10 I do not think that is right. I think in fact Mr Halls
11 was being put forward as a director of Northams, and in
12 fact I do not think he referred in his witness statement
13 at all to the short period for which he was a director
14 of Radcliffe & Taylor. At the top of {D4/3/4}, just in
15 the second line, he mentioned that he is the company
16 secretary of Radcliffe & Taylor.

17 So this point has been raised with the witnesses.
18 That is the first time the point has been mentioned. It
19 is not relevant to any of the pleaded issues. I mean,
20 you asked Mr Randolph what it was relevant to, and my
21 respectful submission is he did not give an answer by
22 reference to actually any issue of any substance in
23 the case, so it is just a fishing expedition.

24 He suggested, in the end, that it was relevant to
25 the weight to be given to the evidence of witnesses.

1 That suggests it is being suggested as a point that
2 would go to credit. It was not actually put to any of
3 the witnesses, no doubt because there is no basis to do
4 so, that there was anything that would go to credit in
5 relation to this episode, and if what is now being said
6 is that disclosure is sought with a view to making
7 a point about credit, well, you do not get disclosure
8 for the purposes of points about credit. That is long
9 established. So we would suggest that there is no basis
10 for asking us to make a search for those documents.

11 Reply submissions by MR RANDOLPH

12 MR RANDOLPH: I can be brief.

13 I hope I do not need to address you on the template
14 issue, save for the fact I am concerned that my learned
15 friend has said, "Oh, you can only get the template
16 now". These proceedings have been on foot for some
17 time. It has been clearly, right from the claim form
18 being lodged, an issue insofar as standard form is
19 concerned, and then whose documents are they.

20 It would be unfortunate if the templates that are
21 produced do not reflect the agreements that have been
22 already identified and examined in cross-examination.
23 However, we are where we are, and if it is the case --
24 and we would require a disclosure statement to this
25 effect, signed, with a statement of truth -- that there

1 is only one current template, then we seek disclosure of
2 that by return, both for Northam and for
3 Ede & Ravenscroft, and in all formats. So there may be
4 templates for different types, you've got OSA or maybe
5 bespoke and anything else, but particularly for OSAs,
6 and if there are several templates, we would seek
7 disclosure of those several documents.

8 The only point I would make in relation to Mr Halls
9 is that my learned friend took you to paragraph 11,
10 the end of paragraph 11 on {D4/3/4}. In fact, Mr Halls
11 sets out at paragraph 10 {D4/3/3} that he has:

12 "... acted as a consultant (amongst all my other
13 professional work) primarily for Radcliffe & Taylor ...
14 assisting with their overseas interests (not Northams
15 and ILA for clarity)."

16 So he sets out there what his role is and was,
17 "as consultant ... primarily for Radcliffe & Taylor",
18 and it seems to us that, insofar as he is saying that in
19 terms, his status, albeit for a very brief period, as
20 director for Radcliffe & Taylor is of relevance, but
21 I think that is all I can say to the tribunal on that
22 point.

23 Further submissions by MR PATTON

24 MR PATTON: Sir, sorry, can I just respond?

25 Insofar as the application is made for a template in

1 respect of Northams, because I had not appreciated that,
2 I think the request that we have got from my learned
3 friend's solicitor said specifically
4 Ede & Ravenscroft Limited, and that reflects the fact
5 that Ms Middleton --

6 MR RANDOLPH: (Inaudible).

7 MR PATTON: Oh, I am sorry. Well, I am reading from our
8 response, which I thought quoted from the categories of
9 request, but if I have misunderstood, let me just deal
10 with the position.

11 Ms Middleton gave evidence that there was a template
12 at Ede & Ravenscroft. Mr Halls was asked whether
13 Northams had a template and he did not know of
14 the existence of any template. Certainly my solicitors
15 are not aware of the existence of one and there is no
16 positive evidence that one exists. So if you were
17 making an order for disclosure, we believe we would be
18 able to give disclosure of a template in respect of
19 Ede & Ravenscroft, but we do not have any reason to
20 think that there is one in respect of Northams.

21 THE CHAIRMAN: You would need to look. If you were required
22 to do it, you would need to look for it, in relation to
23 Northams.

24 MR PATTON: Exactly, yes.

25 THE CHAIRMAN: We will rise for a few minutes and come back.

1 (12.45 pm)

2 (A short break)

3 (12.50 pm)

4 Ruling

5 So far as the template in relation to the OSAs are
6 concerned, one question raised in the proceedings is
7 whether particular terms are inserted at the instigation
8 of E&R or the universities. For that reason we think
9 the templates are at least potentially relevant. We
10 will order disclosure of the templates which have been
11 admitted to exist in relation to Ede & Ravenscroft, but
12 also any templates that do in fact exist in relation to
13 Northams. We do not see a relevant distinction between
14 those two.

15 So far as the documents relating to the episode
16 where Mr Halls was appointed as a director, we fail to
17 see why that is relevant to any issue in the proceedings
18 and therefore we refuse disclosure in relation to that.

19 MR PATTON: I am grateful, sir, and that will be done as
20 soon as possible.

21 Housekeeping

22 MR PATTON: Sir, may I raise a few points of clarification
23 in relation to next week's business.

24 THE CHAIRMAN: Yes.

25 MR PATTON: I have discussed these with Mr Randolph and

1 there is no disagreement between us about these points,
2 but we just wanted to make sure that we understood what
3 the tribunal had in mind.

4 I am afraid I do not think your letter about
5 the protocol for the expert procedure is on Magnum, but
6 I hope you may have access to it?

7 THE CHAIRMAN: Yes.

8 MR PATTON: Yes.

9 So, if you have, just on the second page,
10 paragraph 9, it is explained that the experts will be
11 sworn at the commencement of Day 6., so that is on
12 Monday. Would you expect each of us to examine
13 the witnesses in-chief at that point, to get them to
14 confirm the contents of the reports and the parts of
15 the joint statement that relate to that?

16 THE CHAIRMAN: Yes, I think so. That is a sensible start to
17 the whole process.

18 MR PATTON: So we will be in the row behind, but we will do
19 that and that will be fine.

20 THE CHAIRMAN: Yes.

21 MR PATTON: Then it seemed to us that the experts would
22 remain in purdah until they had completed all of their
23 evidence, not just the hot-tubbing but also their
24 cross-examination.

25 THE CHAIRMAN: Yes, that should follow.

1 MR PATTON: That would make sense.

2 Then just looking at paragraph 11, (i), (ii) and
3 (iii) describe the topic-by-topic process that
4 the tribunal is intending to follow and at (ii) that
5 counsel may be permitted to ask some clarificatory
6 points.

7 Then (iv) says:

8 "After the process set out in (i) to (iii) has been
9 completed, counsel for each of the parties will be
10 afforded an opportunity to cross-examine."

11 We understand that to mean that that is not on
12 a topic-by-topic basis, but right at the end of
13 the whole hot tub.

14 THE CHAIRMAN: Yes.

15 MR PATTON: I am grateful.

16 Then just in relation to the cross-examination, we
17 assume that when the tribunal has had an opportunity to
18 go through what looks like a very comprehensive list of
19 the topics with the experts, you are not expecting us to
20 put our whole case, as it were, in cross-examination;
21 just any particular points we feel would benefit from
22 being put.

23 THE CHAIRMAN: Yes.

24 MR PATTON: I am grateful. I think that covers those
25 points.

1 Then could I just update the tribunal on
2 the timetable. Mr Chan is available on the morning of
3 the Wednesday at 9 o'clock. So shall we move him to
4 then? This was the point you raised.

5 THE CHAIRMAN: Yes. How long do you think you need with
6 him?

7 MR PATTON: I think he is down for an hour?

8 MR SPITZ: Yes, he is down for an hour. It certainly will
9 not take more than that, and in all likelihood will take
10 significantly less.

11 THE CHAIRMAN: So shall we say 9.30 then?

12 MR PATTON: Yes.

13 THE CHAIRMAN: Okay, 9.30.

14 MR PATTON: 9.30.

15 Also in relation to that, Dr Niels, you will recall,
16 had an engagement at 3 o'clock. That no longer is an
17 issue and so he will be able to remain until the end of
18 the day, so the prospects of potentially finishing on
19 Wednesday may be higher.

20 THE CHAIRMAN: Very good.

21 MR PATTON: That was all.

22 THE CHAIRMAN: Thank you all very much. We will reconvene
23 at 10.30 on Monday.

24 (12.54 pm)

25 (The Court adjourned until 10.30 am on Monday,

31 January 2022)

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- 4
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- 8
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- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Index

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR MICHAEL MIDDLETON (continued)3

Cross-examination by MR SPITZ (continued)4

MR ANDREW TELFER (affirmed)41

Examination-in-chief by MR ARMITAGE41

Cross-examination by MR RANDOLPH43

Re-examination by MR ARMITAGE71

Questions by THE TRIBUNAL73

Application75

Submissions by MR RANDOLPH75

Submissions by MR PATTON79

Reply submissions by MR RANDOLPH83

Further submissions by MR PATTON84

1
2 Ruling..... 85
3
4 Housekeeping..... 85