

Case No: 1262/5/7/16 (T)  
 IN THE COMPETITION APPEAL TRIBUNAL

Competition Appeal Tribunal  
 Victoria House  
 Bloomsbury Place  
 London  
 WC1A 2EB

Before:

MR JUSTICE MARCUS SMITH  
 MR PETER FREEMAN CBE, QC (Hon) and MR BRIAN LANDERS

Between:

AGENTS' MUTUAL LIMITED  
 Claimant  
 and  
 GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)  
 Defendant

MR ALAN MACLEAN QC and MR JOSH HOLMES appeared on behalf of the Claimant

MR PAUL HARRIS QC and MR PHILIP WOOLFE appeared on behalf of the Defendant

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1 Thursday, 9 February 2017  
 2 (9.00 am)  
 3 Application re Recorded Evidence  
 4 MR MACLEAN: Sir, before Mr Harris says whatever he is about  
 5 to say, can I just say that after I left my chambers  
 6 this morning, between leaving chambers and arriving  
 7 here, we received a letter from Quinn Emanuel. I was  
 8 forwarded an email from Miss Farrell, who instructs me,  
 9 at 8.51 this morning. At page 405, including that  
 10 letter on my phone, it seems to us absolutely  
 11 extraordinary that the extracts from these transcripts  
 12 were sent at 1.51 this morning and this explanation from  
 13 Mr Bronfentrinker arrived at 8.51. My point is I  
 14 haven't read that letter. Has the Tribunal received that  
 15 letter?  
 16 THE CHAIRMAN: Yes, we've received and read it.  
 17 MR MACLEAN: I haven't read all of it yet and I would like  
 18 the opportunity to finish the five page letter. I have  
 19 digested, obviously, the one paragraph letter from 1.51  
 20 this morning but I haven't yet, and Mr Holmes hasn't  
 21 read at all, the five page letter that arrived within  
 22 the last two minutes.  
 23 THE CHAIRMAN: Do you want us to rise now for ten minutes  
 24 for you to read it?  
 25 MR MACLEAN: It won't take ten minutes, it will just take

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1 five minutes but I haven't been able to digest it.  
 2 THE CHAIRMAN: That is entirely fair enough. It is a fast  
 3 moving thing. We will rise for five minutes. Before we  
 4 do, I was going to start by just putting on the record,  
 5 I am sure for all of us, our appreciation for the  
 6 transcribers and the court staff -- it's very easy for  
 7 the chairman to say in a blasé sort of way "Let's start  
 8 at 9 o'clock tomorrow." Considerable effort has gone  
 9 into making this possible and I am sure I speak for  
 10 everyone when I say thank you. We'll rise for five  
 11 minutes.  
 12 MR MACLEAN: Just one other point. We were obviously hoping  
 13 and expecting to receive the extracts earlier than we  
 14 did. And had we done so, I apprehend that Mr Springett  
 15 would have familiarised himself with the extracts but he  
 16 hasn't had an opportunity to do that. When this phase  
 17 you are about to embark on, finishes, obviously  
 18 Mr Springett will be back in the witness box but he  
 19 will, I suppose we could do it now, but he will need an  
 20 opportunity, depending on what happens, to familiarise  
 21 himself with such extracts as might be in play.  
 22 THE CHAIRMAN: Yes, there are a number of practical issues  
 23 if this material is to be put to him, including, for  
 24 example, whether he sees the confidential parts of  
 25 Mr Bronfentrinker's sixth statement which I understand

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1 he's not seen as yet.  
 2 MR MACLEAN: I don't believe he has, no.  
 3 THE CHAIRMAN: But these are matters which we will obviously  
 4 have to discuss.  
 5 MR MACLEAN: These are all down the line and in my  
 6 submission, as I will develop at the appropriate moment,  
 7 we won't get to any of this.  
 8 THE CHAIRMAN: I think I know where you are coming from,  
 9 Mr Maclean.  
 10 MR HARRIS: Sir, of course, on that last point, the obvious  
 11 course is for Mr Springett to have regard to the  
 12 excerpts now. He is not giving evidence for nearly an  
 13 hour and a half. I think the point Mr Maclean is making  
 14 is that Mr Springett hasn't read them but he can read  
 15 them now.  
 16 THE CHAIRMAN: Does that pre-judge our decision?  
 17 MR HARRIS: Not for him to read the extracts. If they are  
 18 then excluded, there is no problem.  
 19 THE CHAIRMAN: I don't particularly have a problem with  
 20 that, Mr Maclean.  
 21 MR MACLEAN: Not specially. Obviously, it is conceivable we  
 22 might need to take instructions from him in the course  
 23 of this part of the hearing but, in principle, that is  
 24 right.  
 25 THE CHAIRMAN: If he wants to avail himself of the

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| <p>1 opportunity, then it might be worth him doing that but<br/>                 2 perhaps at this stage to see the full Bronfentrinker<br/>                 3 statement.<br/>                 4 MR HARRIS: No, there are confidential items in the witness<br/>                 5 statement.<br/>                 6 THE CHAIRMAN: I know. Well, we will stick with the<br/>                 7 transcript for the moment. We'll rise for five minutes<br/>                 8 and then see how we go.<br/>                 9 (9.07 am)<br/>                 10 (A short break)<br/>                 11 (9.15 am)<br/>                 12 MR HARRIS: There's an application to be made by Gascoigne<br/>                 13 Halman. Mr Woolfe will address you on that application.<br/>                 14 Yes, Mr Woolfe.<br/>                 15 MR WOOLFE: Sir, thank you. This is our application to<br/>                 16 admit the transcripts, as you are aware. In our<br/>                 17 submission there is really only one issue which is<br/>                 18 whether or not these can fairly be accommodated within<br/>                 19 the trial as it currently stands and that is the issue<br/>                 20 to which you should address your mind. If they can be<br/>                 21 they should be allowed.<br/>                 22 I am going to, first of all, briefly explain the<br/>                 23 documents you have before you, just to check that you<br/>                 24 have everything which I think you should have. Then<br/>                 25 I will deal with some of the relevant legal principles</p> <p style="text-align: center;">Page 5</p>  | <p>1 Now, in the exhibits to the witness statement which<br/>                 2 is where I am going to be working from predominantly,<br/>                 3 the February transcript, that runs from pages 33 to 46.<br/>                 4 The April transcript runs from pages -- that is the one<br/>                 5 there are two versions of -- runs from pages 1 to 32 and<br/>                 6 pages 47 to 83 and I am going to refer you to the one<br/>                 7 that starts on page 47 because that is the one which has<br/>                 8 been professionally prepared and therefore we think is<br/>                 9 more likely to be more a reliable transcription of what<br/>                 10 is on the recording of that meeting.<br/>                 11 And then finally, the June transcription is the one<br/>                 12 that starts on page 84.<br/>                 13 THE CHAIRMAN: When you say it has been professionally<br/>                 14 prepared, it won't have been professionally prepared in<br/>                 15 independence of the convenience transcript, as<br/>                 16 Mr Bronfentrinker refers to it, because presumably the<br/>                 17 names of people will have been derived from the<br/>                 18 convenience transcript.<br/>                 19 MR WOOLFE: Yes, that is what I was going to come to.<br/>                 20 THE CHAIRMAN: So there's a pollution between the two.<br/>                 21 MR WOOLFE: As you said, there is some --<br/>                 22 THE CHAIRMAN: Cross-fertilisation.<br/>                 23 MR WOOLFE: In terms of the attribution of voices to names.<br/>                 24 There are some occasions on which somebody uses<br/>                 25 somebody's name, or is introduced in the transcript and</p> <p style="text-align: center;">Page 7</p> |
| <p>1 and in so doing, I'll cover off the first two points<br/>                 2 that you raised yesterday, sir, about the relevance of<br/>                 3 the lawfulness of the collection of the material.<br/>                 4 Then I will turn on to deal with the value of this<br/>                 5 evidence as it stands in the trial, so it is relevant to<br/>                 6 the issues, its credibility and its probative force.<br/>                 7 Then I will deal with the timing of its late provision<br/>                 8 and refer to the letter which you received this morning<br/>                 9 and then, finally, in the light of that, address the<br/>                 10 issue which we say is the core one, whether it can be<br/>                 11 fairly accommodated within the trial timetable.<br/>                 12 Sir, the transcripts were exhibited to the sixth<br/>                 13 witness statement of Mr Bronfentrinker. They were<br/>                 14 confidential and non-confidential versions. I would ask<br/>                 15 you to look at, if you are looking at anything, the<br/>                 16 witness statement, the confidential version, so that you<br/>                 17 can see the full picture.<br/>                 18 That attaches four transcripts which are made of<br/>                 19 three recordings of three separate meetings. I want to<br/>                 20 make that clear. Although there are four transcripts,<br/>                 21 there are only three meetings in issue.<br/>                 22 THE CHAIRMAN: Yes, there are two transcripts of one<br/>                 23 conversation.<br/>                 24 MR WOOLFE: That's right. I am going to refer to them as<br/>                 25 the February, April and June transcripts.</p> <p style="text-align: center;">Page 6</p> | <p>1 you can see their name. But that is a minority of<br/>                 2 cases. By and large, the attributions of voices to<br/>                 3 names has been done by using the names from that earlier<br/>                 4 transcript in respect of the April meeting.<br/>                 5 In addition, the person who listened to the<br/>                 6 transcript has identified where the same voice repeats,<br/>                 7 so even though a name can't be attributed. So, for<br/>                 8 instance, if you are looking at the April transcript,<br/>                 9 for example, on page 33, you have voice M2, for example,<br/>                 10 it refers to throughout and that is M2 because the<br/>                 11 person listening to it believes on education, it is the<br/>                 12 same voice that is speaking. Whereas the other M voices<br/>                 13 may or may not be the same.<br/>                 14 THE CHAIRMAN: Sorry, Mr Woolfe, can I ask, in the<br/>                 15 convenience transcript, where does the attribution of<br/>                 16 names come from?<br/>                 17 MR WOOLFE: As I understand, the attribution of the names on<br/>                 18 the convenience transcript comes from the individual who<br/>                 19 is named at paragraph 6 of Mr Bronfentrinker's witness<br/>                 20 statement.<br/>                 21 THE CHAIRMAN: So this is unnamed individuals, best guess?<br/>                 22 MR WOOLFE: He is a named individual.<br/>                 23 MR FREEMAN: Sorry, named confidential individual's best<br/>                 24 guess.<br/>                 25 THE CHAIRMAN: So we'll call him or her X.</p> <p style="text-align: center;">Page 8</p>  |

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| <p>1 MR WOOLFE: In terms of --</p> <p>2 THE CHAIRMAN: But X did not do the recording, that will be</p> <p>3 Y.</p> <p>4 MR WOOLFE: Yes, X is paragraph 6.</p> <p>5 MR MACLEAN: And X didn't attend any of the meetings,</p> <p>6 paragraph 9.</p> <p>7 MR WOOLFE: And Y made the recordings. The attribution of</p> <p>8 the names has been done by X.</p> <p>9 There is one other point to note on the attribution</p> <p>10 of names, which is insofar as the name Lorna Kerr is</p> <p>11 attributed to who is speaking, we will say there are two</p> <p>12 points. First of all, there is a female Scottish voice.</p> <p>13 All the other voices are Northern Irish. And secondly,</p> <p>14 you can see from the content of what is said that there</p> <p>15 is reference to Lorna, she is introduced. She is</p> <p>16 speaking in the first person plural in respect of</p> <p>17 Agents' Mutual, so we say it is quite clear that it does</p> <p>18 appear to be an agent representative. Therefore, that</p> <p>19 attribution, we say, is one which is supported by the</p> <p>20 intrinsic evidence of the transcript. There are also</p> <p>21 occasions on which I think Philip Tweedie, his name is</p> <p>22 used at various points. There are things that support</p> <p>23 the attribution, albeit that actually, the names aren't</p> <p>24 taken from X.</p> <p>25 We don't propose to rely on the specific names per</p> <p style="text-align: center;">Page 9</p>   | <p>1 MR LANDERS: But you are not suggesting that Mr Notley has</p> <p>2 actually told you that Zoopla have not seen these</p> <p>3 documents?</p> <p>4 MR WOOLFE: Our understanding is that he hasn't got them.</p> <p>5 Hasn't seen them before.</p> <p>6 MR LANDERS: He hasn't told you he has seen them but have</p> <p>7 you asked him?</p> <p>8 MR WOOLFE: When we set out in the letter, when Quinn</p> <p>9 Emanuel went to Mr Notley on 23 January to ask him, now</p> <p>10 we have heard these transcripts do exist, he didn't have</p> <p>11 a copy, he didn't know any more than he said about the</p> <p>12 rumour previous.</p> <p>13 THE CHAIRMAN: One question that arises is whether X has</p> <p>14 shown this material to anybody else. I am not sure you</p> <p>15 have told us about that.</p> <p>16 MR WOOLFE: The full state of our knowledge about that is</p> <p>17 set out in the letter.</p> <p>18 THE CHAIRMAN: Your knowledge may be incomplete.</p> <p>19 MR WOOLFE: Indeed it may. I wouldn't pretend otherwise.</p> <p>20 We don't have full knowledge but we have given a full</p> <p>21 and open account of what knowledge we do have in respect</p> <p>22 of --</p> <p>23 THE CHAIRMAN: We would expect nothing else, Mr Woolfe.</p> <p>24 MR WOOLFE: Now if I can turn to deal with the relevant law.</p> <p>25 The starting point should be rule 55 of the tribunal</p> <p style="text-align: center;">Page 11</p>          |
| <p>1 se. It is not a part of the reliance we place upon it</p> <p>2 that, therefore, Mr Tweedie said X or that Mr Dan Henry</p> <p>3 said X. That's not important for the purposes for which</p> <p>4 we would seek to rely upon the transcripts.</p> <p>5 So Mr Bronfentrinker, in his sixth witness</p> <p>6 statement, gave ancillary evidence as to the provenance</p> <p>7 of these transcripts and then you should also have</p> <p>8 a copy of the letter which I understand was read this</p> <p>9 morning, from Quinn Emanuel. That has been provided</p> <p>10 partly to assist on the issues which the Tribunal raised</p> <p>11 yesterday and some issues which Mr Maclean raised and in</p> <p>12 particular with the suggestion from Mr Maclean that GHL</p> <p>13 or Connells or Zoopla may have had access to these at</p> <p>14 some earlier date and as we see from the letter, that is</p> <p>15 simply not the case. They came into the possession of</p> <p>16 GHL late last week and so far as anybody knows, neither</p> <p>17 GHL nor Connells ever had access to any --</p> <p>18 MR FREEMAN: Zoopla played a little role in it, didn't they?</p> <p>19 MR WOOLFE: Yes.</p> <p>20 MR FREEMAN: There is a reference to Mr Notley. A rumour</p> <p>21 that a recording was circulating.</p> <p>22 MR WOOLFE: Yes. As set out in the letter, sir, but that</p> <p>23 doesn't suggest that Mr Notley had a copy of the</p> <p>24 transcripts --</p> <p>25 MR FREEMAN: No, I didn't say it didn't.</p> <p style="text-align: center;">Page 10</p> | <p>1 rules which says that the Tribunal may give</p> <p>2 directions -- do you have a copy of that available?</p> <p>3 THE CHAIRMAN: I think we have enough copies to be getting</p> <p>4 on, with Mr Woolfe.</p> <p>5 MR WOOLFE: I would say the relevant parts of it, I think,</p> <p>6 are rules 55.1 (b), (c) and (f):</p> <p>7 "The Tribunal may give directions on issues on which</p> <p>8 it provides evidence and ...(Reading to the words)...</p> <p>9 and the admission and exclusion of the proceedings of</p> <p>10 evidence."</p> <p>11 "All submissions [at (c)] the nature of the evidence</p> <p>12 required to decide issues."</p> <p>13 And:</p> <p>14 "(f) the way in which evidence is to be placed</p> <p>15 before the Tribunal."</p> <p>16 All those may be an issue (inaudible) may need to</p> <p>17 make. So there is an obvious analogy to CPR32.1 and</p> <p>18 I also submit that this power should be exercised in</p> <p>19 accordance with rule 4 which is the requirement to</p> <p>20 ensure that each case is dealt with justly and at</p> <p>21 proportionate cost. We further submit that cost issues</p> <p>22 are not really what is centrally in issue here. What</p> <p>23 matters under rule 4 is 4.2(a), ensuring parties are on</p> <p>24 an equal footing and (d) ensuring the case is dealt with</p> <p>25 expeditiously and fairly and, of course, the overriding</p> <p style="text-align: center;">Page 12</p> |

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| <p>1 concern is justice.<br/>                 2 We submit that the relevant issues are justice,<br/>                 3 achieving the right result in the case and fairness to<br/>                 4 both parties.<br/>                 5 Sir, I was going to refer to a case which<br/>                 6 I understand my learned friend is also going to refer<br/>                 7 you to, Jones v University of Warwick. If I could hand<br/>                 8 up some copies of that. (Handed) The relevant facts of<br/>                 9 the case appear from the headnote. It was a personal<br/>                 10 injury case involving a hand injury to an employee which<br/>                 11 was said to give rise to continuing disability and a<br/>                 12 substantial claim for damages. Liability wasn't an<br/>                 13 issue but it was an issue of quantum.<br/>                 14 And you see between (c) and (d):<br/>                 15 "On two occasions an enquiry agent acting for the<br/>                 16 defence insurers obtained access to the claimant's home<br/>                 17 by posing as a market researcher and using a hidden<br/>                 18 camera to film the claimant without her knowledge."<br/>                 19 So essentially it is obtaining access to her home by<br/>                 20 deception. Filming it.<br/>                 21 And it was said, and you will see from paragraph 9<br/>                 22 later on, it says it was common ground this was trespass<br/>                 23 and infringement of her rights to privacy. The district<br/>                 24 judge excluded the evidence originally. The judge in<br/>                 25 the Queens Bench division reversed that decision on</p> <p style="text-align: center;">Page 13</p>   | <p>1 the conversation is being kept hidden away from the<br/>                 2 other protagonists. We don't know quite what's going on<br/>                 3 on page 34.<br/>                 4 MR WOOLFE: No, we don't. It may have been a button that<br/>                 5 beeps on the line or there may be a number of things.<br/>                 6 THE CHAIRMAN: Yes.<br/>                 7 MR WOOLFE: There are certainly a lot of points there are<br/>                 8 personal conversations at the fringe of these meetings<br/>                 9 which are included. There is that too. I wouldn't say<br/>                 10 otherwise.<br/>                 11 Just turning back to Jones v Warwick for a moment.<br/>                 12 Paragraph 15 at the bottom of page 958 just sets out the<br/>                 13 reasoning of the court below. It is said that:<br/>                 14 "The primary question for the court is not whether<br/>                 15 or not to give a ...(Reading to the words)... evidence<br/>                 16 was obtained, it is whether justice and fairness<br/>                 17 required that this highly ...(Reading to the words)...<br/>                 18 to others should be put to her before the trial judge<br/>                 19 ... sound conclusion ..."<br/>                 20 So that was the effectively the QBD judge's<br/>                 21 reasoning.<br/>                 22 Then the reasoning of the Court of Appeal starts on<br/>                 23 paragraph 21 on page 960. And the court which is led by<br/>                 24 Lord Justice Woolfe for dealing with the case under the<br/>                 25 new rules, said at -- paragraph 21 to the previous</p> <p style="text-align: center;">Page 15</p> |
| <p>1 appeal and allowed it in and this was a second appeal to<br/>                 2 the Court of Appeal.<br/>                 3 My first submission is as civil cases regarding the<br/>                 4 exclusion of evidence goes, this is quite extreme facts.<br/>                 5 It is common ground that there had been deception by the<br/>                 6 insurers, who effectively -- something very close to<br/>                 7 being one of the parties in the case and an invasion of<br/>                 8 the claimant's privacy by going into her home. So it is<br/>                 9 a fairly extreme case. And at paragraph 29 the court<br/>                 10 commented that that was improper and not justified. Our<br/>                 11 case doesn't appear to suffer from those problems. The<br/>                 12 recordings were made covertly. There is nothing from<br/>                 13 what we can see to suggest that there was deception<br/>                 14 involved nor an invasion of somebody's home and it is<br/>                 15 business meetings that have been recorded, so a<br/>                 16 distinction there.<br/>                 17 Just turning back to Jones for a moment.<br/>                 18 THE CHAIRMAN: I take the point about the home but looking<br/>                 19 at page 34 of the February transcript, I am not quite<br/>                 20 sure what to make of it but do you see the long<br/>                 21 paragraph of M2 at the top of page on page 34 which ends<br/>                 22 up with "Have we all got our boxes in, Brian?" And then<br/>                 23 "M1: mum don't, that's you recording." I am not quite<br/>                 24 sure what's going on there but there does seem to be an<br/>                 25 element of ensuring that the phone being used to record</p> <p style="text-align: center;">Page 14</p> | <p>1 authorities and noted that in the old authorities, the<br/>                 2 achieving of justice in a particular case before the<br/>                 3 court was the paramount consideration but at<br/>                 4 paragraph 22, goes on to note that things had moved on<br/>                 5 a bit and says:<br/>                 6 "While this approach will help to achieve justice in<br/>                 7 a particular case ...(Reading to the words)...those<br/>                 8 engaged in or about to be engaged in legal proceedings.<br/>                 9 That is also a matter of real public concern."<br/>                 10 At paragraph 23:<br/>                 11 "If the conduct of the insurers in this case goes<br/>                 12 uncensored, there would be a significant risk that<br/>                 13 practices of this type would be encouraged."<br/>                 14 Twenty-four goes on to note "Additionally, in<br/>                 15 criminal cases" -- section 78 of PACE. "Admission of<br/>                 16 the evidence adversely affects the fairness of the<br/>                 17 proceedings."<br/>                 18 Paragraph 24, it also notes the case of Rall v Hume<br/>                 19 and disapproval of trial by ambush, paragraph 25. So<br/>                 20 where one party deliberately holds back and ambushes the<br/>                 21 other. That is a fact to be taken into account.<br/>                 22 And then I think the court's test, as it were, is<br/>                 23 set out at paragraph 28, just below D. The second<br/>                 24 sentence of that:<br/>                 25 "The court must try to give effect to what are here,</p> <p style="text-align: center;">Page 16</p>  |

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| <p>1 the two conflicting...(Reading to the words)... as will<br/>                 2 the gravity of the breach of article 8. According to<br/>                 3 the facts of the particular case, the decision will<br/>                 4 depend on all the circumstances. Here the court<br/>                 5 ...(Reading to the words)... who has the task of trying<br/>                 6 the case."<br/>                 7 Then there is an issue in that case about having to<br/>                 8 instruct new medical experts which doesn't relate to us.<br/>                 9 Pausing there. In our case we say that the<br/>                 10 balancing exercise is very simple. The interests of<br/>                 11 justice favour letting the evidence in and using it for<br/>                 12 what it is worth, weighing it appropriately, given any<br/>                 13 issues, problems it may have, also its probative force,<br/>                 14 to achieve the right result.<br/>                 15 And we say privacy is not a weighty factor in this<br/>                 16 case, as between the parties, for several reasons.<br/>                 17 First, as I have already said, what has been recorded<br/>                 18 are predominantly business conversations held outside<br/>                 19 the home and of course, people's business life. Now,<br/>                 20 business life doesn't fall outside article 8. There's a<br/>                 21 case where it does fall within but it is rather more at<br/>                 22 the margins.<br/>                 23 Secondly, it is hard to see how any infringement of<br/>                 24 privacy is relevant to the claimant. The claimant is<br/>                 25 both a business and a company and it is not its private</p> <p style="text-align: center;">Page 17</p>  | <p>1 MR WOOLFE: Sir, I wouldn't say it is irrelevant but it has<br/>                 2 to be weighed in the balance against the requirements of<br/>                 3 doing justice in the case and having regard to the use<br/>                 4 that is actually going to be made of particular parts of<br/>                 5 the transcript, what is actually going to be trawled<br/>                 6 over to a significant extent in court and any other<br/>                 7 protection that can be put in place, if necessary, to<br/>                 8 prevent any further disclosure, if that were necessary.<br/>                 9 As you will have seen from the passages that we have<br/>                 10 highlighted, what we are interested in are statements by<br/>                 11 Agents' Mutual as to their strategy and their pitch to<br/>                 12 agents in what they are trying to do and aspects of<br/>                 13 concerted practices as to choice of portal, information<br/>                 14 exchange and the like between agents.<br/>                 15 Neither of those are matters to which we say -- no<br/>                 16 privacy concerns should be attached to those. If agents<br/>                 17 haven't actually engaged in, for instance, information<br/>                 18 exchanges to competitive intentions, clearly this<br/>                 19 tribunal should look at that evidence without any<br/>                 20 concern for privacy rights in that respect.<br/>                 21 The transcripts, incidentally, may contain some<br/>                 22 chitchat between people of the kind that goes on in the<br/>                 23 margin of business meetings, but by the nature of it<br/>                 24 being a business meeting, it is necessarily the kind of<br/>                 25 things that people -- it is not central as in very, very</p> <p style="text-align: center;">Page 19</p> |
| <p>1 life that is in issue in these transcripts. There is<br/>                 2 some debate as to whether companies might have some<br/>                 3 rights under article 8 to protect their reputation and<br/>                 4 the like, but I don't think I ever heard it suggested<br/>                 5 that a company has a right to protection of family life.<br/>                 6 Now, the company didn't attend one of the meetings<br/>                 7 and its only involvement in the other is that one of its<br/>                 8 business development consultants or regional sales<br/>                 9 managers, as we apprehend it, has been recorded talking<br/>                 10 to customers or potential customers. And we say that<br/>                 11 doesn't engage, to any significant extent, at least, any<br/>                 12 article 8 rights that the claimant may have.<br/>                 13 THE CHAIRMAN: Ought we not to have regard to the rights of<br/>                 14 parties not represented here? Mr Maclean is going to be<br/>                 15 able to press the claimant's position but if we admit<br/>                 16 this evidence, there is going to be a trawling over<br/>                 17 other people's conversations. Now, it may be that your<br/>                 18 clients don't need to refer to those bits, as you have<br/>                 19 just indicated, but to go back to the unfortunate<br/>                 20 cherry-picking analogy, it does seem that if this<br/>                 21 material is admitted, it goes in in its entirety for<br/>                 22 both parties to make use of it, to the extent that they<br/>                 23 see fit. And ought we not to have regard to the fact<br/>                 24 that there are various other interests of third parties<br/>                 25 engaged or is that simply irrelevant?</p> <p style="text-align: center;">Page 18</p> | <p>1 (inaudible). And we are not going to be reading those<br/>                 2 out in court, putting them to witnesses or otherwise.<br/>                 3 They are simply irrelevant to the case. They happen to<br/>                 4 be on the documents and we say in those circumstances,<br/>                 5 it is not really a weighty factor.<br/>                 6 Finally, as regards any unlawfulness, as you see in<br/>                 7 the Jones case, the evidence has been obtained by<br/>                 8 deception and by trespass. That wasn't seen as a bar as<br/>                 9 such, to it going into evidence. It is really<br/>                 10 a question of public policy whether admitting the<br/>                 11 evidence would encourage parties to engage in unlawful<br/>                 12 or improper conduct and we say that that policy just<br/>                 13 doesn't really bite in our case. This is not a case<br/>                 14 where GHJ or anybody associated with GHJ has been doing<br/>                 15 anything regarding the making of these recordings. They<br/>                 16 have simply happened to obtain them after the event<br/>                 17 because they happened to be available. There is no<br/>                 18 policy that would encourage litigants to engage in any<br/>                 19 sinister practices. The question of lawfulness is<br/>                 20 something of a red herring, for the reasons I have<br/>                 21 given. It doesn't really bite on the central issues<br/>                 22 before the court. As regards the lawfulness of covert<br/>                 23 recording, so far as I have been able to ascertain, in<br/>                 24 England and Wales, covert recording is not, as such,<br/>                 25 unlawful. You may commit offences or torts in the</p> <p style="text-align: center;">Page 20</p>                             |

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| <p>1 course of conducting unlawful recording, as in fact<br/>                 2 happened in Jones. That was a case -- there may be<br/>                 3 deception or similar. I am not Northern Irish counsel<br/>                 4 and I wouldn't want to address the tribunal with any<br/>                 5 authority on Northern Irish law. However, in the<br/>                 6 research I have done overnight, I have not identified<br/>                 7 any general prohibition of tape recording in Northern<br/>                 8 Ireland.<br/>                 9 THE CHAIRMAN: I tell you what, Mr Woolfe, let's leave that<br/>                 10 point there because if Mr Maclean has more to say on<br/>                 11 lawfulness, then you can deal with it in your reply.<br/>                 12 MR WOOLFE: Thank you. Now if I can turn to the value of<br/>                 13 the evidence. As you will have seen from the excerpts,<br/>                 14 broadly they contain evidence, as I said, of how the<br/>                 15 Agents' Mutual representative in those meetings<br/>                 16 presented the Agents' Mutual project, the Bricks and<br/>                 17 Mortar restriction and the OOP rule, to agents at<br/>                 18 face-to-face meetings. And secondly, there is evidence<br/>                 19 of agent behaviour in group meetings, both with and<br/>                 20 without Agents' Mutual present and there appears to be,<br/>                 21 in the meeting without Agent's Mutual present, exchange<br/>                 22 of information regarding future intentions. And it also<br/>                 23 reflects on their understanding of the Agents' Mutual<br/>                 24 project, if I can call it that, in the meeting with<br/>                 25 Agents' Mutual present.</p> <p style="text-align: center;">Page 21</p> | <p>1 attention, in particular, to paragraph 40(b) on page 50<br/>                 2 which is -- so this concerted practice consisting is<br/>                 3 partly in the OOP rule and part of it, and then conduct<br/>                 4 of -- 40(d), sub4, on page 51 which is the -- sorry,<br/>                 5 40(d) is the conduct of agents effectively checking up<br/>                 6 on each other, stabilising ... concerted practice.<br/>                 7 40(e):<br/>                 8 "... representations made by Agents' Mutual to its<br/>                 9 members."<br/>                 10 So those are in issue and that's what these<br/>                 11 transcripts go to and 40(f) as well, which is the<br/>                 12 practice according to (inaudible). It is directly<br/>                 13 relevant, we say, to those pleaded issues.<br/>                 14 Dealing with the credibility, the authenticity of<br/>                 15 the transcripts, I am going to deal with this fairly<br/>                 16 shortly. Subject to anything my learned friend may have<br/>                 17 to say. In short, there was nothing to suggest from the<br/>                 18 transcripts themselves or, we say, the recordings.<br/>                 19 Nothing to suggest they are not authentic or have been<br/>                 20 tampered with in any way. I just note that in respect<br/>                 21 of two of the meetings, Agents' Mutual is in a position<br/>                 22 to check with the lady who we say was present, Lorna<br/>                 23 Kerr, to ask whether or not she attended the meetings on<br/>                 24 those days. We gave them the recordings on Sunday. So<br/>                 25 they have had a few days to be able to listen to them</p> <p style="text-align: center;">Page 23</p>   |
| <p>1 That goes to a number of issues in the case. If<br/>                 2 I can ask you to take out the pleading bundle fairly<br/>                 3 swiftly. It is bundle A. And at tab 3 is our amended<br/>                 4 defence and the pleaded issues which we would say this<br/>                 5 evidence goes to are -- using the bundle numbering on<br/>                 6 page 43, our pleading of the object of the OOP rule,<br/>                 7 subparagraphs 32(b) and (c), so that is an understanding<br/>                 8 of the OOP rule as a limit on the service estate agents<br/>                 9 can provide and having the object of drawing UK estate<br/>                 10 agents away from this (inaudible) on other property<br/>                 11 portals rather than -- through contractual restrictions<br/>                 12 rather than competition on the merits. Also an object<br/>                 13 restriction in respect of the portal market which is the<br/>                 14 object -- paragraph (e):<br/>                 15 "To weaken potentially ...(Reading to the words)...<br/>                 16 presented by Zoopla."<br/>                 17 And it is relevant evidence connected to that as<br/>                 18 well.<br/>                 19 Also paragraph 36, over the page, we say it goes to<br/>                 20 36(l). So whether or not there is, in fact, a real<br/>                 21 restriction of competitive conduct and consumer harm.<br/>                 22 I don't know if you notice, sir, one particular point,<br/>                 23 there is a reference to selling consumers a bum deal.<br/>                 24 And then concerted practice on portal choice is<br/>                 25 pleaded at paragraphs 38 and 40 and I call your</p> <p style="text-align: center;">Page 22</p>   | <p>1 and we gave them the transcripts on Tuesday, with an<br/>                 2 explanation of where they were. So they can carry out<br/>                 3 some steps to, basically, did these meetings happen on<br/>                 4 that day, were you present, does this broadly reflect<br/>                 5 your recollection? And we haven't heard anything from<br/>                 6 them since Sunday or since Tuesday, to suggest that<br/>                 7 these are simply entirely concocted or anything of that<br/>                 8 sort.<br/>                 9 THE CHAIRMAN: Does that in itself though, amount to<br/>                 10 a degree of prejudice to Agents' Mutual? I mean we are<br/>                 11 in the middle of a very heavy trial. I appreciate both<br/>                 12 sides have large legal teams but this might be said.<br/>                 13 I don't want to put words into Mr Maclean's mouth.<br/>                 14 MR WOOLFE: Clearly it is not ideal to have evidence<br/>                 15 disclosed in the middle of the trial. Nobody wants to<br/>                 16 be in that situation. It is not something that we<br/>                 17 sought. It is the way it is. And I am going to say,<br/>                 18 the thing to judge is whether or not, in the time that<br/>                 19 is available -- bear in mind they were given the<br/>                 20 recordings on Sunday, Monday morning. The trial closes<br/>                 21 a week on Monday, so that is a two week gap and the<br/>                 22 issue for you is whether they can, in fairness, manage<br/>                 23 to deal with it and put in any witness statements from<br/>                 24 Miss Kerr in response within that time.<br/>                 25 MR FREEMAN: Mr Woolfe, you said there was nothing to</p> <p style="text-align: center;">Page 24</p> |

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| <p>1 suggest there was any impairment of the authenticity of<br/>                 2 the recordings; is that what you said? Nothing to<br/>                 3 suggest they weren't authentic?<br/>                 4 MR WOOLFE: That is what I said, nothing to suggest they are<br/>                 5 not.<br/>                 6 MR FREEMAN: Is it right you are not relying on the first<br/>                 7 transcript?<br/>                 8 MR WOOLFE: We are not relying on the first transcript as<br/>                 9 being an accurate transcription of what is said in the<br/>                 10 meeting because we prepared -- this is our work in<br/>                 11 preparing the transcript.<br/>                 12 MR FREEMAN: If there were inaccuracies in the first<br/>                 13 transcript, that might suggest that the professionally<br/>                 14 adjusted version of it might also be suspect.<br/>                 15 MR WOOLFE: As regards the attribution of the names, which<br/>                 16 are taken from that first transcript, that is a fair<br/>                 17 point. Can I explain briefly why we disclosed this<br/>                 18 first transcript that we have? Initially, the view was<br/>                 19 actually taken, the reason the recordings were sent at<br/>                 20 the weekend and not this transcript, the convenience<br/>                 21 transcript, is because it was thought well, it may<br/>                 22 just -- until we listen to the recordings properly and<br/>                 23 do our own, this may not be very reliable.<br/>                 24 If I can ask you to turn to page 32, you can see<br/>                 25 some highlighted words on that page.</p> <p style="text-align: center;">Page 25</p>   | <p>1 about -- it would appear that you have separate little<br/>                 2 excerpts of recordings which are being timed<br/>                 3 individually. So you see -- you start at 20 seconds,<br/>                 4 I assume, and then 30 seconds. If you look in the<br/>                 5 middle of the page, you have 1 minute 28 and then<br/>                 6 a whole minute, you have 2, 38. That seems to me quite<br/>                 7 a large gap in time to say what is said in those ten<br/>                 8 lines. So what I am wondering is whether there hasn't<br/>                 9 been an element of selection, gaps in the record? And<br/>                 10 one can see it elsewhere. If you look at page 10, we<br/>                 11 have an oddity of timing because you can see in the<br/>                 12 middle of page 10, you see the time for the bit in red,<br/>                 13 where it is said: well again, Agents' Mutual -- are you<br/>                 14 Agents' Mutual? That is 30.7 but then the next entry is<br/>                 15 30.11 which would appear to be earlier in time than the<br/>                 16 preceding extract. You get the same at page 13, where<br/>                 17 you see there is the -- at 49.22 "sorry to interrupt",<br/>                 18 and then one ignores the 39.55 because that's simply the<br/>                 19 count but then you go down to 40.25. So we seem to have<br/>                 20 gone back in time by nine minutes.<br/>                 21 MR WOOLFE: Sir, this --<br/>                 22 THE CHAIRMAN: So I am not expecting, Mr Woolfe, for you to<br/>                 23 answer these questions because I anticipate that you<br/>                 24 can't. That, I think, is the problem. There are<br/>                 25 questions going to the simple process by way of which</p> <p style="text-align: center;">Page 27</p> |
| <p>1 THE CHAIRMAN: Yes.<br/>                 2 MR WOOLFE: These are typed in, we think, by X, it certainly<br/>                 3 seems so by the heading that's in them and bearing in<br/>                 4 mind who X is. And hence, this is a different document.<br/>                 5 THE CHAIRMAN: It is a working document of X.<br/>                 6 MR WOOLFE: It is a working document of X and also it is<br/>                 7 a distinct document for CPR disclosure purposes and<br/>                 8 therefore we thought properly we should disclose it.<br/>                 9 THE CHAIRMAN: If I may say so, that was entirely the right<br/>                 10 course but it does raise questions. Let me put a few<br/>                 11 cards on the table about the concerns I have here.<br/>                 12 Leaving entirely on one side the content of the<br/>                 13 recordings and transcripts, we have issues regarding the<br/>                 14 reliability of the recording and I am going to show you<br/>                 15 where I have concerns, having read them overnight.<br/>                 16 We then have supplementation of the recordings by<br/>                 17 additional evidence which doesn't emerge from the<br/>                 18 recording and again, that's something which I think I am<br/>                 19 going to need your help on. But let's start with the<br/>                 20 issues regarding the recordings.<br/>                 21 If you look at page 1, so the convenience<br/>                 22 transcript, you see that each passage has got a time and<br/>                 23 what I am inferring, but you can correct me if I am<br/>                 24 wrong -- but in a sense, this is part of the problem<br/>                 25 because we are debating something that we don't know</p> <p style="text-align: center;">Page 26</p> | <p>1 this recording was obtained.<br/>                 2 MR WOOLFE: Sir, one thing I would say is that I think that<br/>                 3 is using a transcript, the reliability of which, I think<br/>                 4 is genuinely in question because it has not been<br/>                 5 professionally prepared, to go back and try and make<br/>                 6 sense about what may have been done with the recording.<br/>                 7 Now, somebody may, for instance, have typed the wrong<br/>                 8 number in and it has not been sequentially.<br/>                 9 THE CHAIRMAN: They may have done but the numbers don't<br/>                 10 appear in the --<br/>                 11 MR WOOLFE: And the gaps, that can be checked by listening<br/>                 12 to the recording to see how long the gaps are and<br/>                 13 whether they actually tally up. There are also things<br/>                 14 which can be done, as I understand it, to send audio<br/>                 15 files off for analysis, to see if they have been fiddled<br/>                 16 with in various ways. We haven't done that. It is for<br/>                 17 the other side to do so if they wanted to do.<br/>                 18 So we consider the primary evidence is the<br/>                 19 recordings. We have arranged for them to be listened to<br/>                 20 and prepared, the transcripts on which we rely, based on<br/>                 21 those recordings.<br/>                 22 I can see the examples on which you say the numbers<br/>                 23 do get out of line. Some of the gaps may appear wrong<br/>                 24 but that assumes that this person has accurately written<br/>                 25 down the time at every point without making a mistake</p> <p style="text-align: center;">Page 28</p>  |

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| <p>1 anywhere in a longish document and also that the<br/>                 2 speakers are not speaking slowly.<br/>                 3 MR LANDERS: Could you just confirm that these are<br/>                 4 recordings of an entire meeting, as opposed to<br/>                 5 a sequence of recordings that have been spliced<br/>                 6 together. Sometimes when you record on the phone, it<br/>                 7 clicks off after a while and it starts again. Was it<br/>                 8 like that or was it one long sequence?<br/>                 9 MR WOOLFE: We have three files, one for each of the<br/>                 10 meetings. That's what we have. Now that doesn't answer<br/>                 11 the chairman's point, which is somebody may have put<br/>                 12 into one file, things that weren't in different sequence<br/>                 13 or a different file or whatever but as we have received<br/>                 14 them, they are one file for each meeting. They have<br/>                 15 been listened to in one go and it sounds to us like<br/>                 16 a continuous recording. It is not, obviously, glitching<br/>                 17 in that sense but that is no more than our impression.<br/>                 18 THE CHAIRMAN: The second point that I raised was the added<br/>                 19 value because you refer in the singular to the evidence<br/>                 20 and I am not sure that that is an accurate way of<br/>                 21 describing it. What I think we have are two evidence<br/>                 22 streams. We have the recording. We then have the work<br/>                 23 that has been done to make the recording more easily<br/>                 24 digestible and that includes, for instance, the tidying<br/>                 25 up of ambiguities, lack of clarities in the recording,</p> <p style="text-align: center;">Page 29</p> | <p>1 or denied by --<br/>                 2 MR FREEMAN: You talked about concerted practice as an<br/>                 3 exchange of information between agents. You would need<br/>                 4 to establish these are agents and it would be helpful in<br/>                 5 doing so, to know their names. You are asking us to<br/>                 6 accept that they are agents, unnamed, anonymous agents,<br/>                 7 with names we don't have to worry about. It seems<br/>                 8 rather scrappy.<br/>                 9 MR WOOLFE: We are not seeking to make those agents liable<br/>                 10 in any way.<br/>                 11 MR FREEMAN: I am not suggesting you do but according to<br/>                 12 your analysis, what agents do, qua agents, is relevant.<br/>                 13 MR WOOLFE: Yes. You can see -- perhaps I will take you to<br/>                 14 it -- you can see in the evidence of the transcript --<br/>                 15 leaving agents' credibility to one side for the moment<br/>                 16 just focussing on the names issue, and whether or not<br/>                 17 that matters, and whether or not these are agents, we<br/>                 18 submit that it is amply apparent from the discussion<br/>                 19 that it is actually contained in the February meeting<br/>                 20 and the April meeting and the June meeting, that these<br/>                 21 are agents and the nature of their discussion, they are<br/>                 22 talking about coming off PropertyPal, Property News.<br/>                 23 "Let's get stickers for our boards". They are referring<br/>                 24 to certain names of agents, I think Dalzell is referred<br/>                 25 to at one point. That is in what is spoken, there are</p> <p style="text-align: center;">Page 31</p> |
| <p>1 the insertion of names, where they don't appear from the<br/>                 2 transcript, where X has done that.<br/>                 3 Of course, the tidying up has only gone so far.<br/>                 4 There are, I anticipate, additional details that could<br/>                 5 be provided regarding the transcript which might be<br/>                 6 helpful. So, for instance, one might be able to provide<br/>                 7 the identity of F1. One could certainly provide the<br/>                 8 identity of X.<br/>                 9 MR WOOLFE: We have provided.<br/>                 10 THE CHAIRMAN: You have but rather more openly than has been<br/>                 11 done at the moment. Obviously we are not going to go<br/>                 12 there yet.<br/>                 13 But these are points, particularly the adding of<br/>                 14 names on, which if you were to rely on the names being<br/>                 15 spoken, you are surely going to have to produce further<br/>                 16 evidence to substantiate what appears on the face of<br/>                 17 these transcripts.<br/>                 18 MR WOOLFE: Sir, as I think I made clear before, we are not<br/>                 19 relying as such, on the attribution of names. It is not<br/>                 20 central to our use of this evidence, that one particular<br/>                 21 name has been allocated, with the exception of<br/>                 22 Lorna Kerr, whose name we do rely upon. We say that can<br/>                 23 be supported and provide intrinsic evidence of the<br/>                 24 transcript and can also be checked by -- her<br/>                 25 participation in these meetings can easily be confirmed</p> <p style="text-align: center;">Page 30</p>  | <p>1 names of agencies. Century 21 is mentioned as well<br/>                 2 which can also be checked. It's an agency in Northern<br/>                 3 Ireland.<br/>                 4 So we say from the intrinsic evidence or the<br/>                 5 transcript, assuming it is reliable for a moment, you<br/>                 6 can see that these are agents and the nature of their<br/>                 7 discussion.<br/>                 8 THE CHAIRMAN: You say that is good enough, do you?<br/>                 9 MR WOOLFE: For the purposes for which we would seek to rely<br/>                 10 upon it. In a sense, the question then is, if we were<br/>                 11 to seek to deploy it in a way and required reliance on<br/>                 12 the names, then there would be an issue, but if we<br/>                 13 don't, that issue simply doesn't arise. Now, if we do<br/>                 14 that and you think that the names are important, at that<br/>                 15 stage we rely upon it, then you can draw whatever<br/>                 16 conclusion you like about the evidence and the weight to<br/>                 17 which can be placed upon it, but that is not a reason to<br/>                 18 exclude it.<br/>                 19 THE CHAIRMAN: Mr Woolfe, doesn't it sometimes matter who<br/>                 20 the agent is, simply to understand the tenor of the<br/>                 21 conversation? Let me give you an example. Let's look<br/>                 22 at page 41 and we see here a conversation between M and<br/>                 23 F1.<br/>                 24 MR WOOLFE: Yes.<br/>                 25 THE CHAIRMAN: Now, we know that F1 is the lady who is doing</p> <p style="text-align: center;">Page 32</p>   |



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| <p>1 the recording.<br/>                 2 MR WOOLFE: Yes.<br/>                 3 THE CHAIRMAN: So don't all of these conversations need to<br/>                 4 be read in light of the fact that F1 is in fact not<br/>                 5 a friend of Agents' Mutual, not really interested in<br/>                 6 participating in Agents' Mutual but is in fact -- well,<br/>                 7 I won't go any further because it runs the risk of<br/>                 8 disclosing material that is yellowed out but you get the<br/>                 9 point.<br/>                 10 MR FREEMAN: Motives that are not entirely unalloyed.<br/>                 11 MR WOOLFE: The question, I think, is the motives with which<br/>                 12 somebody acts in this sort of case don't really matter,<br/>                 13 save as regards it may affect --<br/>                 14 MR FREEMAN: We are not impugning the motives but what the<br/>                 15 chairman is saying is that the tenor of the discussion<br/>                 16 needs to be understood, having regard to the interests<br/>                 17 of the person making the remark.<br/>                 18 MR WOOLFE: Sir, do I understand the suggestion is that the<br/>                 19 conversation may have been guided in some way?<br/>                 20 MR FREEMAN: Well we don't know.<br/>                 21 THE CHAIRMAN: That is a point, surely, that Mr Maclean<br/>                 22 might very well want to ask F1.<br/>                 23 MR WOOLFE: Just on that point, I mean, to take an example,<br/>                 24 the bottom of page 42 and if I can take you to a couple<br/>                 25 of inches up, F1:</p> <p style="text-align: center;">Page 33</p>  | <p>1 comments of F1 at the bottom of 43?<br/>                 2 MR WOOLFE: I can take you there if you like. So M2 says:<br/>                 3 it is all about protection, you don't want to see ..."<br/>                 4 and she raises the issue of the Competition Act. Over<br/>                 5 the page on 44, she seems to refer to a market share of<br/>                 6 60 per cent. So, yes, she raises that as a concern with<br/>                 7 her fellow --<br/>                 8 THE CHAIRMAN: I have to say, the way in which that concern<br/>                 9 is expressed could be regarded as disingenuous.<br/>                 10 MR WOOLFE: I think it can only be regarded as disingenuous<br/>                 11 if we knew more about her and we don't and you may say<br/>                 12 that is a problem but I don't think we can --<br/>                 13 THE CHAIRMAN: That is exactly the point we are putting,<br/>                 14 Mr Woolfe.<br/>                 15 MR WOOLFE: But what difference does that little interchange<br/>                 16 actually make to the evidence provided in the rest of<br/>                 17 the transcript?<br/>                 18 THE CHAIRMAN: Let me give you another example then, Mr<br/>                 19 Woolfe, page 13, show of hands which you do rely on.<br/>                 20 And we see the person who asks for the show of hands is<br/>                 21 elliptically described as a new person. Do you see?<br/>                 22 MR WOOLFE: Yes.<br/>                 23 THE CHAIRMAN: The new person asks for a straw poll. No<br/>                 24 idea who it is. Wouldn't you agree with us that who<br/>                 25 that person is might be relevant?</p> <p style="text-align: center;">Page 35</p> |
| <p>1 "You are all dropping PropertyPal. This is great<br/>                 2 news to me, I'll have a field day, I'll have a field<br/>                 3 day."<br/>                 4 So it is fairly clear she wasn't hiding the fact<br/>                 5 that she wouldn't go with OnTheMarket.<br/>                 6 Then you have a discussion, M2, that is not what<br/>                 7 it's about, but ... is that's what it's all about. And<br/>                 8 then over the page, it's not about out doing anybody<br/>                 9 else. It is about keeping the agents in business. That<br/>                 10 is what they want to have control. "And so on.<br/>                 11 You can see the relationship on the face of the<br/>                 12 transcript on what she says and the response. If there<br/>                 13 were any points to be made about the evidential value of<br/>                 14 the response because of what she had previously said the<br/>                 15 moment before Mr Maclean can easily make it at the point<br/>                 16 we rely upon and that goes to the interpretation of the<br/>                 17 evidence, not really as to whether it should be admitted<br/>                 18 per se and also to say, if you look at the other two<br/>                 19 transcripts, F1 doesn't participate in terms of -- the<br/>                 20 discussion is really between other people and it appears<br/>                 21 to have been recorded. There can be no sense in -- for<br/>                 22 instance, in the April transcript where, Miss Kerr says<br/>                 23 quite a lot about instruction and so on, there is no<br/>                 24 sense in which F1 is entering that discussion.<br/>                 25 THE CHAIRMAN: Mr Woolfe, are you going to take us to the</p> <p style="text-align: center;">Page 34</p> | <p>1 MR WOOLFE: It might be, sir, but if you look at page 62,<br/>                 2 this is where we have taken our transcript and the voice<br/>                 3 is M, so it's described as a male voice, so it is not<br/>                 4 F1.<br/>                 5 THE CHAIRMAN: No.<br/>                 6 MR WOOLFE: So we don't know who it is but, in fact, it is<br/>                 7 not Agents' Mutual and I do make that point very fairly.<br/>                 8 It is not Agents' Mutual who say "Please can we have<br/>                 9 a show of hands or a straw poll." So that is clear.<br/>                 10 THE CHAIRMAN: There are two issues, aren't there, about<br/>                 11 detail? There are some details that we know you could<br/>                 12 provide, the identity of F1 and the identity of X.<br/>                 13 MR WOOLFE: We can provide X. I am not sure we can provide<br/>                 14 F1. We don't know.<br/>                 15 THE CHAIRMAN: Okay, maybe I have misunderstood the<br/>                 16 position.<br/>                 17 MR WOOLFE: We told the chairman everything that we know.<br/>                 18 THE CHAIRMAN: If, as the price of getting this material in,<br/>                 19 we said "I am afraid Mr Maclean needs to be at liberty<br/>                 20 to refer to anything, including the identity of X",<br/>                 21 what's your position?<br/>                 22 MR WOOLFE: I would need to take instructions on that.<br/>                 23 Would you like me to do that?<br/>                 24 THE CHAIRMAN: It may be that we'll park it for the moment<br/>                 25 and let you finish your submissions and then you can let</p> <p style="text-align: center;">Page 36</p>            |

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| <p>1 us know. I am anticipating that given the route by way<br/>                 2 of which you received these materials, that there would<br/>                 3 be considerable push back from X, were that to be<br/>                 4 a course, so I will leave that there.<br/>                 5 MR WOOLFE: Yes.<br/>                 6 THE CHAIRMAN: The other thing is what further<br/>                 7 investigations can be done, in order to provide as full<br/>                 8 a picture as possible. For instance, who the M speaker<br/>                 9 was, who F1 is.<br/>                 10 MR WOOLFE: Sir, we would say that the people who are in the<br/>                 11 best position to do that are the other side because they<br/>                 12 have direct access to Miss Kerr, who was at the meetings<br/>                 13 or at two of the meetings, in respect of those two.<br/>                 14 Insofar as we are looking at detailed points of how<br/>                 15 do we interpret particular parts of the transcript, we<br/>                 16 say those are best addressed by letting the evidence in<br/>                 17 and then seeing the argument on the particular parts and<br/>                 18 then points can be made about the weight of it, bearing<br/>                 19 in mind any of these kind of issues, in respect of the<br/>                 20 particular arguments that are being advanced in reliance<br/>                 21 on it.<br/>                 22 THE CHAIRMAN: The problem is though, as I understand it,<br/>                 23 but again, you can correct me if I am wrong, you want to<br/>                 24 put this material to Mr Springett.<br/>                 25 MR WOOLFE: Sir, yes, to a limited extent. If I can explain</p> <p style="text-align: center;">Page 37</p> | <p>1 terms of the probative force of this, I think. So if<br/>                 2 I begin with the February transcript on page 33. You<br/>                 3 can see the nature of the recording is apparent from the<br/>                 4 first few lines. So that gives you some indication of<br/>                 5 what is going on. It is dated February 2016. You can<br/>                 6 corroborate that internally by going to page 35 and<br/>                 7 going to the second hole punch and there is a discussion<br/>                 8 by the M voice which is beside that:<br/>                 9 "So whatever you do...(Reading to the words)... but<br/>                 10 nothing will go live until 1 March. I know that was<br/>                 11 about two weeks ago...(Reading to the words)... live<br/>                 12 date is tomorrow for stuff to go on."<br/>                 13 So we are looking at something which appears to be<br/>                 14 prior to March but it is common ground that OTM was<br/>                 15 launched in Northern Ireland in 2016, 16 March. So<br/>                 16 therefore, this transcript does appear to fit the date<br/>                 17 that has been attributed to it in terms of that<br/>                 18 intrinsic evidence.<br/>                 19 We also say you can see from the transcript<br/>                 20 itself -- this is the meeting in which none of the<br/>                 21 voices appear to be employees of Agents' Mutual, from<br/>                 22 what we can see of it. On the bottom of page 35, it<br/>                 23 does appear that the voice M2 seems to be an agent who<br/>                 24 is acting in some sort of liaison type capacity. He may<br/>                 25 well be self appointed. I am not suggesting otherwise</p> <p style="text-align: center;">Page 39</p> |
| <p>1 the limited extent that consists of.<br/>                 2 THE CHAIRMAN: Let me just make the point which I was going<br/>                 3 to make which is this: Mr Springett is, I anticipate<br/>                 4 from his evidence yesterday, going to say "I wasn't<br/>                 5 there."<br/>                 6 MR WOOLFE: Indeed.<br/>                 7 THE CHAIRMAN: "And I had an understanding of the Northern<br/>                 8 Ireland market but I wasn't involved on a day-to-day<br/>                 9 basis."<br/>                 10 MR WOOLFE: Yes, Mr Springett cannot fairly be asked any<br/>                 11 questions about the accuracy of what is said in these<br/>                 12 transcripts or recordings, as a record of what happened<br/>                 13 at the meeting. He wasn't there. The only thing he can<br/>                 14 be asked about is really the full extent of the calls<br/>                 15 with his use and his understanding and he will either<br/>                 16 know that or he won't. His evidence will be what his<br/>                 17 evidence is. That is true, whether the transcripts are<br/>                 18 reliable or not. He can say: that is just not my<br/>                 19 understanding or: it is my understanding, as the case<br/>                 20 may be. It is not really affected by these questions we<br/>                 21 are debating today. Actually, cross-examination is<br/>                 22 a rather easier case, if Mr Springett knows what he<br/>                 23 knows about these documents and he can say what he<br/>                 24 knows, which is likely to be fairly limited.<br/>                 25 Perhaps if I go through some of the transcript. In</p> <p style="text-align: center;">Page 38</p>                         | <p>1 because what he says is:<br/>                 2 "We had hoped that during this process that you<br/>                 3 could have it on all three but they came back to us and<br/>                 4 said no, you have to go on one."<br/>                 5 So you can see from that phrase that there is some<br/>                 6 concern about what other agents and listing properties<br/>                 7 but they, Agents' Mutual came back to us, so clearly he<br/>                 8 is not from Agents' Mutual himself. So that gives you<br/>                 9 an idea of who M2 is, which is fairly important.<br/>                 10 Then on page 36, internal page 4, you can read down<br/>                 11 from the top of that page, a series of people saying<br/>                 12 which portal they are coming off. I would just note<br/>                 13 that I think Portstewart is a town in Northern Ireland,<br/>                 14 on the coast.<br/>                 15 Then page 43, that's what we have just -- sorry, the<br/>                 16 bottom of page 42, "it is great news to me" and so on.<br/>                 17 And at the bottom of page 43, "You don't want to see<br/>                 18 PropertyPal surviving." We say that does go to the<br/>                 19 agents' understanding of the purpose of the OOP rule and<br/>                 20 the purpose of Agents' Mutual to get rid of a competitor<br/>                 21 in the market. It is not something about launching<br/>                 22 a new project.<br/>                 23 Then the April transcript, if I can take you to<br/>                 24 that. This is the one where the names are attributed.<br/>                 25 I hope I can show you why we don't really think they</p> <p style="text-align: center;">Page 40</p>  |

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| <p>1 matter. Page 52, we have an unattributed voice and we<br/>                 2 want to rely on this passage, saying:<br/>                 3 "As far as the clients are concerned, PropertyPal<br/>                 4 and Property News wasn't broken...(Reading to the<br/>                 5 words)... everything works and for us, we were trying to<br/>                 6 change something here because we were concerned about<br/>                 7 the influences on ... so what we are trying to do is to<br/>                 8 actually change the public perception of PropertyPal and<br/>                 9 Property News ... a bum deal to them as such."<br/>                 10 We say that goes to the point that's being run into<br/>                 11 the interests of estate agents, not in the interest of<br/>                 12 consumers. That is the point which I say can be made<br/>                 13 relying on, I think, a fair inference that M is an<br/>                 14 estate agent in this meeting of Agents' Mutual. It<br/>                 15 doesn't depend on knowing his name. We don't in fact<br/>                 16 know his name and it doesn't matter.<br/>                 17 Page 55, there is an agent speaking again, who is<br/>                 18 identified as M. The very bottom of that long<br/>                 19 paragraph:<br/>                 20 "Seems to stay with the model we have. At the same<br/>                 21 time, I don't see it working unless we do manage to kill<br/>                 22 off one of the other competitors."<br/>                 23 We have already seen the straw poll show of hands.<br/>                 24 That is, of course, after launch, people saying what<br/>                 25 they are doing.</p> <p style="text-align: center;">Page 41</p>    | <p>1 regaining control ...(Reading to the words)... a portal.<br/>                 2 They are not media men. It was about letting us control<br/>                 3 the portal, as in they have a scheme that works for<br/>                 4 them. We are mean people, giving agents back what they<br/>                 5 should have had."<br/>                 6 And we say it is fairly clear from that, the person<br/>                 7 speaking is from Agent's Mutual. She uses we, she is<br/>                 8 from Scotland. Unless the other side can come back to<br/>                 9 us and say "Miss Lorna Kerr never said this", it is<br/>                 10 a fair inference that it was her speaking and saying<br/>                 11 this and it is indicative of how Agents' Mutual is<br/>                 12 representing itself to agents and agents' understanding<br/>                 13 of what they are signing up to.<br/>                 14 I can take you over to the next page, between the<br/>                 15 hole punches, beginning:<br/>                 16 "Probably one of the most concerning things is they<br/>                 17 talk to online estate agents ...(Reading to the<br/>                 18 words)... and additional products. We don't take any<br/>                 19 online ads. We don't take any banners, there is no<br/>                 20 additional products."<br/>                 21 That goes to the point which you've heard us make,<br/>                 22 sir, that there is this perception amongst agents,<br/>                 23 requested by agents, that OnTheMarket doesn't offer<br/>                 24 additional products. So this is a platform on which<br/>                 25 agents, once they are on it, will not compete by buying</p> <p style="text-align: center;">Page 43</p> |
| <p>1 And then finally, if I can turn to the June --<br/>                 2 I should say these are highlights. There are obviously<br/>                 3 much more than we've seen in the excerpts.<br/>                 4 THE CHAIRMAN: You can take it we have read all of this.<br/>                 5 MR WOOLFE: Pages 92 to 93 and the passage there with "LK"<br/>                 6 at the bottom of that page and we say it is fairly clear<br/>                 7 from this, that this is an Agents' Mutual representative<br/>                 8 speaking and somebody who is from Scotland. She says:<br/>                 9 "That is about the same equivalent as to what I have<br/>                 10 in Glasgow ... west coast."<br/>                 11 It starts a bit above that, the discussion of estate<br/>                 12 agents:<br/>                 13 "Over 250 homeworkers ... estate agents, that is<br/>                 14 massive ...(Reading to the words)... So I would say that<br/>                 15 was pretty significant and these are all people that are<br/>                 16 able to operate, flourish and compete in your<br/>                 17 marketplace because the portals allow them to<br/>                 18 ...(Reading to the words)... what they would do is open<br/>                 19 the door to the onlines."<br/>                 20 Then over the page says they wouldn't be able to<br/>                 21 exist, the estate agents without the portals, and<br/>                 22 halfway down that passage:<br/>                 23 "They wouldn't be able to do that if it wasn't for<br/>                 24 the portals allowing them to do it ...(Reading to the<br/>                 25 words)... back Agents' Mutual, it was about agents</p> <p style="text-align: center;">Page 42</p> | <p>1 additional products or going on further portals and so<br/>                 2 on.<br/>                 3 Then further down, at the bottom of that page, about<br/>                 4 seven lines up from the bottom and it is really about<br/>                 5 having one agent's own portal:<br/>                 6 "The goal for these guys is ...(Reading to the<br/>                 7 words)... that a few years down the line ...(Reading to<br/>                 8 the words)... and that is the goal for the market that<br/>                 9 you are all in control and should have ..."<br/>                 10 Then finally, just on page 96, about halfway between<br/>                 11 the top hole punch and the top of the page:<br/>                 12 "So our strategy is absolutely intrinsic to our<br/>                 13 success ...(Reading to the words)... it will also do its<br/>                 14 impact on the success of the other portals. So it is<br/>                 15 going to hit them significantly."<br/>                 16 Then further down that passage, between the two hole<br/>                 17 punches:<br/>                 18 "So you could have half your stock in one and half<br/>                 19 your stock in another. It wouldn't be ...(Reading to<br/>                 20 the words)... one portal quite hard."<br/>                 21 The inference to be drawn from that is that there is<br/>                 22 a strategy of impacting that has been presented to the<br/>                 23 agent: we want to impact one portal quite hard. It is<br/>                 24 subtractive in its nature and not simply about competing<br/>                 25 on the merits.</p> <p style="text-align: center;">Page 44</p>   |

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| <p>1 So those are the kind of points that we would seek<br/>2 to take from these transcripts and the probative force<br/>3 we say they hold and we say that, actually, unless it is<br/>4 not Miss Kerr speaking at all, that holds irrespective<br/>5 of the precise identity of the agents to whom she is<br/>6 speaking and so many of the understandable concerns<br/>7 which are raised do somewhat fall away.</p> <p>8 In terms of late provision, we have given you the<br/>9 detail that we have. We are where we are. It is not<br/>10 our doing. It is not something deliberate that has been<br/>11 contrived. We accept the issue is, can it fairly be<br/>12 accommodated now, and bearing in mind the impact on<br/>13 Agents' Mutual and what Mr Maclean says about that.</p> <p>14 Broadly speaking, we say, sir, that it can fairly be<br/>15 used. First of all, in cross-examination, on any view,<br/>16 Mr Springett can simply say what he knows, whatever his<br/>17 evidence may be about it. And in terms of reliance on<br/>18 it as evidence, there is the sort of two week gap<br/>19 between the provision of this evidence and the closing<br/>20 of this trial. We, of course, make no objection to<br/>21 Agents' Mutual putting evidence of Miss Kerr in response<br/>22 or anything else they may see fit and unless it is<br/>23 suggested that that will in some sense derail the trial,<br/>24 we say the fairest course is to allow the evidence and<br/>25 our submissions to be made on its weight and the</p> <p style="text-align: center;">Page 45</p> | <p>1 I would not be welcoming a submission from your side,<br/>2 unless you want to persuade me otherwise, that<br/>3 Mr Maclean's team should have gone further in response<br/>4 to this material and produced additional evidence<br/>5 themselves. Do you see what I am saying?</p> <p>6 MR WOOLFE: I would not anticipate you having any patience<br/>7 with any unfair points that we make. I don't know<br/>8 Miss Kerr's movements. If she is sat in an office ten<br/>9 miles down the road and could look at this and just<br/>10 doesn't bother, then the point may be a fair one; if she<br/>11 is on the other side of the world, to take another<br/>12 extreme example, clearly that would be an unfair point<br/>13 and clearly, whatever they do, they are restricted in<br/>14 what they can do, given the time --</p> <p>15 THE CHAIRMAN: My point is that I just don't want to go<br/>16 there. In other words, were this material to come in,<br/>17 I would not want to be having in closing, a debate about<br/>18 how Agents' Mutual could, this late in the day, have<br/>19 responded to the points that you are making which you<br/>20 say fairly arise out of the transcript.</p> <p>21 MR WOOLFE: Sir, I think that is entirely fair.</p> <p>22 THE CHAIRMAN: Mr Maclean.</p> <p>23 MR MACLEAN: My learned friend has taken far longer than<br/>24 I anticipated.</p> <p>25 THE CHAIRMAN: He had a lot of interruption.</p> <p style="text-align: center;">Page 47</p> |
| <p>1 inferences that can be drawn from it, in the usual way.</p> <p>2 THE CHAIRMAN: Thank you, Mr Woolfe. Before Mr Maclean<br/>3 rises, just two questions. I think to summarise your<br/>4 submissions in a sentence, what you are saying is let it<br/>5 in and leave the Tribunal to judge its weight, whatever<br/>6 that may be?</p> <p>7 MR WOOLFE: Exactly, sir, and judge the weight of the<br/>8 specific points.</p> <p>9 THE CHAIRMAN: We'll look at it as a whole and we'll judge<br/>10 the weight, including, I want to be clear, about the<br/>11 concerns that we have raised regarding process and gaps.<br/>12 That, obviously, is a hugely relevant factor in weight<br/>13 but that is your position.</p> <p>14 MR WOOLFE: That is my position, sir.</p> <p>15 THE CHAIRMAN: You have mentioned on four or five occasions<br/>16 now, that Agents' Mutual could speak with Lorna Kerr.<br/>17 Now, I think I should make clear what, at least, my<br/>18 initial view on that is, which is that were the evidence<br/>19 to go in and were Mr Maclean's team to seek to adduce<br/>20 such evidence, as you very fairly indicated, that<br/>21 evidence probably ought to go in. But the converse<br/>22 situation would be that this material goes in, the<br/>23 transcripts, we place what weight there is on there and<br/>24 Mr Maclean does nothing because it is too late in the<br/>25 day to track down Miss Kerr, for whatever there may be.</p> <p style="text-align: center;">Page 46</p>  | <p>1 MR MACLEAN: I was just conscious that before I finish, the<br/>2 shorthand writers will probably want a break. Would it<br/>3 be convenient to do that now rather than to interrupt my<br/>4 submission? That is any question.</p> <p>5 THE CHAIRMAN: Yes, I think it would because it would enable<br/>6 Mr Woolfe to seek instructions on the point of the<br/>7 position of Mr X, were we to say that the price of<br/>8 admission is the release of that further information.</p> <p>9 MR WOOLFE: Sir, our submission may be we would have to go<br/>10 and check with Mr X, which we can't do in the next short<br/>11 period of time.</p> <p>12 THE CHAIRMAN: I see. Take instructions in any event. If<br/>13 the answer is you don't know, then that is the answer.</p> <p>14 MR FREEMAN: Mr X may be in an office just ten miles away.</p> <p>15 MR WOOLFE: He may be or in Northern Ireland.</p> <p>16 THE CHAIRMAN: Thank you. Mr Woolfe. We'll rise for five<br/>17 minutes.</p> <p>18 (10.30 am)</p> <p>19 (A short break)</p> <p>20 (10.35 am)</p> <p>21 MR WOOLFE: Sir, just to respond to you on the question of<br/>22 whether or not we can reveal X's identity. We don't<br/>23 know F1. As matters stands, X is not willing to agree<br/>24 to the disclosure of his name and so if the Tribunal<br/>25 were minded to make a conditional order of it, it can</p> <p style="text-align: center;">Page 48</p>  |

1 only go in if his name is revealed, then it won't be  
 2 going in.  
 3 THE CHAIRMAN: That is very helpful, Mr Woolfe, thank you  
 4 very much. Mr Maclean.  
 5 MR MACLEAN: Can I start by taking Mr Bronfentrinker's  
 6 witness statements, please, and could I invite you to  
 7 have that open and then have alongside it, the Quinn  
 8 Emanuel letter of this morning. The first point I want  
 9 to make is that Mr Bronfentrinker's witness statement  
 10 was served, as I think I remarked in the course of  
 11 Tuesday, in the course of the court day on Tuesday.  
 12 I think it was actually served at 2.38 pm on Tuesday  
 13 afternoon on Eversheds.  
 14 Mr Notley had started giving his evidence, as you  
 15 will see from Tuesday's transcript, at about ten or  
 16 quarter past 12 on Tuesday afternoon and he gave  
 17 evidence, as you will recall, from then, over the short  
 18 adjournment and for much but not all, if I remember  
 19 correctly, of Tuesday afternoon.  
 20 Mr Bronfentrinker's witness statement, I think  
 21 I said I had seen it very briefly, raised -- I said the  
 22 following morning -- raised more questions than it  
 23 answered and when one looked at paragraph 6 of his  
 24 witness statement, it was clear to any intelligent  
 25 reader that this was a statement that had been very

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1 carefully put together.  
 2 I think I remarked at the time, on Wednesday  
 3 morning, at the expression in paragraph 6 in the fourth  
 4 line of "I came to learn of", and I definitely remember  
 5 referring to the point at paragraph 7 about "who  
 6 I understood", in the second paragraph.  
 7 Mr Bronfentrinker's witness statement does not  
 8 reveal the full picture, as we now know from the Quinn  
 9 Emanuel letter. What he says in his witness statement  
 10 at paragraph 2 is that:  
 11 "Further to Quinn Emanuel's letter to Eversheds on  
 12 5 January which enclosed by way of disclosure and  
 13 inspection, three audio files and the convenience  
 14 transcription."  
 15 In paragraph 3, he says, chanting the usual mantra:  
 16 "Save for the contrary as stated, the facts and  
 17 matters set out in this witness statement are within my  
 18 knowledge and are true. To the extent that they are not  
 19 within my knowledge, I state the source of my knowledge  
 20 and confirm it is true to best of my information and  
 21 belief."  
 22 And in paragraph 6 he says:  
 23 "The recordings were received from X [and he gives  
 24 his role], who had obtained them on [and then we see the  
 25 words in yellow] own initiative, prior to any contact

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1 from Quinn Emanuel. The existence of an audio recording  
 2 of a meeting in Northern Ireland involving ...(Reading  
 3 to the words)... was something I came to learn of,  
 4 following investigations."  
 5 And at paragraph 8, this witness statement is  
 6 crafted in such a way as to start this part of the  
 7 chronology at 26 January:  
 8 "An associate of Quinn Emanuel, working with me on  
 9 this matter, first contacted X, who I understood may  
 10 have had a recording of a meeting in Northern Ireland  
 11 involving agents and Agents' Mutual."  
 12 What is conspicuous by its absence from this witness  
 13 statement is any reference to Mr Notley's involvement  
 14 and any reference to the fact that we now discover this  
 15 morning, in paragraph 5 of Quinn Emanuel's letter, that  
 16 Mr Bronfentrinker had had a conversation with Mr Notley  
 17 at some point "in the first half of December 2006, see  
 18 paragraph 5."  
 19 It is impossible to resist the conclusion that this  
 20 witness statement was carefully crafted in such a way as  
 21 not to reveal the involvement in these events of  
 22 Mr Notley, who was in the witness box at the time and,  
 23 of course, had I known then and had the chance to  
 24 assimilate it and digest it, had I known then, the  
 25 material which Quinn Emanuel chose to share with us in

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1 this morning's letter, as opposed to Mr Bronfentrinker's  
 2 witness statement, I would of course, have at least  
 3 considered whether these were matters I wanted to  
 4 explore with Mr Notley.  
 5 Mr Bronfentrinker's witness statement, as I say, it  
 6 is very carefully crafted. One can think of a number of  
 7 epithets to describe the witness statement on the one  
 8 hand and the letter on the other, but I venture to  
 9 suggest that the late Lord Bingham would describe this  
 10 as a rather surprising statement to have produced, given  
 11 the fuller picture which we now understand, set out in  
 12 the Quinn Emanuel letter. Because it is clear from  
 13 paragraph 5 of the Quinn Emanuel letter that  
 14 Mr Bronfentrinker and Mr Notley had a conversation in  
 15 the first half of December and Mr Bronfentrinker then  
 16 explains in paragraph 5 that what appears to be  
 17 a conscious decision was taken, not to explore this  
 18 particular avenue. If I may say so, he was entirely  
 19 right to do so. And the first thoughts would have been  
 20 where matters ought to have rested.  
 21 It was decided at that stage, not to divert  
 22 resources in pursuit of a rumoured recording which may  
 23 or may not have existed with unknown content.  
 24 What happened then was, we have paragraph 6 of the  
 25 Quinn Emanuel letter which is, if I may respectfully say

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| <p>1 so, a thoroughly objectionable paragraph to put in<br/>                 2 a witness statement, seeking to give evidence of matters<br/>                 3 that they are not able then, to give evidence about.<br/>                 4 Passing over that, in paragraph 7, we are then told.<br/>                 5 "As part of those ongoing efforts to obtain direct<br/>                 6 evidence from agents an associate working on this matter<br/>                 7 had discussions with Tollers."<br/>                 8 There is then reference to a conversation which took<br/>                 9 place on 23 January and then further down that paragraph<br/>                 10 we are told, having received confirmation for the first<br/>                 11 time that audio recordings did in fact exist of meetings<br/>                 12 in Northern Ireland, on 23 January the associate<br/>                 13 contacted Mr Notley.<br/>                 14 Again, none of that is referred to in<br/>                 15 Mr Bronfentrinker's witness statement which as I say,<br/>                 16 starts the clock in paragraph 7, at 26 January and can<br/>                 17 at least be read as being the first real involvement<br/>                 18 that Quinn Emanuel had. But we know that that's not the<br/>                 19 case from the Quinn Emanuel letter this morning.<br/>                 20 So the first point is that the way in which the<br/>                 21 matter has been presented, is that leaves very much to<br/>                 22 be desired. But then coming to what we actually have<br/>                 23 and what are the legal principles and what do we<br/>                 24 actually have here, Mr Bronfentrinker's witness<br/>                 25 statement is couched in terms of disclosure and</p> <p style="text-align: center;">Page 53</p> | <p>1 do contain information that is relevant to the issues in<br/>                 2 dispute."<br/>                 3 Now, as I pointed out yesterday, that is not<br/>                 4 actually a test for disclosure but, nonetheless, they<br/>                 5 were disclosed and inspection was given of them.<br/>                 6 So those are documents.<br/>                 7 (Transcript Redacted)<br/>                 8 MR WOOLFE: Sir, can that please be removed from the<br/>                 9 transcript.<br/>                 10 THE CHAIRMAN: I think that needs to be. These things do<br/>                 11 happen.<br/>                 12 MR MACLEAN: At page 32 is the document with the bullet<br/>                 13 points and the fifth bullet point. Will the Tribunal<br/>                 14 just read that one to itself, beginning "What", and the<br/>                 15 last one beginning "Feature", is clearly a document<br/>                 16 which was properly disclosed, whatever view one might<br/>                 17 have taken of the disclosure or otherwise of the rest of<br/>                 18 the transcript.<br/>                 19 So the audio files and convenience transcript are<br/>                 20 documents which may or may not be disclosed. What then<br/>                 21 happens is other documents have been created with the<br/>                 22 help, it seems, of external transcribers from Northern<br/>                 23 Ireland and as Mr Bronfentrinker explains, with the<br/>                 24 input of his own team. See paragraph 15:<br/>                 25 "My team was able to fill in certain gaps because of</p> <p style="text-align: center;">Page 55</p>  |
| <p>1 inspection. The Quinn Emanuel letter of 1.51 this<br/>                 2 morning, not the one I have just been dealing with, but<br/>                 3 the shorter one, sent to the registrar of this tribunal,<br/>                 4 says:<br/>                 5 "Further to the hearing ...(Reading to the words)...<br/>                 6 to admit into evidence, the audio recordings and<br/>                 7 transcripts."<br/>                 8 Now, what we have here, first of all, Quinn Emanuel<br/>                 9 got three audio files and the convenience transcription.<br/>                 10 Now those clearly are documents. They are documents<br/>                 11 within the rules and if those documents were within<br/>                 12 standard disclosure and they come into the lap of<br/>                 13 solicitors, then of course, the solicitors are under an<br/>                 14 obligation of continuing disclosure. So if they fell<br/>                 15 within CPR 31.6 which is the disclosure rubric applied<br/>                 16 to these proceedings, then they have to be disclosed and<br/>                 17 provided for inspection and that's what<br/>                 18 Mr Bronfentrinker's witness statement is directed<br/>                 19 towards. And I made the remark yesterday, I think it<br/>                 20 was, when one looks at paragraph 13 of<br/>                 21 Mr Bronfentrinker's statement, what he is saying is<br/>                 22 that:<br/>                 23 "Following the review of the content of the audio<br/>                 24 files and following privileged communications between<br/>                 25 the legal advisers, it was concluded that the recordings</p> <p style="text-align: center;">Page 54</p>   | <p>1 our familiarity with the issues being discussed."<br/>                 2 One question which arises then, are those newly<br/>                 3 created documents, those transcripts, are they within<br/>                 4 standard disclosure? Are they documents which give rise<br/>                 5 to inspection?<br/>                 6 But what Mr Woolfe wants to do is something quite<br/>                 7 different. He wants to rely, as I understand it, on<br/>                 8 these transcripts as evidence; as evidence presumably,<br/>                 9 of the truth of the contents of the information set out<br/>                 10 in the transcripts.<br/>                 11 I haven't listened to the audio recordings but I am<br/>                 12 told that at least two of the three audio recordings<br/>                 13 jump around, move around and it is very hard to<br/>                 14 understand what's going on. But if those are documents<br/>                 15 which have been disclosed and inspected and somebody<br/>                 16 wants to make some point on them, well, they are like<br/>                 17 all the other documents, they are in this bundle.<br/>                 18 But when it comes to the evidence, that is quite<br/>                 19 a different matter. So you will know under the Civil<br/>                 20 Evidence Act that the evidence, hearsay evidence is<br/>                 21 a statement made otherwise by a person giving oral<br/>                 22 evidence in proceedings which is tendered as evidence of<br/>                 23 the matters stated.<br/>                 24 So what the other side are trying to do is to rely<br/>                 25 on evidence -- what they call relying on the contents of</p> <p style="text-align: center;">Page 56</p> |

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| <p>1 these transcripts as evidence of the truth of their<br/>2 contents.<br/>3 But the Tribunal can have no confidence about the<br/>4 provenance and safe keeping of the original material<br/>5 which are the audio tapes. We don't know, for example,<br/>6 to pick up one of the points from the Tribunal, we don't<br/>7 know and they don't know, whether the whole meetings<br/>8 were taped. They don't know whether this is only the<br/>9 middle of it or the end of it or the beginning of it and<br/>10 the Tribunal can have no assurance about the safe<br/>11 custody or the handling of the tapes, either at the time<br/>12 the recordings were made or since the recordings were<br/>13 made.<br/>14 My learned friend doesn't know the identity of very<br/>15 many of the speakers at the meeting or meetings. What<br/>16 we do know is this is an attempt, it would appear, at<br/>17 entrapment. There is a surreptitious recording going<br/>18 on, my learned friend accepts that. Who else at the<br/>19 meetings is in cahoots with F1? We don't know. If we<br/>20 look at page 44 of the transcript, we can see that F1<br/>21 says, just after Mr Freeman, I think, took Mr Woolfe to<br/>22 the bottom of the previous page and he just about<br/>23 read --<br/>24 MR FREEMAN: I tend to wake up whenever there is a mention<br/>25 of the Competition Act.</p> <p style="text-align: center;">Page 57</p> | <p>1<br/>2<br/>3<br/>4<br/>5<br/>6 (Transcript Redacted)<br/>7 MR MACLEAN: Yes. That's what I went to. That's right. If<br/>8 I have done something I shouldn't have done ...<br/>9 THE CHAIRMAN: Mr Maclean, we might as well nail this now.<br/>10 It is page 51 of the transcript, that is the matter that<br/>11 I am concerned about and I am making a direction that<br/>12 that reference be removed from the public version of the<br/>13 transcript. We can, I don't think it is necessary,<br/>14 always have an in camera version of the transcript which<br/>15 details that but I think the better course is simply to<br/>16 excise that reference.<br/>17 MR MACLEAN: I am sorry, if I have caused a problem, I am<br/>18 very sorry.<br/>19 THE CHAIRMAN: As I say, Mr Maclean, these things do happen<br/>20 and it is just a question of dealing with it.<br/>21 MR WOOLFE: Sir --<br/>22 THE CHAIRMAN: And you wanted a further direction.<br/>23 MR WOOLFE: A further direction in respect of<br/>24 a particular -- everybody in the room but Agents' Mutual<br/>25 in particular, that having heard it, they should not</p> <p style="text-align: center;">Page 59</p>   |
| <p>1 MR MACLEAN: I see entirely why you pay attention to the<br/>2 last line of 43. Mr Woolfe went to the top of 44, but<br/>3 just a little bit further down from where he stopped, if<br/>4 you look at F1 "Well, I decided: "<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14 (Transcript Redacted)<br/>15 MR WOOLFE: Sir, can I -- Mr Maclean has mentioned the name<br/>16 twice now.<br/>17 THE CHAIRMAN: We do need to be careful.<br/>18 MR WOOLFE: I think I am going to have to ask the Tribunal<br/>19 because he directly read the name from the document<br/>20 before. I may have to ask for an order that nobody<br/>21 disclose that name.<br/>22 THE CHAIRMAN: I have that in mind.<br/>23 MR MACLEAN: I am sorry, I don't have -- I have been reading<br/>24 from the transcript.<br/>25</p> <p style="text-align: center;">Page 58</p>   | <p>1 disclose it.<br/>2 THE CHAIRMAN: To any third party.<br/>3 MR WOOLFE: To any third party.<br/>4 THE CHAIRMAN: Including a third party within Agents'<br/>5 Mutual.<br/>6 MR WOOLFE: Any other person who's not in --<br/>7 THE CHAIRMAN: Mr Maclean, that seem to me to be fair<br/>8 enough.<br/>9 MR MACLEAN: That does sound fair enough to me.<br/>10 THE CHAIRMAN: Then I will make an order in those terms and<br/>11 we'll get it drawn up.<br/>12 MR MACLEAN: I am very grateful.<br/>13 MR WOOLFE: Thank you, sir.<br/>14 MR MACLEAN: So the transcripts are of tenuous relevance, at<br/>15 best, to the issues before the Tribunal, for a number of<br/>16 reasons and Mr Springett touched on this yesterday. The<br/>17 first reason is that we have different portals operating<br/>18 in Northern Ireland. Neither Rightmove or Zoopla are<br/>19 there. We have a different pricing structure in<br/>20 Northern Ireland, so the OOP rule is different in<br/>21 Northern Ireland, as Mr Springett explained yesterday.<br/>22 Not only are the portals different but the agents<br/>23 are different. Gascoigne Halman isn't there, doesn't<br/>24 have any business in Northern Ireland. I don't<br/>25 understand but I'll be corrected if I am wrong, that</p> <p style="text-align: center;">Page 60</p> |

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| <p>1 Connells has any business, but Connells isn't the<br/>2 defendant.<br/>3 Moreover, the meetings, the transcripts of which are<br/>4 now in the bundles, are meetings which all took place<br/>5 after, months after, a year after and more, the launch<br/>6 of Agents' Mutual in Great Britain and two of them took<br/>7 place after the launch of Agents' Mutual in OnTheMarket<br/>8 in Northern Ireland.<br/>9 Now, what we say in effect, can I just show you very<br/>10 quickly, a little bit of law from Phipsons. It is<br/>11 chapter 39. The first bit of this deals with improperly<br/>12 obtained evidence and unlawfully obtained evidence. Can<br/>13 I say just something about that. We don't know, we<br/>14 can't tell, whether this evidence was unlawfully<br/>15 obtained. We don't have enough information to be able<br/>16 to come to a conclusion. It might have been and it<br/>17 might not have been but the Tribunal isn't able to form<br/>18 any view about whether there was some breach of<br/>19 somebody's prevention rights or some other tort. We<br/>20 just don't know.<br/>21 I accept that as a matter of the jurisdiction of the<br/>22 court or the Tribunal, that even if the evidence was<br/>23 unlawfully obtained, that doesn't mean that the court or<br/>24 the Tribunal automatically will shut it out. I accept<br/>25 that of course.</p> <p style="text-align: center;">Page 61</p>   | <p>1 of page 32, did actually fall within standard disclosure<br/>2 and were properly disclosable, but they have been<br/>3 disclosed and inspected. So on my submission they are<br/>4 essentially, at best, background documents of minimal<br/>5 relevance to the case.<br/>6 Now, those documents are there and I suppose if<br/>7 Mr Harris wants to put those documents of minimal<br/>8 background relevance to Mr Springett, it won't be the<br/>9 first or possibly the last irrelevant documents he would<br/>10 be putting to Mr Springett. I accept that and the<br/>11 evidence will then be Mr Springett's evidence in answer<br/>12 to whatever questions Mr Harris chooses to put on the<br/>13 basis of those documents.<br/>14 As it were, so far, so unobjectionable.<br/>15 But when it comes to putting in as evidence, relying<br/>16 on the truth of the contents of the material in the<br/>17 transcripts, that in our submission, the Tribunal should<br/>18 and must disallow because of all the problems that these<br/>19 documents face. The fact that they start life as<br/>20 transcriptions, poor transcriptions of meetings, where<br/>21 we don't know who's speaking, we don't know all the<br/>22 people there, we can't be sure if they are agents, we<br/>23 don't know whether we have the whole meeting, we don't<br/>24 know how the tape was produced, we don't know where it's<br/>25 been, we don't know who has been looking after it, what</p> <p style="text-align: center;">Page 63</p> |
| <p>1 Mr Woolfe is, if I may say so, correct to say that<br/>2 the appropriate rules are in the CPR 32.1 and we have<br/>3 set that out in this extract from Phipsons at 39-35:<br/>4 "The court may control the evidence by giving<br/>5 directions as to the issues in which it requires<br/>6 evidence, being the nature of the evidence which it<br/>7 requires to decide those issues and (c) the way in which<br/>8 the evidence is to be placed before the court."<br/>9 As Mr Woolfe says, that finds its echo in the rules<br/>10 of this tribunal in rule 55 and, sir, you will recall<br/>11 that how we get into the Tribunal's rules in this case,<br/>12 because this part of the case was trying to open in the<br/>13 Chancery Division, it is a bit of a spaghetti junction<br/>14 through the rules, but we start at rule 72, when we come<br/>15 from the Chancery Division. That then tells us that the<br/>16 competition bit of the case will then be the subject of<br/>17 a case management conference under, I think, rule 54.<br/>18 So 72 drives one, I think from memory, to rule 54 and<br/>19 then we end up at rule 55, dealing with evidence.<br/>20 The governing principles, as Mr Woolfe said, are<br/>21 rule 4 which echoes, obviously, the overriding<br/>22 objective.<br/>23 Now, if I put my cards on the table, we are not<br/>24 remotely persuaded that the transcripts, any of them,<br/>25 including the convenience transcript, with the exception</p> <p style="text-align: center;">Page 62</p> | <p>1 the custody or control of it. It is not like<br/>2 a Smith Bernal transcript, where we know it starts at<br/>3 10.30 in the morning and finishes at 4.30 in the<br/>4 afternoon because that is all set out. It just doesn't<br/>5 provide any sort of basis for the Tribunal to be<br/>6 satisfied that the material can be properly adduced as<br/>7 evidence of the truth of its contents.<br/>8 What one does normally is to serve a witness<br/>9 statement from the person who one is wanting to call<br/>10 evidence from, whether it is F1 or male 1 or male 2 or<br/>11 any of these other people, but they haven't done that.<br/>12 And they haven't done that and what they should do is<br/>13 they should be serving witness statements from the<br/>14 people they want to call evidence from and I can then<br/>15 cross-examine. But F1 is not coming. They don't know<br/>16 who F1 is. It is completely unsatisfactory.<br/>17 THE CHAIRMAN: Help me on this, Mr Maclean: you mentioned<br/>18 earlier the Civil Evidence Act and the safeguards that<br/>19 exist in terms of identifying the precise statement that<br/>20 is being relied on. You have to specify all sorts of<br/>21 things like the person who is speaking, the person to<br/>22 whom the statement is made, the gist of the statement<br/>23 and various other details.<br/>24 MR MACLEAN: Yes.<br/>25 THE CHAIRMAN: And, of course, one has to do that on good</p> <p style="text-align: center;">Page 64</p>                              |



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| <p>1 notice and, naturally, those times can be abridged but<br/>                 2 there is a formal process for the production of that<br/>                 3 sort of evidence.<br/>                 4 MR MACLEAN: Yes.<br/>                 5 THE CHAIRMAN: The Tribunal, unless you want to correct me,<br/>                 6 doesn't operate on strict rules of evidence.<br/>                 7 MR MACLEAN: No, that's true.<br/>                 8 THE CHAIRMAN: So my question to you is this: accepting, as<br/>                 9 I entirely do, that the requirements of the Civil<br/>                 10 Evidence Act are extremely sensible requirements in<br/>                 11 order to assess the probative value of material don't<br/>                 12 all the points you are making to me and, indeed, I made<br/>                 13 to Mr Woolfe, simply go to the question of weight? We<br/>                 14 look at this document for what it is worth. We hear for<br/>                 15 what it is worth questions that are put to Mr Springett<br/>                 16 if questions are put and we take a view but we obviously<br/>                 17 have to include in that view all of the points regarding<br/>                 18 origin and reliability and information that could but<br/>                 19 has not been provided regarding these transcripts and we<br/>                 20 reach a view as to what it is worth.<br/>                 21 MR MACLEAN: In essence I see the force of that because<br/>                 22 what, sir, you are saying in effect is that in the<br/>                 23 absence of the strict rules of evidence that would apply<br/>                 24 in the commercial courts in the Chancery Division then<br/>                 25 the distinction between a document which has been</p> <p style="text-align: center;">Page 65</p> | <p>1 submission is that this Tribunal should in its<br/>                 2 discretion refuse to admit the transcripts as evidence<br/>                 3 on the basis that a conscious decision, it would seem,<br/>                 4 was taken in December not to pursue this line, nothing<br/>                 5 to suggest that if Mr Bronfentrinker had taken<br/>                 6 a different view from the view he expresses in the<br/>                 7 middle of paragraph 5 that we would be in the position<br/>                 8 that we find ourselves in of this evidence being, if<br/>                 9 that what it is, being dropped on us at the time that it<br/>                 10 was. That clearly goes to the discretion of the<br/>                 11 Tribunal to admit these documents as evidence.<br/>                 12 My primary submission is that the Tribunal should<br/>                 13 make it clear and make it clear that it is not and<br/>                 14 should decline in the exercise of its rule 55.1(b)<br/>                 15 power, to decline to admit these transcripts as<br/>                 16 evidence.<br/>                 17 I accept however, that that doesn't mean that the<br/>                 18 documents somehow disappear in a puff of smoke. They<br/>                 19 have been disclosed. They have been given to us. I am<br/>                 20 not sure why they have been disclose. They have been<br/>                 21 given to us. We have got them and you have got them and<br/>                 22 Mr Harris has got them and he can ask Mr Springett<br/>                 23 questions but the evidence will be Mr Springett's<br/>                 24 evidence and not the material in the transcript. That is<br/>                 25 my primary submission as to what the correct conclusion</p> <p style="text-align: center;">Page 67</p> |
| <p>1 disclosed for an inspection and relying on the truth of<br/>                 2 its contents in this rather formal and important process<br/>                 3 is somewhat eroded in this Tribunal. I see the force of<br/>                 4 that.<br/>                 5 THE CHAIRMAN: Exactly. Normally that's something which<br/>                 6 both counsel and the Tribunal welcome with open arms,<br/>                 7 the ability to simply look at documents and treat them<br/>                 8 as evidence and let everything go to weight.<br/>                 9 MR MACLEAN: Yes.<br/>                 10 THE CHAIRMAN: Here it may be we are in a situation where it<br/>                 11 would perhaps be better that the strict rules of<br/>                 12 evidence apply because then Mr Woolfe would make an<br/>                 13 application which would have to be firmly targeted to<br/>                 14 certain requirements and those requirements simply don't<br/>                 15 exist here.<br/>                 16 MR MACLEAN: I see the force of the point but what I do<br/>                 17 submit is that the observations that I have been making<br/>                 18 on the basis of the distinction between a document<br/>                 19 as stuff, background stuff that Mr Harris can put along<br/>                 20 with other ten thousands of pages of background stuff to<br/>                 21 Mr Springett on the one hand and relying on something as<br/>                 22 evidence on the other hand is clearly something that the<br/>                 23 Tribunal has a discretion to deal with under rule 55.<br/>                 24 Now, in circumstances where, I come back to the<br/>                 25 Quinn Emanuel letter at paragraph 5 my primary</p> <p style="text-align: center;">Page 66</p>                     | <p>1 of this is.<br/>                 2 That's really the long and short of it. This is<br/>                 3 a very curious application and the way in which it has<br/>                 4 been deployed taking it at face value as I do obviously<br/>                 5 the Quinn Emanuel letter of this morning, the<br/>                 6 circumstances in which that information was not provided<br/>                 7 in the witness statement on Tuesday is most unfortunate<br/>                 8 because Mr Notley is clearly involved in this and he was<br/>                 9 in the witness box at the time and that can't have<br/>                 10 escaped the attention of those who were preparing this<br/>                 11 material and that is, as I say, the late Lord Bingham I<br/>                 12 think would describe as rather surprising. For our part<br/>                 13 consider it to be rather unfortunate.<br/>                 14 But as Mr Woolfe would say, we are where we are and<br/>                 15 in my submission, the Tribunal ought to exercise its<br/>                 16 powers in the way I have indicated. Unless I can help<br/>                 17 you any further, those are my submissions.<br/>                 18 THE CHAIRMAN: Yes, so it is really a choice, looking at our<br/>                 19 powers on rule 55 of either positively excluding the<br/>                 20 evidence, subject of course, to what you call the<br/>                 21 document being put to Mr Springett, if Mr Harris chooses<br/>                 22 to do so --<br/>                 23 MR MACLEAN: Yes.<br/>                 24 THE CHAIRMAN: -- against allowing that in any event and not<br/>                 25 excluding the material.</p> <p style="text-align: center;">Page 68</p>   |

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| <p>1 MR MACLEAN: And then --</p> <p>2 THE CHAIRMAN: And letting it all go to weight.</p> <p>3 MR MACLEAN: Yes, that's right. The pick up on the</p> <p>4 discussion you had with Mr Woolfe, of course if it be</p> <p>5 the case that X is not content for his identity to be</p> <p>6 revealed, then that obviously, in my submission, weighs</p> <p>7 heavily in the scales in favour of my submission, which</p> <p>8 is that the Tribunal should draw a distinction between</p> <p>9 these materials as evidence and say: it is not evidence,</p> <p>10 we are not allowing it to be treated as evidence. It is</p> <p>11 merely stuff and it is like all the other stuff. And</p> <p>12 Mr Harris can ask Mr Springett questions and then we can</p> <p>13 make submissions in closing on the basis of</p> <p>14 Mr Springett's evidence because it would be his evidence</p> <p>15 and not the transcript itself.</p> <p>16 THE CHAIRMAN: Mr Springett, I don't want to anticipate but</p> <p>17 Mr Springett is likely to say something like "I see the</p> <p>18 words on the page but I can't say anything more."</p> <p>19 MR HARRIS: I am a little unhappy about -- Mr Springett is</p> <p>20 in the room.</p> <p>21 THE CHAIRMAN: He is, yes.</p> <p>22 MR HARRIS: He can give his evidence without there being any</p> <p>23 suggestion as to what that evidence may be.</p> <p>24 THE CHAIRMAN: Mr Harris, it seems to me to be a material</p> <p>25 factor for our consideration. If you want me to reach</p> <p style="text-align: center;">Page 69</p> | <p>1 the kind of points which you came back with yesterday</p> <p>2 afternoon. Who was it made by, how did it come into our</p> <p>3 possession? And that's what it did.</p> <p>4 We didn't understand, nor do we normally set out an</p> <p>5 exhaustive blow by blow account of the investigations</p> <p>6 which you undertook, in order to track everybody down</p> <p>7 that might have introduced some piece of evidence.</p> <p>8 There has been a lot of work going on for many months,</p> <p>9 seeking to obtain various pieces of evidence and my</p> <p>10 solicitors have spoken to a lot of people and we haven't</p> <p>11 given the other side a full account of every single</p> <p>12 thing we've tried to do, nor do we propose to do so</p> <p>13 because it is privileged. Mr Bronfentrinker did</p> <p>14 something entirely proper which explains to the Tribunal</p> <p>15 where the provenance or what the provenance of these</p> <p>16 documents was. When some further queries were raised</p> <p>17 yesterday afternoon, the best way of responding, just to</p> <p>18 make clear he says: what he didn't know was to give</p> <p>19 a full account of that investigation that was undertaken</p> <p>20 and we thought it only fair to mention the fact that we</p> <p>21 did hear of it by way of a rumour some months ago.</p> <p>22 THE CHAIRMAN: Just bear with me one moment. (Pause).</p> <p>23 Mr Woolfe, it may be we can cut this a little</p> <p>24 shorter. You are telling me that the timing and content</p> <p>25 and production of both the letter and the statement is</p> <p style="text-align: center;">Page 71</p> |
| <p>1 a decision without airing a point that I think is</p> <p>2 important, then I'll do that of course.</p> <p>3 MR HARRIS: Sir, I simply put the marker down.</p> <p>4 THE CHAIRMAN: I am quite sure that Mr Springett knows his</p> <p>5 obligations to tell the truth, the whole truth and</p> <p>6 nothing but the truth and anything that I might say by</p> <p>7 way of speculation will have absolutely no bearing on</p> <p>8 what he says.</p> <p>9 MR HARRIS: I accept that.</p> <p>10 MR MACLEAN: Unless I can assist any further, those are my</p> <p>11 submissions.</p> <p>12 THE CHAIRMAN: Thank you, Mr Maclean. Mr Woolfe?</p> <p>13 MR WOOLFE: I will try to be fairly brief. The first thing</p> <p>14 I should respond to is the criticism of</p> <p>15 Mr Bronfentrinker and, in particular, of his sixth</p> <p>16 witness statement and I am going to respond to this</p> <p>17 fairly forcefully. We do think Mr Maclean's description</p> <p>18 of that evidence is extremely unfair. What he said is</p> <p>19 "it's impossible to resist the conclusion that</p> <p>20 paragraphs 5 and 6 were carefully crafted so as not to</p> <p>21 reveal the involvement of Mr Notley."</p> <p>22 The purpose of this Bronfentrinker witness statement</p> <p>23 was to explain the provenance of the recordings that we</p> <p>24 had actually obtained, where they actually came from, so</p> <p>25 far as we knew it, so that the Tribunal could entertain</p> <p style="text-align: center;">Page 70</p>   | <p>1 entirely a matter of administrative work as to when it</p> <p>2 was done?</p> <p>3 MR WOOLFE: Indeed, sir.</p> <p>4 THE CHAIRMAN: That there was no thinking beyond that?</p> <p>5 MR WOOLFE: Absolutely.</p> <p>6 THE CHAIRMAN: But that the effect, I put that entirely</p> <p>7 neutrally, was that the material in terms of the</p> <p>8 involvement of Mr Notley, as set out in the letter of</p> <p>9 1.52 this morning, whenever it was --</p> <p>10 MR WOOLFE: 8.34, I think.</p> <p>11 THE CHAIRMAN: Quite right, I am getting the wrong letter.</p> <p>12 MR WOOLFE: We are open all hours, sir.</p> <p>13 THE CHAIRMAN: The information that we now have does mean</p> <p>14 that had it been disclosed earlier, to which I am making</p> <p>15 no criticism, Mr Maclean might have had the opportunity</p> <p>16 to think of whether he had questions of Mr Notley but</p> <p>17 that is simply the way statements fell.</p> <p>18 MR WOOLFE: That is simply the way the statements fell.</p> <p>19 THE CHAIRMAN: In that case, I don't think you need address</p> <p>20 us any further on that point.</p> <p>21 MR WOOLFE: Thank you, sir.</p> <p>22 Now I turn to the mention of whether or not these</p> <p>23 are evidence and whether they are hearsay evidence and</p> <p>24 so on. The transcripts have been exhibited to a witness</p> <p>25 statement and we are asking for them to be admitted into</p> <p style="text-align: center;">Page 72</p>  |

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| <p>1 evidence. They are documents and they are -- if I can<br/>                 2 just really go back to basics. They are indisputable<br/>                 3 evidence as to their contents, not as to the truth of<br/>                 4 their contents but as to their contents. They are these<br/>                 5 documents and they are evidence further, of what is in<br/>                 6 the recordings. We would also say they are evidence of<br/>                 7 what was being said in these meetings. You see there<br/>                 8 was a chain of inferences about the accuracy of the<br/>                 9 transcript and the recordings and so on but they are<br/>                 10 evidence of what was said in those meetings. We rely on<br/>                 11 them for that purpose.</p> <p>12 It is then a step further, whether we rely upon what<br/>                 13 was said in the meeting, for the truth of what was said<br/>                 14 in the meeting. And that is when hearsay becomes<br/>                 15 relevant. If the people in that room are saying things<br/>                 16 about what they have done, a statement of fact, as it<br/>                 17 were, if we were to rely upon that, that would then be<br/>                 18 hearsay. However, to take the example of somebody<br/>                 19 saying: can we take a straw poll? Who's going to do<br/>                 20 what? Now, the people may have been lying to each other<br/>                 21 about the intentions or they may have believed something<br/>                 22 different, we don't know, but it is not hearsay evidence<br/>                 23 to say: this is evidence of people in the room,<br/>                 24 exchanging views as to what their competitors'<br/>                 25 intentions are. There is direct evidence of that. As</p> <p style="text-align: center;">Page 73</p> | <p>1 these are full or not. I have already addressed you on<br/>                 2 that point. Just to observe that the April one, at<br/>                 3 least, does start off with them saying: right, who is<br/>                 4 going to get us started and ends with saying "Thank you<br/>                 5 all for coming." So on its face, it appears to be<br/>                 6 complete.</p> <p>7 Mr Maclean said that these are of tenuous relevance<br/>                 8 at best, and he referred to the fact that there is<br/>                 9 a different pricing structure in Northern Ireland and<br/>                 10 things are different -- can I ask you to turn to bundle<br/>                 11 X, tab 33. This was a letter received from Eversheds on<br/>                 12 2 February which -- the night before trial was, by pure<br/>                 13 coincidence, around the time we happened to be receiving<br/>                 14 the recordings on that day, as you will know from<br/>                 15 Mr Bronfentrinker's witness statement but that is pure<br/>                 16 coincidence. An issue had arisen between the parties in<br/>                 17 correspondence about the difference in the OOP rule in<br/>                 18 the UK between Great Britain and Northern Ireland and<br/>                 19 the fact that Northern Ireland have this -- they can<br/>                 20 comply with the OOP rule on a property by property basis<br/>                 21 rather than for a period of 12 months. That appears<br/>                 22 from the paragraph that's numbered 1 and I think that we<br/>                 23 knew that it was a different rule but the time of it was<br/>                 24 new.</p> <p>25 This letter goes on to say:</p> <p style="text-align: center;">Page 75</p> |
| <p>1 you say it is not entirely reliable because of the<br/>                 2 points you made, sir, these are different points but<br/>                 3 this is not all hearsay. Hearsay is really a question<br/>                 4 of the specific reliance that is made.</p> <p>5 And so generally speaking we are talking about this<br/>                 6 as Agents' Mutual is being presented to agents and it is<br/>                 7 direct evidence of that. It is direct evidence of what<br/>                 8 is being done in the meeting.</p> <p>9 THE CHAIRMAN: So you are saying it is a Subramanian case?<br/>                 10 That is a case where the debate was whether a threat was<br/>                 11 hearsay.</p> <p>12 MR WOOLFE: Yes.</p> <p>13 THE CHAIRMAN: The facts in the statement in issue was<br/>                 14 simply a question of reading the statement and saying:<br/>                 15 well, was this a threat and did it operate on the mind<br/>                 16 of B?</p> <p>17 MR WOOLFE: No, it doesn't dispose of all questions of<br/>                 18 reliability but just on the hearsay point, it is that.</p> <p>19 We say generally speaking, the Tribunal has a discretion<br/>                 20 and the court has other ones which are identified of<br/>                 21 letting it in, addressing these points by reference to<br/>                 22 weight, bearing in mind the lateness of it or as<br/>                 23 Mr Maclean now suggests, simply allowing it to be put in<br/>                 24 cross-examination.</p> <p>25 Mr Maclean made the point we don't know whether</p> <p style="text-align: center;">Page 74</p>   | <p>1 "This approach reflects the different marketing<br/>                 2 conditions existing within the province, where the two<br/>                 3 ...(Reading to the words)... PropertyPal and<br/>                 4 Property News ..."</p> <p>5 Et cetera.</p> <p>6 MR FREEMAN: Sorry, which letter are you looking at?<br/>                 7 MR WOOLFE: Tab 33. The bottom of the page. The numbered<br/>                 8 paragraph. So this is providing further information to<br/>                 9 us regarding the period for which the Northern Irish<br/>                 10 version of the OOP rule applied, before it lapsed back<br/>                 11 to become the regular OOP rule and reference is made to<br/>                 12 different market conditions.</p> <p>13 This is the first time on which it was ever<br/>                 14 suggested to us that competitive conditions were<br/>                 15 different in Northern Ireland, any specific contention<br/>                 16 about that.</p> <p>17 MR FREEMAN: Had it been an issue before?<br/>                 18 MR WOOLFE: Sir, there had been an ongoing discussion, with<br/>                 19 the parties trying to obtain this picture as to the<br/>                 20 contractual terms. It isn't an issue before. On the<br/>                 21 pleadings, we pleaded a UK wide market. They pleaded<br/>                 22 a market no wider than the UK.</p> <p>23 MR FREEMAN: This goes to the relevant geographical market.<br/>                 24 Is that what you are saying?<br/>                 25 MR WOOLFE: They are making a positive case about Northern</p> <p style="text-align: center;">Page 76</p>  |

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| <p>1 Ireland having different competitive conditions. That<br/>                 2 may go to market definition, but it may go to the extent<br/>                 3 to which we can rely upon the Northern Irish version of<br/>                 4 the OOP rule as being a less restrictive alternative,<br/>                 5 for example. All I am saying is this is the first time<br/>                 6 that that point was ever put and we do have in the<br/>                 7 transcripts -- one relevance of them is that they do<br/>                 8 show people talking about the different competitive<br/>                 9 conditions in Northern Ireland, so it's a chance to have<br/>                 10 a little window into that world.<br/>                 11 MR FREEMAN: But your clients must be aware of different<br/>                 12 market conditions in Northern Ireland and the different<br/>                 13 portals.<br/>                 14 MR WOOLFE: We were aware of different portals but my<br/>                 15 client -- so Gascoigne Halman and Connells, the owner,<br/>                 16 don't operate in Northern Ireland, sir.<br/>                 17 MR FREEMAN: So Northern Ireland hasn't figured in the<br/>                 18 dispute so far.<br/>                 19 MR WOOLFE: There is an evidential dispute between the<br/>                 20 parties about the extent to which the Northern Irish<br/>                 21 version of the rule which we would say is less<br/>                 22 restrictive, can be used as a relative comparator,<br/>                 23 considering objective necessity and indispensability and<br/>                 24 so forth and it is made in that context. I am simply<br/>                 25 saying that is an issue which is raised and it's</p> <p style="text-align: center;">Page 77</p> | <p>1 is a bit of a pause.<br/>                 2 THE CHAIRMAN: Yes. The problem is your transcript doesn't<br/>                 3 have the times at all.<br/>                 4 MR WOOLFE: No, sir, it doesn't. The switching around of<br/>                 5 the numbers on the other pages, that could simply be<br/>                 6 a typo. It is a bit of a strong inference to assume<br/>                 7 that somebody is tampering.<br/>                 8 THE CHAIRMAN: I raised them as a possibility. I don't<br/>                 9 think we are at the level of inference. I think we are<br/>                 10 at the level of not knowing.<br/>                 11 MR WOOLFE: Illustrating the problems but not knowing.<br/>                 12 THE CHAIRMAN: Exactly.<br/>                 13 MR WOOLFE: I entirely accept that, sir, to be fair.<br/>                 14 MR FREEMAN: It is absolutely clear that there are no other<br/>                 15 convenience transcripts; is that right?<br/>                 16 MR WOOLFE: I believe that is right. I need to double<br/>                 17 check. To the best of our knowledge, there are no<br/>                 18 others.<br/>                 19 THE CHAIRMAN: Yes, Mr Bronfentrinker, I think, is fairly<br/>                 20 there may be but, again, you don't know if there are.<br/>                 21 MR WOOLFE: Yes, sir. Again, to the best of my knowledge,<br/>                 22 there aren't any recordings. Sir, unless I can assist<br/>                 23 you further.<br/>                 24 THE CHAIRMAN: One point, Mr Woolfe, at the risk of<br/>                 25 provoking Mr Harris's ire, I do think it important to</p> <p style="text-align: center;">Page 79</p>  |
| <p>1 evidence relevant to that issue. I am not making<br/>                 2 a criticism now, of things not being ...<br/>                 3 MR FREEMAN: Thank you.<br/>                 4 MR WOOLFE: Sir, just finally, dealing with the point<br/>                 5 I think that you raised, regarding the timings on the<br/>                 6 convenience transcript. Can I say, sir, that is one of<br/>                 7 the reasons why we don't rely upon the transcript.<br/>                 8 There may have been errors in its compilation. We rely<br/>                 9 as our description of what was said, on our own<br/>                 10 transcript from the same recording and I accept that<br/>                 11 point, sir. Just to take an example, I think you<br/>                 12 pointed out on page 1 of that transcript to the fact<br/>                 13 that there was a considerable gap between 2.38 and 3.38.<br/>                 14 Is that right, sir?<br/>                 15 THE CHAIRMAN: That was one example, yes.<br/>                 16 MR WOOLFE: to point out, "Does anyone want to raise<br/>                 17 anything or say anything to get us started?" What we<br/>                 18 have in square brackets is a new person. As you can<br/>                 19 see, in our version of the transcript which is at<br/>                 20 page 47, there is a break between the two speakers. You<br/>                 21 can see that it is a new voice comes in. That confirms<br/>                 22 our listening to the transcript. In our recording, it<br/>                 23 is a new person.<br/>                 24 The natural thing, when you walk into a meeting and<br/>                 25 say: right, who wants to get us started, is that there</p> <p style="text-align: center;">Page 78</p>                            | <p>1 the discretionary question that we have got here.<br/>                 2 I mean, if Mr Springett had been intensely involved in<br/>                 3 the recordings, the meetings that are recorded, then one<br/>                 4 can see that cross-examination would create evidence<br/>                 5 which would be helpful for the Tribunal, were it minded<br/>                 6 to understand more about these meetings, to do so.<br/>                 7 If, on the other hand, and I may be wrong,<br/>                 8 Mr Springett's line is, "I wasn't there", the exclusion<br/>                 9 of his evidence is more serious than were Mr Springett<br/>                 10 to have been present and cross-examination to have some<br/>                 11 mileage. Are you suggesting that is a relevant factor<br/>                 12 we ought to take into account?<br/>                 13 MR WOOLFE: Sir, I would say that is a relevant factor. As<br/>                 14 I apprehend it, I don't think we would be intending to<br/>                 15 ask Mr Springett questions that would verify the things<br/>                 16 that are said because he wasn't there.<br/>                 17 THE CHAIRMAN: No, indeed, you very fairly made that point<br/>                 18 in opening.<br/>                 19 MR WOOLFE: What this means to him as the chief executive of<br/>                 20 a company who is represented in these meetings and<br/>                 21 so on. But, obviously, that is not asking him to<br/>                 22 verify ... Thank you, sir.<br/>                 23 THE CHAIRMAN: Thank you very much, Mr Woolfe.<br/>                 24 There being no reason that the cross-examination of<br/>                 25 Mr Springett can't proceed, I am minded to hand down</p> <p style="text-align: center;">Page 80</p> |

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| <p>1 a ruling first thing tomorrow morning rather than<br/>2 2 o'clock, which was my initial thinking. I think it<br/>3 will be likely to be a more ragged ruling at 2 o'clock<br/>4 than first thing tomorrow, so unless you have any<br/>5 problem with that, that's what I intend to do.<br/>6 MR HARRIS: Sir, subject only to this consideration: there<br/>7 are one or two passages that I would be minded to ask<br/>8 Mr Springett questions that bear upon one or two<br/>9 passages in the transcript. If you would prefer, I can<br/>10 avoid doing that at all today but that would be on the<br/>11 understanding that if allowed to do so after the ruling<br/>12 tomorrow, it would be a little bit out of order. Now,<br/>13 I can manage that but I am in your hands.<br/>14 THE CHAIRMAN: No, I don't understand that to be a problem<br/>15 unless Mr Maclean is going to leap up and say it is<br/>16 a problem. As I understood the position, we are not<br/>17 talking about putting these materials in<br/>18 cross-examination. Mr Maclean is perfectly relaxed<br/>19 about that. I see him not standing up, so that is<br/>20 helpful. It is really much more whether the material<br/>21 should be given any weight, absent Mr Springett's<br/>22 evidence, and that I think, is the question that the<br/>23 Tribunal has to resolve. I see Mr Maclean nodding.<br/>24 MR MACLEAN: Yes, I am nodding, yes. Exactly.<br/>25 THE CHAIRMAN: In that case, we'll let you proceed in your</p> <p style="text-align: center;">Page 81</p> | <p>1 Northern Ireland and I just want to explore with you,<br/>2 one or two factual matters that you will be pleased to<br/>3 hear are not in the transcript of Northern Ireland but<br/>4 they are in this rather unwieldy bundle X, if that could<br/>5 be handed to you. The Tribunal may still have it open<br/>6 at tab 33.<br/>7 Mr Springett, what you ought to have at the first<br/>8 page of that tab, is a letter from your solicitors on<br/>9 the night before trial, 2 September; do you have that?<br/>10 <b>A. I do.</b><br/>11 Q. And as well as providing some additional information<br/>12 about the duration of 12 months of a less restrictive<br/>13 rule in Northern Ireland, you attach -- and<br/>14 incidentally, that is under the form of a statement of<br/>15 truth. Is that your signature on the second page?<br/>16 <b>A. Yes.</b><br/>17 Q. You have attached -- your side has attached some new<br/>18 documents and it is those that I just want to take you<br/>19 to for a moment. In my copy of the bundle beginning<br/>20 about eight to ten pages in at 255, there is a copy of<br/>21 a contract. Do you have that?<br/>22 <b>A. I do.</b><br/>23 Q. And it is my understanding from the contents of the<br/>24 letter that this is a contract that applies in Northern<br/>25 Ireland and that's why it has been provided to us.</p> <p style="text-align: center;">Page 83</p>           |
| <p>1 own way, Mr Harris.<br/>2 MR HARRIS: I am sorry if I have provoked the Tribunal's ire<br/>3 myself.<br/>4 MR FREEMAN: We don't have ire, Mr Harris.<br/>5 MR HARRIS: Not even as a collective group.<br/>6 MR FREEMAN: We don't have collective ire.<br/>7 MR WOOLFE: May I just thank the Tribunal for your patience<br/>8 this morning with the slightly longer submissions than<br/>9 were intended.<br/>10 THE CHAIRMAN: No, they were very helpful, thank you both<br/>11 very much. Shall we proceed or do we need to rise for<br/>12 the transcribers?<br/>13 MR HARRIS: It may be better to make a start and then if the<br/>14 transcribers indicate that they would like a break<br/>15 before the short adjournment, we can do so.<br/>16 THE CHAIRMAN: Yes, okay. Let's try and rise for five<br/>17 minutes after midday, sort of 10 past time if you can<br/>18 manage it, Mr Harris.<br/>19 MR IAN SPRINGETT (continued)<br/>20 Cross-examination by MR HARRIS (continued).<br/>21 MR HARRIS: Good morning, Mr Springett. Just you and I have<br/>22 had slightly more of a back seat role this morning but<br/>23 funnily enough, we finished the day, yesterday,<br/>24 Mr Springett -- I know you realise you are still under<br/>25 oath from yesterday -- talking about none other than</p> <p style="text-align: center;">Page 82</p>   | <p>1 I appreciate there are no names on it but that is your<br/>2 understanding as well, isn't it?<br/>3 <b>A. Yes.</b><br/>4 Q. And then in addition, my understanding from your letter<br/>5 is if you go one page earlier in the bundle to 254,<br/>6 there is in fact -- well, let's see if we can have<br/>7 a finger on 255 and 254. The Northern Irish contract at<br/>8 255 and article 5 towards the bottom, that is the<br/>9 equivalent, isn't it, of the OOP rule that applies in<br/>10 the membership contract for Gascoigne Halman or Mognin<br/>11 James or --<br/>12 <b>A. Everybody.</b><br/>13 Q. But in this version of the contract it is article 5. Am<br/>14 I right in saying, Mr Springett, that that has now been<br/>15 varied formally by contract variation, for those firms<br/>16 that have signed up to OTM in Northern Ireland; yes?<br/>17 <b>A. Via this variation, yes, for the first 12 months.</b><br/>18 Q. The previous page is the variation to the OOP rule for<br/>19 the purposes of Northern Ireland; is that right?<br/>20 <b>A. Correct.</b><br/>21 Q. That's what I thought. It is just that I see -- I don't<br/>22 know if you can assist me with this or perhaps we need<br/>23 a letter in due course, but the contract begins by<br/>24 saying -- the variation on 254:<br/>25 "Dear sirs, the following terms form a variation to</p> <p style="text-align: center;">Page 84</p> |

1 clause 4 of the legal contract and this variation is  
 2 valid only for a period of 12 months from  
 3 15 March 2016."  
 4 Then it goes on to give a revised version of the OOP  
 5 rule. That's right, isn't it?  
 6 **A. Clearly it is right.**  
 7 Q. But in fact, the clause that needs to be varied is  
 8 clause 5, isn't it?  
 9 **A. That is right.**  
 10 Q. So as far as you are aware, that is just a mistake in  
 11 number?  
 12 **A. I am afraid so, yes.**  
 13 Q. And in any event, the point of the formal contract  
 14 variation is that, as you said very fairly yesterday  
 15 towards the end of the day, it produces a less  
 16 restrictive rule for the Northern Irish version, albeit  
 17 only for a period of 12 months. That is how you  
 18 understand it, isn't it?  
 19 **A. It is.**  
 20 Q. Thank you. We can put away that bundle then, thank you.  
 21 I just wanted to make sure I had understood it  
 22 correctly.  
 23 One of the things, Mr Springett, that I explored  
 24 with you yesterday, was the quality and practice of you,  
 25 as the guiding light of Agents' Mutual, for getting

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1 local groups of agents together in various different  
 2 regions around the country; yes?  
 3 **A. Yes.**  
 4 Q. Sorry, you have to say yes or no.  
 5 **A. Yes.**  
 6 Q. But I am right in saying, am I not, that the members of  
 7 local groupings of estate agents, they would ordinarily  
 8 compete with each other as to the number and identity of  
 9 portals that they choose to list on, wouldn't they?  
 10 **A. Well, I think you heard yesterday from our other**  
 11 **witnesses that that really wasn't functioning**  
 12 **particularly well. In practice, people were on two**  
 13 **portals and they are the ones which mattered.**  
 14 Q. I accept that. But we are having a little bit of the  
 15 same skirting as yesterday. In principle, the number  
 16 and identity of the portals that they list on is  
 17 a parameter of competition as between estate agents;  
 18 isn't it?  
 19 **A. I am not sure I agree with that, depending on when you**  
 20 **are talking about.**  
 21 Q. Let's see what the CMA has to say about this then. If  
 22 you look in bundle number 10, if you could be provided  
 23 with that and if you could please turn to page 5395.  
 24 MR FREEMAN: Mr Harris, I think "parameter of competition"  
 25 is quite a nerdy sort of remark, isn't it? "Ways in

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1 which they compete" might be easier.  
 2 MR HARRIS: The reason I used the phrase, sir, but I am  
 3 happy to replace -- that is another word which occurs in  
 4 this case, replace, but I will change "parameter" for  
 5 "weight", but the reason I used that in particular, when  
 6 I was exploring with Mr Springett that particular  
 7 formulation, is it is the way the CMA puts it.  
 8 MR FREEMAN: That is not so surprising.  
 9 MR HARRIS: Do you see, Mr Springett, on 5395, under the  
 10 first emboldened subheading, second sentence:  
 11 "The CMA considers that the number and identity of  
 12 portals they list on can be an important parameter of  
 13 competition for estate agents."  
 14 That is right in general, isn't it?  
 15 **A. As a principle but it wasn't operating that way.**  
 16 **I think that's the difference with what -- between this**  
 17 **and what I just said.**  
 18 Q. Really? During the course of the remainder of this  
 19 trial we will see lots of examples of where it does work  
 20 that way. I am just going to take you to one so we can  
 21 see the operation of that in practice. This is an  
 22 example of how it worked in Scotland. If you could take  
 23 up bundle number 6, please. And this time turn to  
 24 page 3275C.  
 25 **A. Yes.**

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1 Q. So of course, in the usual way, this is an email which  
 2 starts on the previous page at B, 28 July 2014, from  
 3 Mr McEwan, who is obviously a senior figure, a chief  
 4 executive of a large grouping -- not grouping, firm in  
 5 Scotland. Do you know that?  
 6 **A. I do.**  
 7 Q. And he is writing to Miss Kerr and as I think you said  
 8 yesterday, she is the senior Agents' Mutual  
 9 representative in Scotland and Northern Ireland; that is  
 10 right, isn't?  
 11 **A. That's correct.**  
 12 Q. And do you see that towards the bottom of 325B, what  
 13 Mr McEwan is explaining is the dynamics of competition  
 14 as between estate agents, at least in Scotland, and he  
 15 says:  
 16 "Well we were the first agent to promote Zoopla in  
 17 Scotland and the first agent in the ESPC to list with  
 18 Rightmove. Both companies offered us various incentives  
 19 to get our brand on board and as soon as we did, others  
 20 followed in our footsteps. These portals automatically  
 21 gained significant momentum. as a result of our initial  
 22 association."  
 23 And so there is an example of, according to  
 24 Mr McEwan, other agents following what his firm is doing  
 25 as regards listings in the locality, seemingly in

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| <p>1 competition. Do you accept that?</p> <p>2 <b>A. I can see that's what he says.</b></p> <p>3 Q. Then he goes on to spell it out even more concretely,</p> <p>4 just above the first hole punch. He says:</p> <p>5 "Without MFL on board [that is McEwan Fraser Legal],</p> <p>6 we would simply end up directly competing against any</p> <p>7 agents who joined Agents' Mutual, who can't offer the</p> <p>8 big two portals to clients and this will provide us with</p> <p>9 a significant competitive advantage."</p> <p>10 Do you see that? So he does regard the number and</p> <p>11 choice of portals, including yours, as being a parameter</p> <p>12 or a way of competing with other agents in his locality,</p> <p>13 doesn't he?</p> <p>14 <b>A. Certainly after we came into being, that's true.</b></p> <p>15 Q. Of course, one of the aims of the OOP rule is to reduce</p> <p>16 that parameter of way of competing, isn't it? Instead</p> <p>17 of being able to have two or three or four or five or</p> <p>18 however many portals the agent may choose to list on,</p> <p>19 any member of your company is restricted to just two, is</p> <p>20 not that member?</p> <p>21 <b>A. That is not the objective.</b></p> <p>22 Q. You certainly knew, didn't you, Mr Springett, that part</p> <p>23 of what you were trying to achieve through the group</p> <p>24 meetings that we talked about yesterday was to get</p> <p>25 estate agent competitors into bed with each other, as</p> <p style="text-align: center;">Page 89</p> | <p>1 into bed together."</p> <p>2 So you would accept that at least the local agents</p> <p>3 saw context and prospects of getting on to</p> <p>4 Agents' Mutual as coming together, notwithstanding that</p> <p>5 they were competitors; correct?</p> <p>6 <b>A. I just highlight the date of this email, 24 July 2013.</b></p> <p>7 <b>So this is the point in time where the decision agents</b></p> <p>8 <b>who are considering the Agents' Mutual proposition were</b></p> <p>9 <b>assessing whether it was even going to be viable.</b></p> <p>10 Q. Yes, I accept that, Mr Springett. That is a perfectly</p> <p>11 fair point about timing but, nevertheless, Mr Rook, in</p> <p>12 this group of agents, is characterising the proposition</p> <p>13 of getting together and joining Agents' Mutual as being</p> <p>14 one between people who compete to the extreme and</p> <p>15 instead, have to lay down their arms and get into bed</p> <p>16 together?</p> <p>17 <b>A. No, that is not Mr Rook.</b></p> <p>18 Q. No, I beg your pardon, Mr Pattinson. That is the lens</p> <p>19 through which he is looking at it in part, isn't it?</p> <p>20 <b>A. All I can see is what is here.</b></p> <p>21 Q. That is a fair point as well. It was in your interests</p> <p>22 as the architect or as the principal proponent of</p> <p>23 Agents' Mutual, to get groups of agents to join it,</p> <p>24 wasn't it? Because you realised that as a group, they</p> <p>25 could deliver very significant advantage to a portal?</p> <p style="text-align: center;">Page 91</p> |
| <p>1 regards at least, the decision to join OTM. That is</p> <p>2 right, isn't it?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Certainly at least one of your local groups, one of the</p> <p>5 local groups recognised that that was what was going on.</p> <p>6 Can I take you to a document, please, at bundle number 3</p> <p>7 at 13.47D. The document begins on 1347C and it is an</p> <p>8 email from a Mr Pattinson. He is an estate agent in the</p> <p>9 north east of England, isn't he?</p> <p>10 <b>A. Keith Pattinson, yes.</b></p> <p>11 Q. To a Mr Henning. We are going to be seeing plenty more</p> <p>12 of these two gentlemen shortly, and then it is copied to</p> <p>13 a Mr Rook and he's an estate agent in a firm called Rook</p> <p>14 Matthews Sayer in the North East, isn't he?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And we'll be seeing more of him in due course.</p> <p>17 Do you see, if you cast your eye over it. You don't</p> <p>18 need to read the whole thing. It is a grouping of these</p> <p>19 agents up there in the North East, recording thoughts</p> <p>20 about Agents' Mutual as a proposition. Do you see that?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And then he says at the end, if you just go to the end</p> <p>23 of his email:</p> <p>24 "My other concern is to how to get people who</p> <p>25 compete to the extreme, to lay down their arms and get</p> <p style="text-align: center;">Page 90</p>   | <p>1 <b>A. Well, any customer delivers advantage to the portal. I</b></p> <p>2 <b>am trying to build up membership of Agents' Mutual and</b></p> <p>3 <b>I am using group meetings to present the proposition?</b></p> <p>4 Q. We are perhaps not disagreeing here, Mr Springett.</p> <p>5 <b>A. No.</b></p> <p>6 Q. You are saying that any one is good?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Therefore it follows that more than one, as a group, is</p> <p>9 even better; right?</p> <p>10 <b>A. I am saying more than one is better and then another one</b></p> <p>11 <b>is good on top and then a fourth.</b></p> <p>12 Q. So you are agreeing then, a group is good?</p> <p>13 <b>A. I don't think I am agreeing.</b></p> <p>14 Q. But you always needed a joint approach involving a large</p> <p>15 number of firms, in order to protect and defend the</p> <p>16 interests of those firms in the portal's market, didn't</p> <p>17 you?</p> <p>18 <b>A. That's the purpose of Agents' Mutual in part.</b></p> <p>19 Q. Yes, that is right, a joint approach. That is the</p> <p>20 point, isn't it?</p> <p>21 <b>A. I am not following a joint approach.</b></p> <p>22 Q. Well a joint approach between a large number of firms,</p> <p>23 that is what you wanted to get together because that was</p> <p>24 the joint grouping that was intended to be able to</p> <p>25 defend --</p> <p style="text-align: center;">Page 92</p>   |

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| <p>1 <b>A. I wanted as many people as possible to join</b><br/>2 <b>Agents' Mutual.</b><br/>3 Q. I am sorry, Mr Springett, I hadn't quite finished.<br/>4 <b>A. I am sorry.</b><br/>5 Q. It was a joint approach involving a large number of<br/>6 firms that you wanted to put together, in order to<br/>7 defend and promote the interests of the group in the<br/>8 portal's market, isn't it?<br/>9 <b>A. Repeated use of the word "group". We put our</b><br/>10 <b>proposition out there which was the Agents' Mutual</b><br/>11 <b>Limited proposition and we were inviting people to</b><br/>12 <b>support it.</b><br/>13 Q. You quibble with the wording, Mr Springett, but in fact<br/>14 this is your own wording, as I understand it, and<br/>15 perhaps you could turn to bundle number 1, page 174.<br/>16 May I just have a moment, sir, I may be on the wrong<br/>17 page? Apologies, Mr Springett.<br/>18 This is a document which is one of the earliest<br/>19 iterations of the project Z discussion piece, isn't it?<br/>20 <b>A. November 2011.</b><br/>21 Q. That is right. I am going to come back to, I think, 174<br/>22 in a moment, but now just looking over the page<br/>23 at 175 -- I beg your pardon. No -- my confusion.<br/>24 I have written 174 and everything is on 175. If you go<br/>25 to the bottom of 175 do you see there is a paragraph</p> <p style="text-align: center;">Page 93</p> | <p>1 Q. At the time that you wrote them, Mr Springett.<br/>2 <b>A. Well, this is an evolving draft at the end of 2011 which</b><br/>3 <b>is two years before we got going.</b><br/>4 Q. And how is that relevant to my question, Mr Springett?<br/>5 <b>A. Well, because this is an evolving discussion draft. It</b><br/>6 <b>doesn't necessarily represent what the conclusions were</b><br/>7 <b>of the steering committee or indeed the company when it</b><br/>8 <b>was formed in January 2013.</b><br/>9 Q. I see, so the words -- certainly the approach, I put it<br/>10 to you, that you had in mind when you wrote them down<br/>11 and you go on, don't you, to say later on in the words<br/>12 that aren't crossed out that:<br/>13 "We have concluded that a properly constituted and<br/>14 resourced joint venture is needed."<br/>15 That is not crossed out, is it?<br/>16 <b>A. No, it isn't.</b><br/>17 Q. So it was a joint and collaborative venture that you<br/>18 were aiming to put together amongst groups of estate<br/>19 agents, right?<br/>20 <b>A. It was a joint venture. That's what it says.</b><br/>21 Q. Amongst groups of estate agents, right?<br/>22 <b>A. It doesn't say that.</b><br/>23 Q. That is who you are talking about?<br/>24 <b>A. It doesn't say that.</b><br/>25 Q. I am not asking you what it says. I am asking you who</p> <p style="text-align: center;">Page 95</p> |
| <p>1 that begins with some crossed out words and then have<br/>2 some remaining words? Do you have that one?<br/>3 <b>A. The last paragraph on that page?</b><br/>4 Q. Yes.<br/>5 <b>A. Yes.</b><br/>6 Q. In the second line the words that were -- were you<br/>7 responsible largely for altering this document as well.<br/>8 I think you did say that.<br/>9 <b>A. I certainly was.</b><br/>10 Q. And so I think you had originally written down, hadn't<br/>11 you, that:<br/>12 "The agents believe a joint approach involving<br/>13 a large number of firms needs to be applied to defend<br/>14 and promote their interest in the portals market."<br/>15 <b>A. Sorry, I'm not seeing those words.</b><br/>16 Q. They are crossed out in the second and third lines.<br/>17 <b>A. Crossed out?</b><br/>18 Q. Yes.<br/>19 <b>A. I can see the words, yes.</b><br/>20 Q. And you had written them, right?<br/>21 <b>A. Yes, it is my document.</b><br/>22 Q. That is right. So at the time you wrote them you did<br/>23 think there was a joint approach involving a large<br/>24 number of firms?<br/>25 <b>A. Clearly I didn't because I crossed them out.</b></p> <p style="text-align: center;">Page 94</p>   | <p>1 is in this joint venture. It is estate agents, isn't<br/>2 it?<br/>3 <b>A. Other estate agents, absolutely. They all own it.</b><br/>4 Q. And indeed in the following line at the bottom of the<br/>5 page:<br/>6 "Finance policies, membership requirements of such<br/>7 a joint venture."<br/>8 You do see this as being a joint collaborative<br/>9 venture between estate agents, don't you,<br/>10 Agents' Mutual?<br/>11 <b>A. We are going to get into a discussion about what a joint</b><br/>12 <b>venture is, aren't we?</b><br/>13 Q. No, we are not. It is a joint and collaborative<br/>14 venture. I am not using that as a legal term of art.<br/>15 It is between estate agents, isn't it?<br/>16 <b>A. What do you mean by "collaborative"?</b><br/>17 Q. When they jointly get together in order to achieve aims<br/>18 and objectives together, don't they?<br/>19 <b>A. What they've done is invested in and supported a new</b><br/>20 <b>venture for which Agents' Mutual Limited is the vehicle.</b><br/>21 Q. Yes, and they jointly invest and collaborate together as<br/>22 regards the aims of the company of which they are mutual<br/>23 members, don't they?<br/>24 <b>A. You keep using the word "collaborate" and you haven't</b><br/>25 <b>really set out for me what you mean by that.</b></p> <p style="text-align: center;">Page 96</p>   |



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| <p>1 Q. Your own counsel describe it in their skeleton as<br/>2 a mutual company. That means relations between the<br/>3 members themselves of the company, doesn't it?<br/>4 <b>A. They are members of the company.</b><br/>5 Q. It was the purpose, wasn't it, to join together with<br/>6 others in order to achieve the objectives, right?<br/>7 THE CHAIRMAN: Don't you need to make it clear what the<br/>8 objectives, are, Mr Harris.<br/>9 MR HARRIS: The objectives in this document as we are going<br/>10 to be going through in due course.<br/>11 That is right, isn't it, Mr Springett? They were<br/>12 joining together in order to ensure the portals they use<br/>13 operate in the best interests of themselves?<br/>14 <b>A. That's not true either. What they wanted to do is put</b><br/>15 <b>a new competitor into the market which more closely</b><br/>16 <b>delivered the services and the manner of those services</b><br/>17 <b>that they say suited their businesses.</b><br/>18 Q. You quibble, Mr Springett, with the use of the word<br/>19 "collaborative" but that is another one of your words<br/>20 isn't it? If you go back to page 174 and look in the<br/>21 fourth line down of your executive summary, that is<br/>22 indeed your own phrase, isn't it in: they propose<br/>23 a collaborative venture with a broad range of other<br/>24 agents. I don't know why you are not agreeing with<br/>25 this, Mr Springett. That is what you say, isn't it?</p> <p style="text-align: center;">Page 97</p> | <p>1 England?<br/>2 MR FREEMAN: Sorry, can I just for my own satisfaction.<br/>3 MR HARRIS: Please.<br/>4 MR FREEMAN: The purpose of the agents with a capital A that<br/>5 refers back presumably to the leading independent agents<br/>6 at the top of the executive summary, so that is a small<br/>7 group of founding agents.<br/>8 MR HARRIS: What page are you on, sir?<br/>9 MR FREEMAN: I was just looking at the page you left us on<br/>10 which was 180. You were making a point about the<br/>11 wording at the top of the page: "The purpose of the<br/>12 agent is to join with others".<br/>13 MR HARRIS: I think you are right. I think at this stage<br/>14 agents with a capital A was the grouping --<br/>15 MR FREEMAN: Agents has a capital A and it is the founding<br/>16 members.<br/>17 MR HARRIS: Yes, which became known as the steering<br/>18 committee or was a steering committee.<br/>19 MR MACLEAN: It is defined at 174, sir.<br/>20 MR FREEMAN: I have found it, thank you. That is what I<br/>21 thought, not just any old agent.<br/>22 MR HARRIS: No, not at this stage. This was, as<br/>23 Mr Springett pointed out, 9 November 2011 so at an<br/>24 early stage of gestation for this mutual company.<br/>25 So you do know about the grouping in the North East</p> <p style="text-align: center;">Page 99</p>                          |
| <p>1 <b>A. Well, the structure of this is that they invested, they</b><br/>2 <b>took an independent decision to participate just like</b><br/>3 <b>any other business would form. You can't get something</b><br/>4 <b>fresh off the ground unless people support it.</b><br/>5 Q. That is right and they were collaborating with each<br/>6 other as agents in order to get it up and off the<br/>7 ground, weren't they? Very simple. That is right,<br/>8 isn't?<br/>9 <b>A. Bear in mind there isn't an "it" at this stage. The</b><br/>10 <b>company wasn't formed until January 2013.</b><br/>11 Q. That is right, but at this stage the purpose was to join<br/>12 together with others, wasn't it, in order to achieve the<br/>13 objectives, yes?<br/>14 <b>A. Join together with others?</b><br/>15 Q. Yes. Those are your words, Mr Springett. Let's have<br/>16 a look at page 180. It is taking you rather a long time<br/>17 for you to accept words that you have already written<br/>18 down yourself. Do you see at the top:<br/>19 "Common purpose and key objectives. The purpose of<br/>20 the agents is to join with others."<br/>21 That is other agents, isn't it?<br/>22 <b>A. Well that would be the reason for them to support the</b><br/>23 <b>venture, yes.</b><br/>24 Q. Yes. I am right in saying aren't I, Mr Springett, that<br/>25 you know about a grouping of agents in the North East of</p> <p style="text-align: center;">Page 98</p>   | <p>1 of England, don't you, Mr Springett?<br/>2 <b>A. Do you mean at this stage?</b><br/>3 Q. Well, let's just ask generally. You are aware of<br/>4 a grouping of agents acting collectively with regards to<br/>5 Agents' Mutual in the North East of England, aren't you?<br/>6 <b>A. Yes.</b><br/>7 Q. And indeed, you were instrumental in developing or<br/>8 progressing that grouping of agents as a group, weren't<br/>9 you?<br/>10 <b>A. No, I wasn't.</b><br/>11 Q. We'll come to that.<br/>12 <b>A. I presented to groups of agents on successive occasions</b><br/>13 <b>during I think mid to late 2013.</b><br/>14 Q. We'll come to the details of your involvement in due<br/>15 course. I am just starting with some opening remarks<br/>16 about this group and questions.<br/>17 The grouping that you have in mind about it<br/>18 operating in the northeast of England, that includes<br/>19 Mr Clive Rook of Rook Matthews Sayer, doesn't it?<br/>20 <b>A. He was, as with Mr Halman, up in the North West the</b><br/>21 <b>first person that I communicated with in the North East.</b><br/>22 Q. That is right, and he is a director of a leading<br/>23 independent estate agent in the North East, isn't he?<br/>24 <b>A. He was.</b><br/>25 Q. He was. He has retired. That is a fair point. In 2013</p> <p style="text-align: center;">Page 100</p> |

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| <p>1 and 2014 and 2015 he was a director of a leading estate<br/>2 agency in the North East?<br/>3 <b>A. I would agree with that.</b><br/>4 Q. And he was also a board director of Agents' Mutual,<br/>5 wasn't he?<br/>6 <b>A. He became a director in March 2014.</b><br/>7 Q. That is right. And he lasted until -- can you say<br/>8 exactly when? It was well into 2015, wasn't it?<br/>9 <b>A. Certainly well into 2015. I couldn't say -- certainly</b><br/>10 <b>after the launch of OnTheMarket.</b><br/>11 Q. I suggest to you that you knew that you could build upon<br/>12 groupings that had already been formed to negotiate with<br/>13 portals so as to encourage or facilitate them in making<br/>14 joint decisions to join Agents' Mutual?<br/>15 <b>A. Let me just get that clear. I could build upon groups</b><br/>16 <b>that had already been formed to negotiate with portals?</b><br/>17 Q. Yes.<br/>18 <b>A. That is the question?</b><br/>19 Q. Yes.<br/>20 <b>A. No.</b><br/>21 Q. You could take those groupings and facilitate and<br/>22 encourage them to make joint collective decisions about<br/>23 joining Agents' Mutual, didn't you?<br/>24 <b>A. No.</b><br/>25 Q. Equally, you knew you could facilitate and encourage</p> <p style="text-align: center;">Page 101</p>   | <p>1 Q. Yes, let's have a look at it. It is at bundle<br/>2 number 5/2645A?<br/>3 <b>A. Yes, this is 2014.</b><br/>4 Q. That is right. Well before the launch of<br/>5 Agents' Mutual, isn't it?<br/>6 <b>A. Yes, but I wanted to make clear that --</b><br/>7 Q. I haven't asked you a question yet, Mr Springett.<br/>8 <b>A. I'm finishing off the answer to the previous one if you</b><br/>9 <b>don't mind.</b><br/>10 Q. What question?<br/>11 <b>A. You were asking me --</b><br/>12 Q. I asked you, did you send it?<br/>13 <b>A. Yes, and I said there are two different lists so it</b><br/>14 <b>would be helpful to clarify which they are.</b><br/>15 Q. So did you send this list?<br/>16 <b>A. No, that is not the point of clarification I want to</b><br/>17 <b>make. The first list that I received from Mr Rook was</b><br/>18 <b>not this list. It was just a list of emails of local</b><br/>19 <b>estate agents in the North East area and it gave me the</b><br/>20 <b>opportunity to invite them all to an Agents' Mutual</b><br/>21 <b>meeting. This list as far as I can see is all the</b><br/>22 <b>agents in the relevant postcodes who have registered</b><br/>23 <b>their interest in joining Agents' Mutual via our website</b><br/>24 <b>and that was sent in 2014 and it was emailed to a number</b><br/>25 <b>of agents who had already become members of</b></p> <p style="text-align: center;">Page 103</p> |
| <p>1 those groupings to make collective decisions as to which<br/>2 portal to choose, didn't you?<br/>3 <b>A. It is not true.</b><br/>4 Q. But you knew about --<br/>5 <b>A. If you want to take Mr Rook as an example, he contacted</b><br/>6 <b>Agents' Mutual via its website. He made an enquiry. He</b><br/>7 <b>registered. I contacted him. We had I think</b><br/>8 <b>a conversation and he provided me with a list of agents</b><br/>9 <b>operating in the North East, their email addresses. He</b><br/>10 <b>identified Mr Pattinson as another leading agent in the</b><br/>11 <b>area. I also had discussions with Keith Pattinson and</b><br/>12 <b>I, independently of Mr Rook, emailed all of the estate</b><br/>13 <b>agents on that list and invited them to attend an</b><br/>14 <b>Agents' Mutual meeting.</b><br/>15 Q. That is right, but you did more than that, didn't you?<br/>16 I am very glad you raised that list, Mr Springett<br/>17 because in fact you are the one who sent round that list<br/>18 to a large grouping of agents in the North East, aren't<br/>19 you? It wasn't Mr Rook who sent it. It was you, wasn't<br/>20 it?<br/>21 <b>A. Sent round the list?</b><br/>22 Q. Yes. Shall we see it. It is in bundle number 5 at<br/>23 page --<br/>24 <b>A. Let's make sure we are clear about what lists we are</b><br/>25 <b>talking about.</b></p> <p style="text-align: center;">Page 102</p> | <p>1 <b>Agents' Mutual and the purpose of it was to assist them</b><br/>2 <b>in helping us recruit more agents to Agents' Mutual.</b><br/>3 Q. The purpose was to assist them in growing and developing<br/>4 the group of agents in the North East as a group, wasn't<br/>5 it?<br/>6 <b>A. It wasn't.</b><br/>7 Q. Of course it was, Mr Springett. What you say to them in<br/>8 the second paragraph is:<br/>9 "I know that Steve Henning plans to invite existing<br/>10 members to meet shortly to consider how you might<br/>11 support further member" --<br/>12 <b>A. "Member recruitment".</b><br/>13 Q. Excuse me, I haven't finished. I haven't even put the<br/>14 question yet.<br/>15 "... how you might support further member<br/>16 recruitment and also the potential for portal<br/>17 negotiations."<br/>18 And it is in that regard that you say in the first<br/>19 line that, "I thought you might find it helpful to<br/>20 receive the attached schedule."<br/>21 That is right, is it not? So what you are doing is<br/>22 sending to an existing grouping that consists of the<br/>23 recipients of the email in the North East a large<br/>24 further list to assist them in having additional groups<br/>25 at further meetings, aren't you?</p> <p style="text-align: center;">Page 104</p>  |

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| <p>1 <b>A. What you said to me earlier was that I was using</b><br/>                 2 <b>existing groupings that had been formed for portal</b><br/>                 3 <b>negotiations and to use those groupings as the basis for</b><br/>                 4 <b>moving them en bloc to Agents' Mutual.</b><br/>                 5 Q. Yes, this is the first step in that process, isn't it?<br/>                 6 <b>A. This is not.</b><br/>                 7 Q. This is the first step. We are going to look at the<br/>                 8 remaining steps in a minute.<br/>                 9 THE CHAIRMAN: No, Mr Harris, I thought there was an<br/>                 10 anterior list which pre-dated this one, so it wouldn't<br/>                 11 be the first step, unless I am misunderstanding.<br/>                 12 MR HARRIS: Never been disclosed to us, sir. This is the<br/>                 13 only list I am aware of. I am willing to stand<br/>                 14 corrected if Mr Maclean and his team can find it but<br/>                 15 I have certainly not seen any earlier list.<br/>                 16 <b>A. I don't know whether it is in the bundle, sir, maybe.</b><br/>                 17 Q. That would be a most surprising omission if that's the<br/>                 18 case. Perhaps that can be looked into by my learned<br/>                 19 friend's team.<br/>                 20 THE CHAIRMAN: It might or night not be a surprising<br/>                 21 omission. Documents go missing and the obligation is,<br/>                 22 as you well know, to make proportionate searches for<br/>                 23 documents. The fact is, I think though, that the<br/>                 24 witness is referring to an anterior list and I just want<br/>                 25 to be clear that I am understanding your answers.</p> <p style="text-align: center;">Page 105</p>   | <p>1 there was only one reason, further member recruitment.<br/>                 2 That is not what it says here. It says "and also the<br/>                 3 potential for portal negotiations." You were expressly<br/>                 4 sending it round for two purposes, weren't you?<br/>                 5 <b>A. Forgive me, you are right because by that time, I was</b><br/>                 6 <b>aware that this group was planning to enter into</b><br/>                 7 <b>negotiations with both Zoopla and Rightmove.</b><br/>                 8 Q. That is right. So you are facilitating, aren't you,<br/>                 9 groupings both on the issue of member recruitment and on<br/>                 10 the issue of portal negotiations, aren't you, by sending<br/>                 11 around this list?<br/>                 12 <b>A. It certainly assists that, yes.</b><br/>                 13 Q. Thank you.<br/>                 14 THE CHAIRMAN: Mr Springett, I see under the second column<br/>                 15 in sheet 1 on the table "Member", question mark, and we<br/>                 16 see gold members under the rubric G and then silver<br/>                 17 members under the rubric S. The ones who don't have<br/>                 18 a designation, what were they?<br/>                 19 <b>A. They would be people who would -- generally who had --</b><br/>                 20 <b>by 2014, I think these would be people who had</b><br/>                 21 <b>registered their interest and there was a means of doing</b><br/>                 22 <b>that at an Agents' Mutual website, where the agent could</b><br/>                 23 <b>enter rudimentary contact details and then having done</b><br/>                 24 <b>that, we would assess whether they were eligible for</b><br/>                 25 <b>membership of Agents' Mutual. And having done that, we</b></p> <p style="text-align: center;">Page 107</p> |
| <p>1 <b>A. There was a list of emails sent to me by Mr Rook.</b><br/>                 2 <b>I believe it was late May 2013 and he gave it to me to</b><br/>                 3 <b>assist me in communicating with agents in the North</b><br/>                 4 <b>East, with a view to assembling an Agents' Mutual</b><br/>                 5 <b>meeting at which the proposal would be put.</b><br/>                 6 THE CHAIRMAN: And you did not send that list round?<br/>                 7 <b>A. I didn't send that list round.</b><br/>                 8 THE CHAIRMAN: You used it for individual --<br/>                 9 <b>A. I sent emails to each, inviting them, yes.</b><br/>                 10 MR HARRIS: So I put it to you, Mr Springett, that you are<br/>                 11 sending this list round, knowing and intending that the<br/>                 12 existing group of email recipients will use it to<br/>                 13 contact other members in the North East because, as you<br/>                 14 yourself put it, it might support further member<br/>                 15 recruitment. That is one of the reasons you sent it<br/>                 16 round, isn't it?<br/>                 17 <b>A. The only purpose is for them to be able to assist</b><br/>                 18 <b>further agent recruitment, yes, and what you have here</b><br/>                 19 <b>is a list of people who are already members and they</b><br/>                 20 <b>would be entitled to have the membership register if</b><br/>                 21 <b>they wanted to, to see who else was a member of their</b><br/>                 22 <b>company.</b><br/>                 23 Q. And you are sending it round and a minute ago you said<br/>                 24 that was the only reason, but that is not what you say<br/>                 25 in the document, is it? You just very carefully said</p> <p style="text-align: center;">Page 106</p> | <p>1 <b>would send them a means, log in details, so that on</b><br/>                 2 <b>future occasions they could enter parts of the website</b><br/>                 3 <b>that the public couldn't reach and it allowed them to</b><br/>                 4 <b>access things like the articles of association, the</b><br/>                 5 <b>membership rules, the current information memorandum,</b><br/>                 6 <b>the letter of intent and so forth. So those people will</b><br/>                 7 <b>have -- I think will have done that but not taken the</b><br/>                 8 <b>extra step of having joined.</b><br/>                 9 MR HARRIS: But I am right in saying, am I not,<br/>                 10 Mr Springett, that by the time you send round this list<br/>                 11 of further members, including to Mr Pattinson and<br/>                 12 Mr Rook and Mr Henning, you knew that those people and<br/>                 13 others in the North East --<br/>                 14 <b>A. I don't think Mr Pattinson is on the list.</b><br/>                 15 Q. For these purposes it doesn't really matter -- to agents<br/>                 16 in the North East?<br/>                 17 <b>A. I think it does matter because these are existing</b><br/>                 18 <b>members.</b><br/>                 19 THE CHAIRMAN: He is on the list.<br/>                 20 MR WOOLFE: Four up from the bottom.<br/>                 21 <b>A. Sorry, the list of addressees.</b><br/>                 22 Q. You knew at the time you sent this list to the agents in<br/>                 23 the North East, that there was a group of agents in the<br/>                 24 North East, including some or all of them, who were<br/>                 25 working together collectively to make decisions both</p> <p style="text-align: center;">Page 108</p>  |

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| <p>1 about joining Agents' Mutual and about which portal they<br/>2 would choose. That is right, isn't it?<br/>3 <b>A. The email was sent to members and it had a list on it of<br/>4 members and non-members. I was aware at that stage that<br/>5 they had begun to consider collective negotiations with<br/>6 the other portals. I was aware of that.</b><br/>7 Q. That is right. Collective negotiations, collective<br/>8 decisions they were considering at the time you sent the<br/>9 list, about whether to join Agents' Mutual?<br/>10 <b>A. No, sir.</b><br/>11 Q. We'll see that in a minute.<br/>12 <b>A. These are already members.</b><br/>13 Q. And secondly, collective decisions -- you knew that they<br/>14 were considering at that time that you sent the list,<br/>15 collective decisions as to which portal to drop, didn't<br/>16 you?<br/>17 <b>A. I was aware that they wanted to investigate collective<br/>18 negotiation with -- not just for portals, actually, but<br/>19 media negotiations.</b><br/>20 Q. That is not right, is it, Mr Springett? You knew more<br/>21 than that. You knew that they had put forward specific<br/>22 proposals to collectively drop one of the portals, at<br/>23 the time you sent the list, didn't you?<br/>24 <b>A. No, I didn't.</b><br/>25 Q. Let's have a look then, shall we? If you have a look in</p> <p style="text-align: center;">Page 109</p> | <p>1 many in agreement to review this opportunity further."<br/>2 Yes?<br/>3 <b>A. Yes.</b><br/>4 Q. And then if you go back, doing as one does with these<br/>5 emails, backwards in the bundle, do you see that the<br/>6 email above it -- so you have to go now to part way down<br/>7 1292 to see where that starts. Do you see there is an<br/>8 email, Mr Jonathan Parker wrote "Good afternoon". Now,<br/>9 on this version of the email we can't see to whom that<br/>10 is sent and he even begins by saying "Apologies if<br/>11 I have missed anybody on the distribution list."<br/>12 Just pausing there for a moment. We can see that<br/>13 you were in fact forwarded that very email, a matter to<br/>14 whom that was sent, above it on the page. You see at<br/>15 142332, 19 July, you are copied in, aren't you?<br/>16 <b>A. Yes.</b><br/>17 Q. By now the email distribution list has expanded to more<br/>18 agents in the North East, hasn't it?<br/>19 <b>A. It has.</b><br/>20 Q. So back in 2013, you are obtaining direct information of<br/>21 what this email says and it goes on, doesn't it?<br/>22 <b>A. I think this might be around the time I emailed<br/>23 Mr Henning to reiterate that there couldn't be joint<br/>24 decisions on this.</b><br/>25 Q. To be absolutely clear, Mr Springett, I am going to take</p> <p style="text-align: center;">Page 111</p> |
| <p>1 bundle number 3 and can you start it at page 1293.<br/>2 Page 1293. Sorry, you don't have it yet. Bundle<br/>3 number 3, Mr Springett. I am sorry, it is very trying.<br/>4 <b>A. No, I have -- what was the page again, if I may?</b><br/>5 Q. So at 12.93, you say at the bottom hole punch, do you<br/>6 see that --<br/>7 <b>A. Nearly there.</b><br/>8 Q. That is an email from Mr Henning to a series of the<br/>9 North East agents, including Mr Rook and Mr Pattinson<br/>10 and you are the one who is copied in the CC column,<br/>11 aren't you?<br/>12 <b>A. Eighteen July 14.55?</b><br/>13 Q. Correct.<br/>14 <b>A. I am in the CC column, yes.</b><br/>15 Q. So it is Mr Henning to various North East agents,<br/>16 including Mr Rook, Mr Pattinson and you are copied in:<br/>17 "Good afternoon all."<br/>18 Now they are talking about getting together<br/>19 a meeting in the North East and Mr Henning says:<br/>20 "I have now received positive feedback from the<br/>21 following firms."<br/>22 He lists all kinds of firms and two paragraphs below<br/>23 that on the next page. This agent says, to your<br/>24 knowledge, because you are copied in:<br/>25 "We may be in competition but it is good to see so</p> <p style="text-align: center;">Page 110</p>  | <p>1 you to the email that you have got in mind.<br/>2 <b>A. Okay.</b><br/>3 Q. It comes a day later.<br/>4 <b>A. Right.</b><br/>5 Q. So you need not worry that you won't have an opportunity<br/>6 to say what you want to say about that email but before<br/>7 we get there, we need to deal with this email. It says:<br/>8 "I think following on from discussions within our<br/>9 company and to other agents, we are in broad agreement."<br/>10 So you are obtaining some information there, aren't<br/>11 you, about this grouping in the North East making,<br/>12 apparently, broad agreements as between themselves, as<br/>13 to the way forward; yes?<br/>14 <b>A. Well, I think I am copied on the reply, aren't I?</b><br/>15 Q. Yes, so you did know that that's what they were doing?<br/>16 <b>A. Yes.</b><br/>17 Q. And then he goes on to say, doesn't he, in this, Mr<br/>18 Parker:<br/>19 "The question for a lot of agents would be which<br/>20 portal to drop, Rightmove or Zoopla?"<br/>21 So you knew that this grouping of agents was<br/>22 thinking about the choice of which portal as well,<br/>23 didn't you?<br/>24 <b>A. Well, they were -- all the agents would be thinking<br/>25 about that.</b></p> <p style="text-align: center;">Page 112</p>  |

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|---|---|
| <p>1 Q. That is right, as a group though, Mr Springett. That's<br/>2 how they are thinking of it, isn't it? Because it is on<br/>3 a group email?<br/>4 <b>A. Well, Mr Parker is, I guess, giving his view of what the<br/>5 issues for agents will be.</b><br/>6 Q. Yes, that's right and he goes on to say:<br/>7 "I think the obvious choice would be to drop<br/>8 Zoopla."<br/>9 That's what he tells the group, isn't it?<br/>10 <b>A. He does.</b><br/>11 Q. He goes on to say:<br/>12 "In fact that's probably or not such a good idea<br/>13 because Zoopla would disappear as an effective force in<br/>14 the market. It would only go to strengthen Rightmove's<br/>15 hold."<br/>16 Right?<br/>17 <b>A. That's what he says.</b><br/>18 Q. And indeed he goes even further therefore. He puts<br/>19 forward a written proposal for consideration, doesn't<br/>20 he? Every agent in the North East drops Rightmove. So<br/>21 you knew that there was in this grouping in the North<br/>22 East, proposals being put forward as to collective<br/>23 action as to which portal to choose, didn't you?<br/>24 <b>A. Bear in mind this is 19 July 2013. So none of these<br/>25 people have joined Agents' Mutual at this stage.</b></p> <p style="text-align: center;">Page 113</p>                                  | <p>1 email, again at the top of 1292, is Mr Rook and -- yes,<br/>2 can you see that? The top of 1292.<br/>3 <b>A. I haven't got there yet, sorry.</b><br/>4 Q. You see he is in the CC line, second entry.<br/>5 <b>A. I may be -- yes, I am sorry.</b><br/>6 Q. And Mr Pattinson?<br/>7 <b>A. Yes.</b><br/>8 Q. And a whole series of other people?<br/>9 <b>A. Yes.</b><br/>10 MR HARRIS: Sir, I know you suggested having a break. There<br/>11 are plenty more in this theme but now is as good a time<br/>12 as any.<br/>13 THE CHAIRMAN: Then let's rise for five minutes.<br/>14 (12.10 pm)<br/>15 (A short break)<br/>16 (12.15 pm)<br/>17 THE CHAIRMAN: Mr Harris, before you resume, it might be<br/>18 probative to say a couple of words about timing because<br/>19 I notice you lost an hour this morning and that is no<br/>20 criticism. What we were minded to do, though we will<br/>21 keep an eye on just how tired Mr Springett feels, would<br/>22 be to start at 10 tomorrow rather than 10.30 but on the<br/>23 understanding that we go absolutely no later than 4.30<br/>24 and finish some time between 4.15 and 4.30. But that we<br/>25 allocate until 1 pm on Monday for you to finish your</p> <p style="text-align: center;">Page 115</p>   |
| <p>1 Q. How is that relevant to the question? You knew that<br/>2 there was a grouping in the North East that were putting<br/>3 forward formal proposals for consideration about<br/>4 collective choices on portal. You knew that, didn't<br/>5 you?<br/>6 <b>A. I think you are stretching formal proposals.</b><br/>7 Q. Right. You can see what it says. It underlined the<br/>8 proposal for consideration. That is a collective<br/>9 proposal to drop a particular portal, isn't it? And you<br/>10 knew about it; right?<br/>11 <b>A. Did you see who Mr Parker is?</b><br/>12 Q. Mr Springett, I know you know what's going on here but<br/>13 I ask the questions and you answer them.<br/>14 <b>A. Okay, I apologise.</b><br/>15 Q. Yes.<br/>16 <b>A. Mr Parker is though, the sales and letting agent for<br/>17 Whitley Bay.</b><br/>18 Q. With respect, you knew this proposal was being put<br/>19 forward amongst the agents?<br/>20 <b>A. I didn't regard that as a proposal.</b><br/>21 Q. Notwithstanding that he says --<br/>22 <b>A. No, not at all. I was concerned about it when I saw it.</b><br/>23 Q. We see what it says, Mr Springett. Even if for some<br/>24 reason, you won't accept it.<br/>25 And do you see that one of the recipients of this</p> <p style="text-align: center;">Page 114</p> | <p>1 cross-examination of Mr Springett and that is being<br/>2 a little bit more generous to you than the time you have<br/>3 lost and so I want to make it clear now, for your<br/>4 planning purposes, that we would regard 1 o'clock as<br/>5 a hard deadline. We sit down then and cut your cloth,<br/>6 just as Mr Maclean cut his when he was cross-examining<br/>7 his witnesses and then we'll commence the hot tub, get<br/>8 the waters running at 2 o'clock.<br/>9 MR HARRIS: Waters running at 2 o'clock no less.<br/>10 MR FREEMAN: Just to add to that, and the hot tub may run<br/>11 over into Tuesday.<br/>12 THE CHAIRMAN: I forget you have re-examination Mr Maclean,<br/>13 as you are about to remind me.<br/>14 MR MACLEAN: Yes.<br/>15 THE CHAIRMAN: You will have to sit down a little before<br/>16 1 o'clock, so 12.30, Mr Harris.<br/>17 MR HARRIS: Could we perhaps play a little bit by ear<br/>18 whether or not we should have a slightly shortened short<br/>19 adjournment today and/or is there any flexibility for<br/>20 the end of today. The only reason is that I am<br/>21 conscious that we are making quite slow progress and it<br/>22 is in the nature of those things. One does one's best<br/>23 in advance but there are a lot of documents and you can<br/>24 see how forensic the examination of each one in many<br/>25 cases has to be.</p> <p style="text-align: center;">Page 116</p> |

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| <p>1 THE CHAIRMAN: I quite appreciate that. I think we can sit<br/>2 at 1.45 and that this is very much subject to how<br/>3 Mr Springett is feeling, go beyond, a little bit beyond<br/>4 4.30, though I am very conscious that we have people who<br/>5 have been working quite hard since 9 o'clock, including<br/>6 the transcription service. So we'll see how we go, but<br/>7 certainly not beyond 4.45.</p> <p>8 MR MACLEAN: Can I just ask if I may about the -- picking up<br/>9 on Mr Freeman's point -- if the hot tub might run into<br/>10 Tuesday. I think as matters stand, we have been<br/>11 allocated a half day each for cross-examination of the<br/>12 experts. But I take it that the Tribunal doesn't<br/>13 anticipate that the hot tub would last beyond lunchtime<br/>14 on Tuesday. I am simply asking what the knock-on effect<br/>15 might be for the rest --</p> <p>16 THE CHAIRMAN: No, to be clear, we do not anticipate the hot<br/>17 tub part of the examination extending more than a day.<br/>18 We would like to think it would be concluded between<br/>19 half a day and a day. Nor do we want to abrogate your<br/>20 ability to cross examine, so I am afraid what we are<br/>21 talking about is moving into the time that was allocated<br/>22 for closing submissions and we can consider how to deal<br/>23 with that.</p> <p>24 MR MACLEAN: I understand. On that basis then, assuming --<br/>25 I think I was cross-examining Mr Parker before Mr Harris</p> <p style="text-align: center;">Page 117</p> | <p>1 he? He says "the effect of this would be", bullet 1,<br/>2 and then I am reading bullet point 2?</p> <p>3 <b>A. I see what Mr Parker said, yes.</b></p> <p>4 Q. And can you see that over to the next page, he even goes<br/>5 so far as to say in his penultimate paragraph, after the<br/>6 bullet points have finished:<br/>7 "This approach ..."<br/>8 So pausing there. One infers that that is the<br/>9 approach of this proposal for consideration about<br/>10 a collective boycott of Rightmove:<br/>11 "This approach would have to be unanimous."<br/>12 Do you see that?</p> <p>13 <b>A. I see.</b></p> <p>14 Q. "It simply won't work if one agent says yes and one<br/>15 agent says no."<br/>16 Do you see that?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And that reflects the interchange we had yesterday about<br/>19 the fact that agents see themselves as in competition<br/>20 with other agents in their locality, doesn't it?</p> <p>21 <b>A. I don't know what he means by that.</b></p> <p>22 Q. I see. And then he even goes so far as to say his<br/>23 proposal for the collective boycott, he doesn't use<br/>24 those words of course, but he ends by saying:<br/>25 "I think we would also need to sign a legal document</p> <p style="text-align: center;">Page 119</p> |
| <p>1 cross-examines Mr Bishop, then the anticipation would be<br/>2 that my cross-examination of Mr Parker would start no<br/>3 later than lunchtime on Tuesday. If that's the case,<br/>4 I am content with that.</p> <p>5 THE CHAIRMAN: That is the understanding.</p> <p>6 MR MACLEAN: I am very grateful.</p> <p>7 MR HARRIS: Thank you.</p> <p>8 Unless there are any further matters, I propose,<br/>9 sir, to --</p> <p>10 THE CHAIRMAN: Please do.</p> <p>11 MR HARRIS: So that slight diversion for housekeeping<br/>12 matters which lawyers want to do. We were on page 1292<br/>13 in bundle number 3. Just a couple more matters on these<br/>14 two pages. Do you see Mr Parker's email, after he put<br/>15 forward the proposal for consideration, you see that he<br/>16 goes on to make some further remarks, next to some<br/>17 bullet points at the bottom of the page.</p> <p>18 <b>A. Yes, I see those.</b></p> <p>19 Q. And because you are copied in, you knew that he had said<br/>20 that at least in his view, it instantly changes the<br/>21 playing field, puts Agents' Mutual in a strong position;<br/>22 yes?</p> <p>23 <b>A. I can see what it says.</b></p> <p>24 Q. And he is referring, one sees from the email, to the<br/>25 proposal for the collective boycott of Rightmove, isn't</p> <p style="text-align: center;">Page 118</p>   | <p>1 so there is no back tracking within a set period of<br/>2 time."<br/>3 Do you see that?</p> <p>4 <b>A. I see that.</b></p> <p>5 Q. And then this is all copied to you, isn't it, the top of<br/>6 1292?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And this person is responding, is Mr Henning:<br/>9 "Good afternoon, Jonathan. You are not alone."<br/>10 He copies that to a whole series of other agents in<br/>11 the North East, doesn't he?</p> <p>12 <b>A. Actually, the one thing I can't say was whether I was<br/>13 initially on copy for Mr Parker's email.</b></p> <p>14 Q. No, but you certainly received it because you are copied<br/>15 in to the one above?</p> <p>16 <b>A. Indeed, in Mr Henning's reply.</b></p> <p>17 Q. So you did receive it then?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. So you can see then, well before you circulated that<br/>20 list of further agents, that they are advocating having<br/>21 a further meeting with this -- a key point on the<br/>22 agenda, this proposal to have a collective boycott of<br/>23 Rightmove. A key point on the agenda; right?</p> <p>24 <b>A. I can see what they are contending, yes.</b></p> <p>25 Q. And then if we turn over one or two pages in the bundle</p> <p style="text-align: center;">Page 120</p>              |

1 to 1297 and move to the next day. I am going to take  
 2 you to your own email in just a moment, so we won't  
 3 leave that out. But at 8.23 in the morning there is  
 4 a response. In fact, one can see at the bottom of the  
 5 page, the previous afternoon is a "totally agree" from  
 6 a Mr Small and then the next morning at 8.23, again  
 7 copied to you. Mr Henning responds and you can see what  
 8 he says but he says it needs to be a key agenda point  
 9 and this agent is expressing the view at the bottom:  
 10 "As I said the other day, we are all in competition  
 11 but this is one area we all need to agree on."  
 12 Right?  
 13 **A. I can see that.**  
 14 Q. So you knew the sort of mindset that this group of  
 15 agents was having in the North East, didn't you?  
 16 **A. I can only go from these two emails, can't I?**  
 17 Q. That's right but you knew from those two emails, didn't  
 18 you?  
 19 **A. I knew what Mr Parker was thinking. He was the letting**  
 20 **manager at Whitley Bay and Mr Henning.**  
 21 Q. And also you knew what Mr Small was thinking?  
 22 **A. And Mr Henning.**  
 23 Q. And Mr Henning. So you did know then?  
 24 **A. Well, you are implying that I knew what each member of**  
 25 **this quite large group on circulation was intending**

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1 **which is a different thing.**  
 2 Q. I see. And then the email that you have been wanting to  
 3 get to, and fair enough, Mr Springett, you respond,  
 4 don't you, if you look over several pages at 1307 in the  
 5 bundle, the various other emails about getting people  
 6 into the grouping but the one that I think you were  
 7 looking for, do you see that, starts towards the top of  
 8 13.07, "Ian Springett 20 July, 10.05." To whom did you  
 9 send that?  
 10 **A. Mr Henning.**  
 11 Q. So you didn't send it to any of the other people listed  
 12 on these multiple recipient emails, did you?  
 13 **A. I didn't.**  
 14 Q. So what you say to one of the group is:  
 15 "Steve, many thanks for your hard work on this."  
 16 Well you can see for yourself, perhaps if you read  
 17 it to yourself?  
 18 **A. No, I'm familiar with what I said.**  
 19 Q. What is notable, amongst other things, about this email,  
 20 Mr Springett, is that in addition to not sending it to  
 21 anybody but Mr Henning, what you don't say anywhere in  
 22 the email is that they mustn't reach a collective  
 23 agreement on the decision to join Agents' Mutual, do  
 24 you?  
 25 **A. Not in this email, but I'm responding to the suggestion**

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1 **in, primarily, Mr Parker's email, that they would**  
 2 **collectively determine which portal to retain or drop.**  
 3 Q. But yesterday in the transcript -- if anyone wants the  
 4 reference, it is page 183, line 21, you said as follows:  
 5 "So the process was built to make sure that we  
 6 complied with the original legal advice that we had  
 7 taken and been given about firms needing to make their  
 8 own independent decisions."  
 9 And you said that in response to some points I was  
 10 making about collective decisions to join  
 11 Agents' Mutual, didn't you?  
 12 **A. I did.**  
 13 Q. So the clear inference you were suggesting was that you  
 14 had to have some legal advice about it not being proper  
 15 to make a collective decision, even to join, as well as  
 16 a collective decision to drop a particular portal; yes?  
 17 **A. Yes, and nothing in this email to Steve Henning**  
 18 **contradicts that.**  
 19 Q. But I suggest to you, Mr Springett, that is not correct,  
 20 is it, because at the time, you didn't have any  
 21 appreciation of whether or not a collective decision to  
 22 join Agents' Mutual was even legal or illegal, did you?  
 23 **A. That's nonsense.**  
 24 Q. Perhaps I can take you then -- you will need to keep  
 25 open, bundle 3 somewhere. You might want to put away

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1 some of the others.  
 2 **A. I have H5 and H1.**  
 3 Q. They can go, yes. Keep number 3 to hand. Now we are  
 4 going to look at 16, please. And if you could please  
 5 open that to the front page of an email that you wrote  
 6 on 2 May 2016. It begins at 8719, right near the front  
 7 of the bundle. The background to this email,  
 8 Mr Springett, is you had received a letter from the CMA  
 9 and you said at the top, this is to your brand director,  
 10 Mr Milsom, I believe, in any event to one of your  
 11 colleagues:  
 12 "I agree that having some more demonstrable  
 13 compliance is desirable."  
 14 Does that put that into context for you, that's what  
 15 was going on?  
 16 **A. I agree about having some more demonstrable compliance,**  
 17 **yes.**  
 18 Q. But the point, Mr Springett, in relation to my last  
 19 question is over the page at 8721 and what you say there  
 20 is:  
 21 "The decision 2 [I am reading the second paragraph]  
 22 is the decision on the one other portal which may  
 23 require other portals to ...(Reading to the words)... To  
 24 remain within the law, this decision must clearly be  
 25 taken individually by each firm with no collusion

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1 between other agents."  
 2 But in your own words you say, here you say in 2016,  
 3 so some two years later and you say:  
 4 "The question which needs clarifying is whether  
 5 a collective decision to join AM would be illegal, even  
 6 if each agent involved made an individual decision  
 7 regarding their one other portal."  
 8 That is completely inconsistent with the evidence  
 9 that you have just given, that you already knew about it  
 10 and you had already had advice to say that wasn't  
 11 proper, isn't it?  
 12 **A. To answer this question, I would like to refer to some**  
 13 **documents. Firstly, being the letter that we received**  
 14 **from the CMA on 27 March 2015. The second, my response**  
 15 **to the CMA to that letter and then the letter that's**  
 16 **referred to in these emails which I believe**  
 17 **is April 2016. So I haven't got, I am afraid,**  
 18 **references for those documents but if somebody could**  
 19 **help us with that.**  
 20 MR HARRIS: Sir, I am not proposing to go to those.  
 21 Mr Springett's learned leading counsel can deal with  
 22 those in re-examination, if that's what he wants. He's  
 23 got a good note on the transcript.  
 24 **A. It would assist me to answer the point, so if I could**  
 25 **refer to those documents.**

1 Q. I don't have the time, sir, to do what Mr Springett  
 2 wants.  
 3 **A. I won't be able to give you the whole truth in that**  
 4 **case.**  
 5 Q. I am going to have to move on, I am afraid, sir, because  
 6 I put to him squarely and fairly, the point that I  
 7 suggest comes from the documents.  
 8 THE CHAIRMAN: If he fairly and squarely puts to you that  
 9 there are other documents which he knows about but  
 10 doesn't have the references to which he would like to  
 11 refer to in the answer, we'll have to look at them at  
 12 some point.  
 13 MR HARRIS: I accept that and I don't know what those  
 14 references are in any event. I don't know what  
 15 documents.  
 16 THE CHAIRMAN: Mr Maclean, I think you have five minutes of  
 17 your re-examination earmarked.  
 18 MR FREEMAN: Without putting words into your mouth.  
 19 MR MACLEAN: Yes.  
 20 **A. Let me answer the question you asked me then or the**  
 21 **point you put to me, that I didn't know at this point.**  
 22 **That is complete nonsense. We have had legal advice**  
 23 **from the outset and it has been taken by our board**  
 24 **several times over the last three years. The**  
 25 **presentation that all of the people in the North East**

1 **and, indeed, beyond the North East, received, made very**  
 2 **clear that agents had to take their own individual**  
 3 **decisions. The process I explained yesterday was set up**  
 4 **to make sure, as far as possible, from our perspective,**  
 5 **that that's what they did. So there are particular**  
 6 **circumstances which surround the remark I made there in**  
 7 **terms of the legal position regarding collective**  
 8 **purchase, for example, or entering into a joint venture**  
 9 **which were confused by differing messages that we saw**  
 10 **within the two letters from the CMA that I have referred**  
 11 **to.**  
 12 MR HARRIS: Thank you. But it is the fact, isn't it, if we  
 13 go back to bundle 3/1307, that you only write this email  
 14 back to one member of the group, notwithstanding the  
 15 large number of recipients of the earlier emails  
 16 proposing for consideration, a collective boycott; that  
 17 is correct, isn't it?  
 18 **A. I wrote back to Steve Henning because he had forwarded**  
 19 **me the email from Mr Parker.**  
 20 Q. Even though the proposal for consideration for  
 21 a collective boycott is amongst a group of agents, you  
 22 only write back to one, don't you?  
 23 **A. I don't accept it is a proposal for consideration. It**  
 24 **is one man's email copied.**  
 25 Q. Those are the words that it says, Mr Springett. In any

1 event, you can see that you only wrote back to one?  
 2 **A. I can.**  
 3 Q. And you didn't give any warning, even to that one agent,  
 4 about collective decision to join, did you?  
 5 **A. But, of course, that agent had already received the**  
 6 **warning because he had been in the presentation.**  
 7 Q. I see, so you accept that you didn't give the warning in  
 8 this email; correct?  
 9 **A. I accept that, yes.**  
 10 Q. And then if you go up the chain of emails, so I am now  
 11 working front words in the bundle, 1306, Mr Henning  
 12 responds to you one-to-one:  
 13 "I understand the legal position. I'm married to  
 14 a solicitor."  
 15 And then you respond in the middle of that page:  
 16 "Ah, I didn't appreciate you had legal advice on  
 17 tap."  
 18 But then there is a telling comment, isn't there,  
 19 Mr Springett:  
 20 "Please be mindful of it in relation to what gets  
 21 circulated. We don't want anything out there which  
 22 could be used against you all."  
 23 So you are concerned about there not being evidence  
 24 that can be traced back about these decisions, aren't  
 25 you?



1 **A. No.**  
 2 Q. This is a theme, Mr Springett. We'll see plenty more of  
 3 this as we go through the documents. I suggest to you  
 4 that one of the things you are doing is you are saying  
 5 to the individual who, on your view of the world, seems  
 6 to be most implicated, that he should be careful and, in  
 7 particular, he should be careful about what he  
 8 circulates because you don't want any evidence out there  
 9 which can be used against you. That is right, isn't it?  
 10 **A. So it is a long time ago this, but my sense of it is**  
 11 **that everyone was very clear or I had made it very clear**  
 12 **what the position was. There are a variety of people**  
 13 **involved in this correspondence, of varying degrees of**  
 14 **seniority, and what I was concerned with is that emails**  
 15 **of this type which had no bearing on events in relation**  
 16 **to this group at all because these are relatively**  
 17 **insignificant individuals in the scheme of things, could**  
 18 **be used in some way to harm the agents involved.**  
 19 Q. Exactly, Mr Springett. You were very concerned that  
 20 this grouping of agents could demonstrate involvement  
 21 with your knowledge of a collective boycott and you  
 22 didn't want there to be anything out there which could  
 23 be used against you all, did you?  
 24 **A. That's not true.**  
 25 Q. Those are the words in your email, Mr Springett. Then

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1 I am still going to stay with the North East but now  
 2 I am going to move bundles, Mr Springett. I am sorry  
 3 about this, it is just a feature of -- you can put  
 4 bundle 3 away for a while and I am now moving into  
 5 bundle 6. I am very sorry but we will be going back to  
 6 3 and 5 and 6 and we will even be looking, I am afraid  
 7 to say, at some emails for a different purpose again.  
 8 Thank you for bearing with me.  
 9 I am now in 6/3443B. Do you see, Mr Springett, that  
 10 this is an email from an agent in the North East,  
 11 Mr Hutchinson and I appreciate it is not sent to you but  
 12 can you see that it is sent to one of your, at the time,  
 13 board members, Mr Rook?  
 14 **A. Yes.**  
 15 Q. August 2014, so he was on the board of Agents' Mutual at  
 16 that point in time, wasn't he?  
 17 **A. He was.**  
 18 Q. And the message you say, a moment ago, was very clearly  
 19 disseminated. That is effectively what you said  
 20 a minute ago. It doesn't appear to have got through to  
 21 Mr Rook at all, does it? Look at what he says in the  
 22 second paragraph -- I am not suggesting that Mr Rook  
 23 sent the email but he received it, didn't he, and it  
 24 doesn't appear to have got through, this message about  
 25 not taking group decisions, to the people on this email?

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1 **A. Who hasn't done? Did you say Mr Rook? -- I haven't seen**  
 2 **anything from Mr Rook responding to any of these emails**  
 3 **so far.**  
 4 Q. No. I perhaps didn't phrase it very well. What I am  
 5 suggesting to you is what you said a moment ago about  
 6 the message of not taking what should be individual  
 7 competitive decisions individually, doesn't seem to have  
 8 percolated through to this Mr Hutchinson, when he sends  
 9 his email to Mr Rook and you can see that from the  
 10 second paragraph, amongst others?  
 11 **A. By this time, to the best of my knowledge, Mr Hutchinson**  
 12 **or his firm, is a member of Agents' Mutual. Mr Foster**  
 13 **is, Mr Rook is, Mr McCowan is. So all those and**  
 14 **Mr Coulson, yes, I believe all of those are already**  
 15 **contracted and members of Agents' Mutual.**  
 16 Q. Yes, thank you. That is helpful. And so one of the  
 17 members -- this is all prelaunch though; right?  
 18 **A. Yes.**  
 19 Q. He says in the second sentence of the second paragraph:  
 20 "Of course, we are all in competition with each  
 21 other but that does not mean that we cannot join  
 22 together, where by doing so, we can reduce our costs."  
 23 So they are clearly carrying on thinking about  
 24 collective decision making, even though they are in  
 25 competition with each other; correct?

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1 **A. Well, I think I've already said that by this point I was**  
 2 **aware that this group, as well as one in south Wales,**  
 3 **were contemplating collective purchasing arrangements**  
 4 **and if you look further down in the same email, you can**  
 5 **see that there are arrangements for Zoopla to go and**  
 6 **present to them all on 10 September.**  
 7 Q. That is right. Let us look further down in the same  
 8 email because there is a clear suggestion that they  
 9 should all agree to boycott Rightmove, isn't there? If  
 10 you look just above the second hole punch, the paragraph  
 11 beginning "On the assumption that"?  
 12 **A. It doesn't say boycott Rightmove.**  
 13 Q. It says:  
 14 "I think agree between us how we can stage a gradual  
 15 withdrawal from Rightmove by growing confidence between  
 16 us, in taking a group position in at least the time  
 17 valid".  
 18 So he is clearly saying to this group, including  
 19 a director of your company, putting forward a suggestion  
 20 about agreeing, collectively, to boycott Rightmove,  
 21 isn't he?  
 22 **A. It seems to be, yes.**  
 23 Q. In fact, you were pleased that the North East carried on  
 24 as a tight local collective, weren't you?  
 25 **A. I was pleased because it didn't matter to me who did**

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1 **what in terms of other portal. I just wanted the**  
 2 **maximum number of members of Agents' Mutual.**  
 3 Q. I think yesterday what we discussed was that you were --  
 4 doing my best to paraphrase an email which was at  
 5 bundle 5/5527 but the gist of your email was that you  
 6 wanted to create a critical mass everywhere; right? Do  
 7 you remember that from yesterday?  
 8 **A. I can't remember.**  
 9 Q. I can show you again if you like.  
 10 **A. I can't remember whether the words were "critical mass"**  
 11 **but my point is that I wanted to encourage the growth of**  
 12 **the Agents' Mutual network and I wanted members to get**  
 13 **more members and I wanted them to prepare for the launch**  
 14 **by this time as well, premarket, get ready.**  
 15 Q. Yes, but the important word, actually, is not so much  
 16 "critical mass" but that you were encouraging and  
 17 expressing your view that you wanted this sort of  
 18 grouping to take place everywhere and that was a quote  
 19 from the email. Do you remember that? I will show you  
 20 again if you like.  
 21 **A. No, I'm happy with that.**  
 22 Q. So you did want these groupings everywhere around the  
 23 country, didn't you?  
 24 **A. For the specific purpose I am talking about. It might**  
 25 **be relevant for me to say here that this matter has come**

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1 **up at our board and I was clear with the board that**  
 2 **where I had become aware that agents were considering**  
 3 **these kind of arrangements, I had told the people**  
 4 **concerned that they would need to take their own**  
 5 **independent legal advice and that's minuted.**  
 6 Q. But you didn't. We have just seen one example where  
 7 instead of writing back to the group, even though you  
 8 know the group is prepared to make that decision, you  
 9 only wrote to Mr Henning. That is not right, is it,  
 10 Mr Springett?  
 11 **A. Those people who told me that they were intending and**  
 12 **Mr Rook had already told me by this time that he was**  
 13 **intending to form the grouping into a collective**  
 14 **purchasing group, at that point I told him he would have**  
 15 **to get his own legal advice and the same is true in west**  
 16 **Wales, for example.**  
 17 Q. So you have already accepted you didn't send emails to  
 18 everybody?  
 19 **A. Yes.**  
 20 Q. The fact is that there were groupings making collective  
 21 decisions about joining Agents' Mutual and collective  
 22 decisions about which portal to drop all around the UK,  
 23 weren't there?  
 24 **A. Well, we discussed with Mr Notley, in his evidence, the**  
 25 **groups that he was aware of which broadly coincide with**

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1 **the ones I was aware of in relation to portal**  
 2 **negotiations with, in particular, Zoopla. I don't agree**  
 3 **that there were lots of groups making collective**  
 4 **decisions to join Agents' Mutual because the process**  
 5 **really wasn't set up in a manner that would have allowed**  
 6 **that.**  
 7 Q. You accept in some of your evidence, your written  
 8 evidence, that you knew of groupings in the North East?  
 9 **A. Yes.**  
 10 Q. Correct? That is the one that we have just seen. So  
 11 you can't deny that one.  
 12 THE CHAIRMAN: A little tendentious, Mr Harris.  
 13 MR HARRIS: Sorry, I didn't mean it in that way. I had my  
 14 mind looking for a bundle so apologies if it came across  
 15 that way.  
 16 I am now back in bundle X at tab 33. So this is  
 17 a good example of going back to something that we have  
 18 already looked at but for a different reason. Do you  
 19 see on the second page of that tab that on the night  
 20 before trial, you say at paragraph 2 under a statement  
 21 of truth that, actually, you do recall being aware of  
 22 several groups of agents mentioned which includes the  
 23 North East, west Wales, northwest London and some other  
 24 informal groups such as in Cambridge, the one in  
 25 Cambridge; yes?

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1 **A. Yes, I have less awareness of that than the first three**  
 2 **you mentioned.**  
 3 Q. Then you say that you also believe that there may have  
 4 existed a grouping in Devon. So that was new  
 5 information provided on the eve of trial; right? Why  
 6 didn't you mention the Devon one at any earlier stage?  
 7 **A. I'm not sure I was asked.**  
 8 Q. I see. But in fact there were groups in other areas of  
 9 the country that we have now learnt about in these  
 10 papers, weren't there, that you knew of?  
 11 **A. In which papers, sorry?**  
 12 Q. In these trial papers?  
 13 **A. You need to show me them.**  
 14 Q. There was a group in Maidstone, Kent. You knew about  
 15 that one?  
 16 **A. Well, we had a variety of groups but the degree to which**  
 17 **I was involved or aware varied. I was very aware of the**  
 18 **North East grouping, I was very aware of the west Wales**  
 19 **grouping. The others, less -- progressively less so.**  
 20 **So Maidstone, I have seen an email saying that members**  
 21 **of Agent's Mutual in the Maidstone area had got**  
 22 **together. That's what I know.**  
 23 Q. Let's run through a couple more and then we'll go back  
 24 to what you have done in your statement of truth the  
 25 night before trial.

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1 Bristol. You knew of a group of agents acting  
 2 collectively together, didn't you?  
 3 **A. Not that I recall.**  
 4 Q. Norfolk in East Anglia, you knew of a group there,  
 5 didn't you?  
 6 **A. It depends, really, whether you are trying to position**  
 7 **any meeting of a group of member agents as a group or**  
 8 **whether it is just a members meeting to pursue the**  
 9 **interests of growing Agents' Mutual and helping it**  
 10 **launch successfully.**  
 11 Q. And you also knew of the group of which Gascoigne Halman  
 12 forms a part, don't you, the Independent Estate Agent  
 13 Group; yes?  
 14 **A. But that is a pre-existing group. That has been around**  
 15 **for years.**  
 16 Q. That's right and you don't mention any of those in your  
 17 paragraph 2, do you, under the statement of truth?  
 18 **A. Well it -- I need to check what paragraph 12 is asking**  
 19 **me, if I am going to give a proper answer to this. What**  
 20 **does paragraph 12 ask me?**  
 21 Q. I promise to look that up for you, Mr Springett, over  
 22 the short adjournment and I can take you back to that  
 23 after lunch.  
 24 **A. Thank you.**  
 25 Q. But you also knew of groups of agents getting together

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1 to make decisions about whether or not to join  
 2 Agents' Mutual in Scotland, didn't you?  
 3 **A. Again, I have done a number of group presentations in**  
 4 **Scotland. It isn't the same thing.**  
 5 Q. And I am right to say that you also know about groups of  
 6 agents getting together to make collective decisions  
 7 about whether or not to join Agents' Mutual in Northern  
 8 Ireland as well, don't you?  
 9 **A. Again, I haven't, as I said yesterday, been involved**  
 10 **closely with Northern Ireland, but we have done group**  
 11 **presentations there.**  
 12 THE CHAIRMAN: Mr Harris, when you refer to collective  
 13 decisions, are you suggesting that there is a clear  
 14 differentiation between a meeting at which the  
 15 Agents' Mutual proposition is presented and, as it were,  
 16 sold, and a separate and distinct sort of meeting, where  
 17 there is a debate at which Mr Springett is present or an  
 18 Agents' Mutual person is present, where they are  
 19 debating what to do? Because, obviously, when one is  
 20 selling Agents' Mutual, the unspoken premise is that  
 21 Agents' Mutual want the agents to sign up.  
 22 MR HARRIS: Sir, there is a distinction which I hope I have  
 23 been adhering to in my questions which is about  
 24 collective groups making collective decisions about  
 25 whether to join, as opposed to just a collective

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1 marketing decision. But you will be pleased to hear,  
 2 sir, in each one of the examples that I have now  
 3 additionally drawn to Mr Springett's attention, I will  
 4 be going to documents for each of them, so we can see  
 5 what happened in each case.  
 6 THE CHAIRMAN: Right. I am grateful for that because  
 7 I wasn't absent that, sure what we would make of the  
 8 evidence that we've just had.  
 9 MR HARRIS: No, these are, if you like, introducing the  
 10 global and in our submission, vast array of groupings  
 11 and then we're going to be -- one of the reasons it is  
 12 going to take a long time is because I have to deal with  
 13 each of those groupings.  
 14 THE CHAIRMAN: Yes, I understand.  
 15 MR HARRIS: But I will be doing that and hopefully  
 16 Mr Springett has already said he is aware of an email  
 17 about this group and he remembers something about that  
 18 group, so we will get to that.  
 19 I am going to, Mr Springett -- I am conscious of  
 20 time. It may be that if we stop now -- I am about to  
 21 talk about one of those particular groupings in  
 22 considerably more detail. Maybe if we started again  
 23 at -- instead of quarter to, 20 to, if that is  
 24 acceptable.  
 25 THE CHAIRMAN: We'll reconvene at quarter to. Mr Springett,

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1 you will remember the warning of yesterday.  
 2 **A. Yes, indeed.**  
 3 MR HARRIS: Is the warning slightly different today, sir, as  
 4 regards there being no carve out of the purdah?  
 5 THE CHAIRMAN: I think that unless Mr Maclean has any  
 6 particular reason for wanting to take instructions,  
 7 I think that must be right.  
 8 MR MACLEAN: I think it is the usual rule because until you  
 9 deliver your ruling, there is no basis for me to be  
 10 seeking any instructions. I am content for the usual  
 11 ruling. Either you will give the directions or I will  
 12 communicate it to Mr Springett.  
 13 THE CHAIRMAN: Don't talk to anyone about this.  
 14 **A. Yes, sir.**  
 15 **(1.00 pm)**  
 16 **(Luncheon Adjournment)**  
 17 **(1.45 pm)**  
 18 MR HARRIS: Mr Springett, I said that after lunch I would  
 19 take you back to the questions that you were answering  
 20 and I will do that in just a moment and I hadn't  
 21 forgotten that and I did promise. But whilst you still  
 22 have open 3443B in volume 6, I just want to make two  
 23 more points whilst we are on those pages -- two more  
 24 questions, I beg your pardon and then I'll take you back  
 25 to that question.

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| <p>1 So bundle 6/3443B, the last question I was going to<br/>                 2 put to you related to the end of Mr Hutchinson's email<br/>                 3 of 7 August 2014 which was sent, amongst others, to<br/>                 4 Mr Rook. We already looked at several parts but over<br/>                 5 the page it finishes. Can you see that Mr Hutchinson<br/>                 6 rounds off by saying that:<br/>                 7 "I can see the main point is that as agents in<br/>                 8 competition with each other, we need to develop<br/>                 9 a confidence that we can actually agree something and<br/>                 10 that all will implement that agreement."<br/>                 11 Yes?<br/>                 12 <b>A. I see that.</b><br/>                 13 Q. And those are sentiments with which you were familiar,<br/>                 14 weren't you, at or about this time, that the agents,<br/>                 15 although they all saw themselves in competition with<br/>                 16 each other, wanted to reach agreement between<br/>                 17 themselves, notwithstanding that they are in competition<br/>                 18 with each other; is that right?<br/>                 19 <b>A. No.</b><br/>                 20 Q. Just finishing off then, if you look at the previous<br/>                 21 page -- we are going up the chain of emails at 3443A.<br/>                 22 There is no response from your board member, Mr Rook, in<br/>                 23 this chain, at least none that has been provided that we<br/>                 24 know of, but there is a response from a Mr Foster to,<br/>                 25 amongst others, Mr Rook and he chimes in on the same</p> <p style="text-align: center;">Page 141</p>   | <p>1 <b>A. Yes.</b><br/>                 2 Q. And if you look in bundle X at tab 25 which you have not<br/>                 3 seen before recently, if you look at page 173 within<br/>                 4 tab 25 at the bottom, you will see you answer that<br/>                 5 question 12 for the first time, to the best of your<br/>                 6 recollection -- I beg your pardon, Eversheds' answer<br/>                 7 about your recollection. It is a fair point,<br/>                 8 Mr Maclean.<br/>                 9 <b>A. Yes.</b><br/>                 10 Q. And then under a statement of truth, you give some<br/>                 11 additional information and that is what we looked at at<br/>                 12 tab 33.<br/>                 13 <b>A. Yes.</b><br/>                 14 Q. So that's just putting it into ...<br/>                 15 <b>A. Yes, and that's right, those are the groups where I was<br/>                 16 aware they were contemplating collective portal<br/>                 17 negotiations.</b><br/>                 18 Q. I am sorry, collective?<br/>                 19 <b>A. Negotiations.</b><br/>                 20 Q. Can I now take you away from bundle 6 and into bundle 5.<br/>                 21 Do you recall that there was a time in June 2014 when<br/>                 22 a particular marketing forum, so-called meeting was put<br/>                 23 together in the North East and I suggest to you that you<br/>                 24 knew that collective decision making would happen at<br/>                 25 that marketing meeting by groups of agents, didn't you?</p> <p style="text-align: center;">Page 143</p>  |
| <p>1 theme, doesn't he? Once he has "got out of the<br/>                 2 dentist's chair", he says, "I'm all for a collective<br/>                 3 approach"; do you see that?<br/>                 4 <b>A. I do.</b><br/>                 5 Q. And he goes on to say at the bottom of that page, just<br/>                 6 before the end, "Personally, I would ditch Rightmove."<br/>                 7 So he is putting his view to this collective grouping<br/>                 8 about which other portal he would choose; correct?<br/>                 9 <b>A. He is an individual doing that, yes.</b><br/>                 10 Q. As I said, I would go back -- you asked me if -- if you<br/>                 11 want it open -- if, you may not want it open -- it is in<br/>                 12 X, tab 33. I took you to your answer, where you named<br/>                 13 certain groupings and you said, "What is paragraph 12<br/>                 14 that I'm answering?" And just to tell you, we had<br/>                 15 written you -- this document isn't in the bundle so I'll<br/>                 16 just tell you what we had asked you. We had asked you<br/>                 17 about paragraph 15.10 of your fifth witness statement,<br/>                 18 in which you said that you "were aware, however, of<br/>                 19 a number of discrete groups of member agents or<br/>                 20 prospective agents who formed groups to discuss issues<br/>                 21 relating to their use of online property portals".<br/>                 22 <b>A. Yes.</b><br/>                 23 Q. So that's in your witness statement. And we wrote<br/>                 24 a question saying, effectively: can you please provide<br/>                 25 details of all other groups?</p> <p style="text-align: center;">Page 142</p> | <p>1 <b>A. I'm not -- I haven't got to the place.</b><br/>                 2 Q. Before we look at the -- we will definitely look at this<br/>                 3 document, but I am just asking you, you knew of the<br/>                 4 meeting, you just said that?<br/>                 5 <b>A. I knew of the meeting? In June?</b><br/>                 6 Q. Yes, so-called marketing forum meeting in June 2014 in<br/>                 7 the North East?<br/>                 8 <b>A. I know that it took place, yes.</b><br/>                 9 Q. And I am suggesting to you before we look at the<br/>                 10 document that you knew that collective decision making<br/>                 11 by the groups of agents at that meeting would happen at<br/>                 12 that meeting; right?<br/>                 13 <b>A. I knew the purpose of it was to take forward collective<br/>                 14 negotiations with other portals and, potentially, other<br/>                 15 media.</b><br/>                 16 Q. And am I right in saying that you didn't issue any<br/>                 17 warning to the participants in that meeting about not<br/>                 18 taking group decisions to join Agents' Mutual, did you?<br/>                 19 <b>A. Well, I'm not sure I was aware of who was going to be at<br/>                 20 the meeting.</b><br/>                 21 Q. Right. And you didn't give any warning, did you, as to<br/>                 22 them not taking a group decision as to which portal to<br/>                 23 choose, did you?<br/>                 24 <b>A. I didn't, no.</b><br/>                 25 Q. And in fact, all you did was you told your sales</p> <p style="text-align: center;">Page 144</p> |

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| <p>1 representative for the region to re-organise the agenda<br/>2 for the meeting, didn't you?<br/>3 <b>A. Well, it wasn't her place to organise the agenda.</b><br/>4 <b>I simply told her, to the best of my recollection, that</b><br/>5 <b>we, Agents' Mutual, couldn't be present for that part of</b><br/>6 <b>the agenda.</b><br/>7 Q. That is right. So let's have a look at the email<br/>8 itself. It is at bundle 5/2724. On that page, at 2754,<br/>9 you see about a third of the way down there is an email<br/>10 starting off the relevant part of this chain on<br/>11 2 June at 09.21 from Ms Whiteley. She is effectively<br/>12 your number 2 at the company, isn't he?<br/>13 <b>A. She is.</b><br/>14 Q. "Hi Ian, I just wanted to check the legal issues<br/>15 surrounding the NE meeting."<br/>16 That is a regional grouping of the North East<br/>17 agents, isn't it?<br/>18 <b>A. The North East meeting, yes.</b><br/>19 Q. "The meeting is officially a Marketing Forum [capitals]<br/>20 for the Agents' Mutual members in the North East. As<br/>21 part of that agenda, they will be negotiating with<br/>22 Zoopla and Rightmove for a collective rate to list with<br/>23 them."<br/>24 Do you see that?<br/>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 145</p>   | <p>1 <b>with that group. I'd also put Mr Rook in touch with</b><br/>2 <b>Mr Jones, who was within the west Wales group, so they</b><br/>3 <b>could inform each other about the potential issues</b><br/>4 <b>surrounding it and if you recall, I had also told them</b><br/>5 <b>that they needed to take their own independent legal</b><br/>6 <b>advice. So I think Ms Whiteley's question arose from</b><br/>7 <b>that situation having arisen, in her knowledge, for the</b><br/>8 <b>first time.</b><br/>9 Q. That doesn't make sense, does it, Mr Springett, because<br/>10 if that were right, then she wouldn't be asking you the<br/>11 question about: does that create any legal issues? She<br/>12 plainly doesn't know that collective decisions of the<br/>13 type she is referring to in this email in June 2014,<br/>14 even create any legal issues and that's why she's asking<br/>15 you, isn't it?<br/>16 <b>A. She is asking me in the specific context of the move by</b><br/>17 <b>this newly formed North East marketing group to conduct</b><br/>18 <b>collective negotiations with Rightmove and Zoopla.</b><br/>19 Q. I suggest to you that it is little wonder that<br/>20 Agents' Mutual personnel, and as we shall see, Julie<br/>21 Emmerson in a moment, becoming involved in these<br/>22 decisions, participating and/or being present at these<br/>23 sorts of decisions, when even your number 2 didn't know<br/>24 in June 2014 whether there were "any legal issues about<br/>25 collective decisions to not list on the one other</p> <p style="text-align: center;">Page 147</p> |
| <p>1 Q. "That obviously could link to a collective decision for<br/>2 them to choose to list on one particular portal and<br/>3 hence, a collective decision to not list on the other<br/>4 portals."<br/>5 Do you see that?<br/>6 <b>A. Yes, I do.</b><br/>7 Q. And she says to you:<br/>8 "Does that create any legal issues and is there an<br/>9 issue with Julie being present when those discussions<br/>10 happen?"<br/>11 She asked you that question; right?<br/>12 <b>A. I see that.</b><br/>13 Q. Isn't it extraordinary that here we are in June 2014,<br/>14 quite a long time after you were saying earlier today<br/>15 that you had been disseminating the message to all<br/>16 people that they should take individual decisions --<br/>17 that here is your number 2 and she doesn't even know<br/>18 whether that creates any legal issues. It is<br/>19 extraordinary, isn't it?<br/>20 <b>A. I am not sure it is because collective -- the idea of</b><br/>21 <b>the agents being approached or making an approach in</b><br/>22 <b>relation to the other portals was something that hadn't</b><br/>23 <b>come up very much before. It originated in the west</b><br/>24 <b>Wales group, who I think had begun talking to Zoopla at</b><br/>25 <b>a fairly early stage in 2014 and I was the primary link</b></p> <p style="text-align: center;">Page 146</p> | <p>1 portal?"<br/>2 <b>A. I think you overlooked what I just answered.</b><br/>3 Q. If Ms Whiteley didn't know, you couldn't surely expect<br/>4 Miss Julie Emmerson to know?<br/>5 <b>A. Should I repeat the answer I just gave?</b><br/>6 Q. She is the junior, isn't she, to Ms Whiteley?<br/>7 <b>A. She is the junior to Ms Whiteley and the enquiry to me</b><br/>8 <b>was quite rightly put by Ms Whiteley. She didn't know</b><br/>9 <b>the answer. She referred it to me.</b><br/>10 Q. So the warning that you had sent a year or so earlier<br/>11 that we saw earlier today to Mr Henning alone, about not<br/>12 taking group decisions as regards one other portal, that<br/>13 doesn't seem to have percolated through even to<br/>14 Ms Whiteley, does it?<br/>15 <b>A. It absolutely does. This is a different set of</b><br/>16 <b>circumstances to the norm that we were used to seeing</b><br/>17 <b>and the issues around collective purchasing, I don't</b><br/>18 <b>know the law on and we weren't going to become involved</b><br/>19 <b>in any of that, which is why I told the kind of -- the</b><br/>20 <b>people that were involved with these groups that they</b><br/>21 <b>had to get their own independent legal advice.</b><br/>22 Q. We will see, in fact, that you don't say anything of the<br/>23 sort, as we go through this email. What you say in the<br/>24 first instance, just up the page, is in response to<br/>25 Ms Whiteley, Ian Springett wrote: "Yes. Julie, ... "</p> <p style="text-align: center;">Page 148</p>  |

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| <p>1 That is Julie Emmerson, isn't she?<br/>                 2 <b>A. Mmm.</b><br/>                 3 Q. She is the local sales rep for Agents' Mutual in the<br/>                 4 North East; correct?<br/>                 5 <b>A. Mmm.</b><br/>                 6 Q. Sorry, is that a yes or no?<br/>                 7 <b>A. Julie is the what?</b><br/>                 8 Q. She is the local Agents' Mutual sales rep for the North<br/>                 9 East?<br/>                 10 <b>A. Yes, she is.</b><br/>                 11 Q. And you say:<br/>                 12 "Julie needs to ask whoever is leading the meeting<br/>                 13 to put matters like further agent recruitment,<br/>                 14 communication, et cetera, which she should be involved<br/>                 15 in, at the top of the agenda and then move on to agent<br/>                 16 only matters - joint negotiation with other portals and<br/>                 17 choice of other portal are completely off limits for<br/>                 18 us."<br/>                 19 <b>A. Yes.</b><br/>                 20 Q. So what you are effectively saying there is, isn't it,<br/>                 21 that you know that there will be these other joint<br/>                 22 negotiations, including about choice of other portal by<br/>                 23 the agents in the group but that just you don't want to<br/>                 24 be participating in them; right?<br/>                 25 <b>A. That's correct.</b></p> <p style="text-align: center;">Page 149</p>   | <p>1 <b>A. I refer -- I suggest that if she's questioned about the</b><br/>                 2 <b>stance, she should refer people to Clive Rook,</b><br/>                 3 <b>Agents' Mutual director, someone who I have previously</b><br/>                 4 <b>advised that if he was going to enter into this kind of</b><br/>                 5 <b>thing, he would need to take his own independent legal</b><br/>                 6 <b>advice. It's minuted.</b><br/>                 7 Q. With respect, Mr Springett, what you do is you<br/>                 8 deliberately refer people on to a board director of<br/>                 9 Agents' Mutual, if they want further information, don't<br/>                 10 you?<br/>                 11 <b>A. What I say, I think, is that she shouldn't be party to</b><br/>                 12 <b>any element of the meeting which relates to media</b><br/>                 13 <b>negotiation and if anyone questions her about that, they</b><br/>                 14 <b>need to be referred to Clive Rook.</b><br/>                 15 Q. That is right and that is because Clive Rook is a board<br/>                 16 director of Agents' Mutual, is it not?<br/>                 17 <b>A. Absolutely.</b><br/>                 18 Q. Interestingly -- so you don't say: oh you must make<br/>                 19 sure, either you, Helen or you, Julie, must tell them<br/>                 20 not to take these collective decisions but you do say<br/>                 21 she shouldn't be a party and she should avoid<br/>                 22 receiving/sending any documents, messages about it?<br/>                 23 <b>A. Yes.</b><br/>                 24 Q. So again your concern is about not creating in the hands<br/>                 25 of Agents' Mutual, any incriminating evidence, isn't it?</p> <p style="text-align: center;">Page 151</p>  |
| <p>1 Q. I see. But you don't say, even here to Ms Whiteley, you<br/>                 2 don't issue any warning or give any advice about joint<br/>                 3 decisions by the group in the North East to join<br/>                 4 Agents' Mutual, do you?<br/>                 5 <b>A. To join Agents' Mutual?</b><br/>                 6 Q. That's right?<br/>                 7 <b>A. That's not the question she's asking me. This is</b><br/>                 8 <b>a members group. They've already joined.</b><br/>                 9 Q. And it goes on up the page. Sorry, you have to sort of<br/>                 10 flick to the bottom of the previous page, and<br/>                 11 Ms Whiteley queries with you because you have not quite<br/>                 12 answered it in your first answer:<br/>                 13 "But is it okay for them to make decision to come<br/>                 14 off a specific portal through a meeting like this and<br/>                 15 can Julie be present when they discuss it or should she<br/>                 16 leave at that point?"<br/>                 17 Do you remember getting that email?<br/>                 18 <b>A. Yes, I do.</b><br/>                 19 Q. And what you say on the next page going forward in the<br/>                 20 bundle, 2753 at 10.39, you simply say that:<br/>                 21 "She [that is Julie Emmerson] must leave before<br/>                 22 either media negotiation or other portal is discussed."<br/>                 23 You don't say: she should take steps, either you or<br/>                 24 she should take steps to make sure those decisions don't<br/>                 25 happen, do you?</p> <p style="text-align: center;">Page 150</p> | <p>1 <b>A. Our messages have already been very clear to the agents</b><br/>                 2 <b>about what our perspective was on how they should act.</b><br/>                 3 <b>So if they felt that a collective purchasing arrangement</b><br/>                 4 <b>with, for example, Zoopla, was something they wanted to</b><br/>                 5 <b>look into, they had been clearly told they would need to</b><br/>                 6 <b>take their own legal advice about whether that was</b><br/>                 7 <b>acceptable or not.</b><br/>                 8 Q. It doesn't say anywhere in any part of this chain what<br/>                 9 you have now said three times, about you making sure<br/>                 10 that agents were told to take their own independent<br/>                 11 legal advice, does it?<br/>                 12 <b>A. Well, it is a conversation I had with Clive Rook, board</b><br/>                 13 <b>director of Agents' Mutual, and it is a conversation</b><br/>                 14 <b>I had previously with Mr Jones, who was the leading</b><br/>                 15 <b>light in the west Wales group and at the point that this</b><br/>                 16 <b>took place, I believe those were the only two that I was</b><br/>                 17 <b>aware of.</b><br/>                 18 Q. It doesn't say anywhere, in any part of this chain, does<br/>                 19 it?<br/>                 20 <b>A. I am sorry, what?</b><br/>                 21 Q. What you have now said four times, that you were going<br/>                 22 around giving advice to agents, including Mr Rook: make<br/>                 23 sure you take an independent decision and you get<br/>                 24 independent legal advice about that?<br/>                 25 <b>A. I didn't have to go very far because there were only two</b></p> <p style="text-align: center;">Page 152</p> |

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| <p>1 <b>people who discussed it with me.</b></p> <p>2 Q. And it is not any part of this chain, is it?</p> <p>3 <b>A. It is not part of this chain, no, but my evidence is</b></p> <p>4 <b>that I had those discussions and that was the advice</b></p> <p>5 <b>I gave and, actually, it was considered at our July</b></p> <p>6 <b>board meeting, where the matter is minuted.</b></p> <p>7 Q. I suggest to you further, Mr Springett, that in the</p> <p>8 final sentence, having said "avoid receiving/sending</p> <p>9 messages/documents about it", I have suggested to you</p> <p>10 already that that means you were concerned about the</p> <p>11 creation of incriminating evidence and that's why you</p> <p>12 also go on to say: "refer people to Clive Rook, so he</p> <p>13 can deal with it orally, can't he?"</p> <p>14 <b>A. I was, effectively, simply saying to both Ms Whiteley</b></p> <p>15 <b>and Miss Emmerson: this is territory which is not for</b></p> <p>16 <b>Agents' Mutual.</b></p> <p>17 Q. That is right. Well, in fact, you don't say that, what</p> <p>18 you say is: she must leave before these decisions. So</p> <p>19 what you are contemplating is a situation in which these</p> <p>20 selective decisions do go ahead with the agents but</p> <p>21 there is nobody present in the room from Agents' Mutual</p> <p>22 at the moment of those discussions?</p> <p>23 <b>A. Can't be party to it, precisely.</b></p> <p>24 Q. What you say is "she must leave before the media</p> <p>25 negotiation or other portal is discussed", and you can</p> <p style="text-align: center;">Page 153</p> | <p>1 <b>A. That's correct.</b></p> <p>2 Q. And Mr Rook, the board director of Agents' Mutual, he</p> <p>3 says:</p> <p>4 "Hi all, the need to keep the [and then he puts in</p> <p>5 quotation markets] media negotiation item to the end of</p> <p>6 the meeting, is clearly understood."</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And that email is copied to you, isn't it?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So at this stage, it is you and Helen and Julie and you</p> <p>11 can quite clearly see, can't you, that Mr Rook, board</p> <p>12 director of Agents' Mutual, is saying: yes, I understand</p> <p>13 the need to restructure the meeting and put the "media</p> <p>14 negotiation" to the end, but he's not saying: not to</p> <p>15 worry, Mr Springett, I know that a collective decision</p> <p>16 about these matters is not allowed at all, is he?</p> <p>17 <b>A. No.</b></p> <p>18 Q. And that is notwithstanding that you apparently have</p> <p>19 told him, I think you said it but correct me if I am</p> <p>20 wrong, a moment ago, that you told him on multiple</p> <p>21 occasions that this sort of collective decision making</p> <p>22 shouldn't happen?</p> <p>23 <b>A. I also told him if he was going to consider collective</b></p> <p>24 <b>purchasing arrangements with Zoopla, as we know on</b></p> <p>25 <b>Mr Notley's evidence took place, then he would have to</b></p> <p style="text-align: center;">Page 155</p>  |
| <p>1 see how Ms Whiteley interprets that, understandably, up</p> <p>2 the page between the hole punches. So this is "Hi</p> <p>3 Julie", this is from Helen Whiteley:</p> <p>4 "If you read through the notes below, you will see</p> <p>5 that the meeting agenda needs to be structured in</p> <p>6 a certain way and, indeed, you can't be present when it</p> <p>7 gets to the discussion on media negotiation or other</p> <p>8 portal choice."</p> <p>9 You are not saying to her: make sure you tell the</p> <p>10 agents that it can't happen, and then she doesn't say</p> <p>11 that to Julie, does she?</p> <p>12 <b>A. No, and I confirmed I didn't say that to them.</b></p> <p>13 Q. So the message then gets passed on up the chain --</p> <p>14 I guess down the chain whatever, from Helen to Julie:</p> <p>15 "I'm really sorry, this probably affects how the</p> <p>16 meeting is ordered."</p> <p>17 So she is not telling to Julie: make sure you tell</p> <p>18 the agents it can't happen, these collective decisions,</p> <p>19 is she?</p> <p>20 <b>A. No.</b></p> <p>21 Q. And then it is difficult to discern this but just above</p> <p>22 the "Hi Julie", do you see there's another email</p> <p>23 Julie Emmerson wrote and she just writes "FYI" and she</p> <p>24 passes that on to none other than a board director of</p> <p>25 Agents' Mutual, doesn't she?</p> <p style="text-align: center;">Page 154</p>  | <p>1 <b>get his own independent legal advice and we could have</b></p> <p>2 <b>nothing to do with it.</b></p> <p>3 Q. With respect, Mr Springett, I know why you do this and</p> <p>4 that is fair enough. You constantly come back to,</p> <p>5 collective purchasing negotiations and that, but the</p> <p>6 email starts off with Helen Whiteley saying to you:</p> <p>7 "That could obviously link to a collective decision</p> <p>8 for them to choose to list on one particular portal and</p> <p>9 hence, a collective decision to not list on the other</p> <p>10 portal."</p> <p>11 That is not the same as a collective purchasing</p> <p>12 decision, is it?</p> <p>13 <b>A. Well, I don't know what the law is on that.</b></p> <p>14 Q. I see. That's your answer, is it?</p> <p>15 <b>A. That's correct.</b></p> <p>16 Q. I see. I put it to you that the only sensible</p> <p>17 understanding that you personally could have received</p> <p>18 from this when you received it at 11.24 on 2 June, is</p> <p>19 that you knew that the group of agents in the North</p> <p>20 East, including a board director of Agents' Mutual, were</p> <p>21 going to have, at the end of the restructured meeting,</p> <p>22 a collective discussion and decision about, amongst</p> <p>23 other things, which portal to list on and which to not</p> <p>24 list on. That is right, isn't it?</p> <p>25 <b>A. Well, I think we know there wasn't a decision taken at</b></p> <p style="text-align: center;">Page 156</p> |

1 **that meeting. I think we know that there was**  
 2 **a presentation from Zoopla on 10 September 2014.**  
 3 Q. Am I right in saying, by reference to the emails we  
 4 already looked at before involving Mr Rook, you knew as  
 5 of this date that he had already been involved in  
 6 discussions in the North East about, potentially, which  
 7 portal the agents in the North East were going to  
 8 choose; that is right, isn't it?  
 9 **A. You are saying from the emails we considered earlier?**  
 10 Q. Yes?  
 11 **A. Well, a bit like Mr Symons yesterday, being copied on an**  
 12 **email is not necessarily the same as being involved.**  
 13 Q. If that is your answer, so be it.  
 14 What happens as regards Miss Emmerson, one infers  
 15 from the emails, I am about to take you to some of them,  
 16 that the meeting agenda did get re-ordered and  
 17 Miss Emmerson perhaps did step out of the room for that  
 18 moment and I think I have the right reference. If we go  
 19 now, please, to 2891 in the same bundle, the top email  
 20 is to Mark Small, copied to Mr Rook, the board member,  
 21 and none other than Julie Emmerson and it is from a man  
 22 we have now seen his name plenty of times, Steve Henning  
 23 in the North East. This is some days after the email,  
 24 so on the 2 June they are talking about the meeting yet  
 25 to happen. Then the meeting happens on a date that

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1 I don't know. And here on 10 June they are reporting  
 2 back on the meeting and it is from Mr Henning to  
 3 Mr Small, copied to Julie Emmerson and the board member:  
 4 "Hi Mark, good holiday?"  
 5 And then they report back on the meeting:  
 6 "A mixed view in the room as to who people would go  
 7 with. Probably more favouring Rightmove and some Zoopla  
 8 and some undecided."  
 9 And then they go on to talk about a plan.  
 10 So the part of the meeting that one infers  
 11 Julie Emmerson may have left physically, she is then  
 12 simply told what happens in that part, is she not, in  
 13 this email?  
 14 **A. If you read the last paragraph, it talks about**  
 15 **supporting Julie Emmerson in getting the rest of the**  
 16 **coastal agents signed up to Agents' Mutual.**  
 17 Q. I very much do want to read the last one but in relation  
 18 to my question -- can you please direct your mind to the  
 19 question. She steps, one infers, out of the room, we  
 20 don't know because we haven't been provided with any  
 21 information about that meeting, but even if she did, she  
 22 is simply told a few days later, what happened in the  
 23 bit where she stepped out, isn't she?  
 24 **A. She can read the email but I am not sure what the**  
 25 **relevance of that is.**

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1 Q. Don't worry about the relevance, Mr Springett?  
 2 **A. What this is really reflecting is that that group we are**  
 3 **now talking about, 10 June, had a purpose, which was**  
 4 **collective purchasing negotiations.**  
 5 Q. So you say.  
 6 **A. Well, okay. And also the purpose of furthering the**  
 7 **membership growth of Agents' Mutual and preparing for**  
 8 **the law. So the bit of that that Julie Emmerson is**  
 9 **interested in is the second part.**  
 10 Q. Right. Okay --  
 11 **A. I should also say that the way that we incentivise our**  
 12 **sales staff is purely signing up new members.**  
 13 **Julie Emmerson had nothing in her objectives or her**  
 14 **commission arrangements which would have given her any**  
 15 **reason to sway that group in one direction or another.**  
 16 **She just wanted it to be bigger.**  
 17 Q. Thank you, Mr Springett. Just bear with me a minute  
 18 because I want to find another page reference. So you  
 19 say this is just an unhappy coincidence, do you, that  
 20 Miss Emmerson is reported back on that very part of the  
 21 meeting where she was invited to step out, in the  
 22 context of an email where she is in fact really being  
 23 addressed about some completely separate matter. Is  
 24 that your case?  
 25 **A. I think that the group has two aspects to it. There is**

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1 **no reason for her not to receive the first part of this**  
 2 **email, as far as I can see. But the relevance of**  
 3 **including her on copy is the second part.**  
 4 Q. I see. But the fact is that it is all a bit of  
 5 a charade, is it not? She is invited to restructure the  
 6 meeting or to give suggestions about restructuring the  
 7 meeting. The bit that you personally suggest you are  
 8 anxious for her not to create messages and documents  
 9 about. She then steps out and then she simply finds out  
 10 a few days later what happens in that very part of the  
 11 meeting; right?  
 12 **A. I don't know if I can do more than repeat what I said**  
 13 **previously, that I was aware that that group was looking**  
 14 **at collective purchasing arrangements. There was**  
 15 **a board director who had been fully briefed by**  
 16 **Agents' Mutual with the legal advice that we had**  
 17 **received during the process of setting up and that**  
 18 **director had also been told that group would need to**  
 19 **take their own independent legal advice relating to**  
 20 **collective purchasing.**  
 21 Q. I see, but you can't point me to any communication in  
 22 which you say that that group was told to take  
 23 independent legal advice about the questions, can you?  
 24 **A. Well that would be -- well, I can tell you that**  
 25 **Clive Rook received that advice from me. Whether he**

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| <p>1 <b>communicated it beyond that, I don't know.</b></p> <p>2 Q. Thank you, Mr Springett, if you just bear with me for</p> <p>3 one moment, please. I'm sorry about this.</p> <p>4 So you point out a second part of the email, 2891.</p> <p>5 I think your evidence a moment ago was that was</p> <p>6 Julie Emmerson's business, that part?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. So we are agreed that Julie Emmerson is involved in the</p> <p>9 suggestion at the bottom that Mr Cooke and Mr Booth had</p> <p>10 agreed to support Julie Emmerson in getting the rest of</p> <p>11 the coastal agents signed up to AM. That is a group of</p> <p>12 agents, isn't it?</p> <p>13 <b>A. This is one agent meeting another, getting on the phone,</b></p> <p>14 <b>saying "Do you know about Agents' Mutual? Do you mind</b></p> <p>15 <b>if Julie Emmerson comes to see you to talk you through?"</b></p> <p>16 Q. Yes, the coastal agents is a group of agents, isn't it?</p> <p>17 <b>A. It's like saying Devon agents or agents in such</b></p> <p>18 <b>a street.</b></p> <p>19 Q. Yes, that's exactly, isn't it, exactly the same,</p> <p>20 Mr Springett?</p> <p>21 <b>A. But they are being recruited individually by one of our</b></p> <p>22 <b>salespeople and all of our salespeople.</b></p> <p>23 Q. I see, so when it says "support in getting the rest of</p> <p>24 the coastal agents", you are saying that is going to be</p> <p>25 done one by one, is it?</p> <p style="text-align: center;">Page 161</p> | <p>1 that an Agents' Mutual board member should be</p> <p>2 participating in an email with that subject? Do you</p> <p>3 agree?</p> <p>4 <b>A. I agree.</b></p> <p>5 Q. That is right. That is notwithstanding all the apparent</p> <p>6 warnings you gave him, none of which you can point to on</p> <p>7 a piece of paper; that is right, is it not?</p> <p>8 <b>A. I don't know what he replied to this or what his</b></p> <p>9 <b>subsequent involvement was. I don't know what he did</b></p> <p>10 <b>next.</b></p> <p>11 Q. Let us have a look at the email then.</p> <p>12 <b>A. I should say at this point, we are still a month ahead</b></p> <p>13 <b>of a meeting at which Zoopla attended this group to make</b></p> <p>14 <b>an offer for a group purchasing arrangement.</b></p> <p>15 Q. I see. Well, let's have a look at the first sentence</p> <p>16 then. So a moment ago you said the idea was to go and</p> <p>17 get them one by one, "the coastal agents" and you</p> <p>18 disputed my characterisation of the coastal agents as</p> <p>19 a group. But in fact it seems that Mr Small had exactly</p> <p>20 the same understanding as me because he says:</p> <p>21 "I was asked to approach all the coastal agents to</p> <p>22 arrange. A second meeting and discuss and hopefully all</p> <p>23 agree to which portals we will all come off [oh, and low</p> <p>24 and behold] as a group."</p> <p>25 Do you see that?</p> <p style="text-align: center;">Page 163</p>                                     |
| <p>1 <b>A. Yes, it wouldn't matter --</b></p> <p>2 Q. Well, that is a matter for the Tribunal. Perhaps I can</p> <p>3 take you to a document that shows how this in fact did</p> <p>4 happen. It certainly wasn't one by one. Bundle</p> <p>5 6/3453B. The email we looked at a moment ago was</p> <p>6 10 June and the email we are now looking at is</p> <p>7 11 August. It has some of our favourite protagonists in</p> <p>8 there. Mr Small sends it? Mr Parker, Mr Cooke,</p> <p>9 Mr Henning and then do you see the fifth recipient is</p> <p>10 none other than a board member of Agents' Mutual, yes,</p> <p>11 Mr Rook?</p> <p>12 <b>A. Yes, I can see that.</b></p> <p>13 Q. So --</p> <p>14 THE CHAIRMAN: Sorry, Mr Harris, your reference was 3454B,</p> <p>15 was it?</p> <p>16 MR HARRIS: 3453B.</p> <p>17 THE CHAIRMAN: Thank you.</p> <p>18 MR HARRIS: So notwithstanding the many warnings you gave to</p> <p>19 Mr Rook on multiple occasions about not taking</p> <p>20 collective decisions about which portals to come off,</p> <p>21 here he is as a primary recipient of an email, the</p> <p>22 subject matter is what?</p> <p>23 <b>A. OnTheMarket, making a decision on which portals to come</b></p> <p>24 <b>off.</b></p> <p>25 Q. Crikey, that seems very odd, doesn't it, Mr Springett,</p> <p style="text-align: center;">Page 162</p>  | <p>1 <b>A. I see it.</b></p> <p>2 Q. So that is not at all consistent with what you were</p> <p>3 saying about going and asking them one by one, is it?</p> <p>4 <b>A. I would need to check whether these agents were already</b></p> <p>5 <b>members of ours at the time.</b></p> <p>6 Q. I see. We can have a look further down and you agreed</p> <p>7 with me just a moment ago that this was Julie's</p> <p>8 Emmerson's job, didn't you, and she was involved in</p> <p>9 that. You said that just about three or four minutes</p> <p>10 ago; correct?</p> <p>11 <b>A. Forgive me, that -- it would make a difference whether</b></p> <p>12 <b>this grouping was existing members, in which case the</b></p> <p>13 <b>discussions might well be linked to the collective</b></p> <p>14 <b>purchasing arrangements but otherwise, if it is --</b></p> <p>15 <b>Julie's job was to recruit new agents to Agents' Mutual.</b></p> <p>16 Q. I see, so -- reading on in this email. Do you see the</p> <p>17 second sentence:</p> <p>18 "In September there will be an OnTheMarket meeting</p> <p>19 at which we all need to have a decision made for the</p> <p>20 coast."</p> <p>21 That is clearly a collective decision, isn't it?</p> <p>22 <b>A. On the face of it.</b></p> <p>23 Q. Can we then put that bundle away, number 6 and move this</p> <p>24 time into bundle number 8. Would you mind turning up,</p> <p>25 please, page 4463A, so we are back to your board member,</p> <p style="text-align: center;">Page 164</p> |

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| <p>1 Mr Rook.<br/>2 <b>A. Yes.</b><br/>3 Q. And I am not suggesting that you were party to this<br/>4 email but it is sent from a board member of<br/>5 Agents' Mutual, isn't it, internally, within his estate<br/>6 agency in the North East?<br/>7 <b>A. Yes.</b><br/>8 Q. Twenty-four November, so a couple of months after these<br/>9 emails in which we have already seen his email<br/>10 participation; correct? The emails we were just looking<br/>11 at. They were in June 2014 and August 2014, weren't<br/>12 they?<br/>13 <b>A. I think participation again -- he was one of the</b><br/>14 <b>recipients.</b><br/>15 Q. Yes, participation by email; yes?<br/>16 <b>A. I didn't see any response from him.</b><br/>17 Q. Let's see what he has to think about this. You can see<br/>18 this is still prelaunch, isn't it?<br/>19 <b>A. I can.</b><br/>20 Q. And he highlights -- the subject is "OTM/RM and Z,<br/>21 highly confidential", and you can see that he is<br/>22 relaying his thoughts. This is the same man, isn't it,<br/>23 Mr Rook, to whom you said to Helen Whiteley, "further<br/>24 queries about these should be referred to Clive Rook";<br/>25 right, that was your view?</p> <p style="text-align: center;">Page 165</p> | <p>1 <b>I think, John Notley of Zoopla Property Group to this</b><br/>2 <b>North East agents marketing group. So inevitably they</b><br/>3 <b>will have been considering that offer and it is not</b><br/>4 <b>clear whether they have determined to take it or not.</b><br/>5 Q. That is right. But they are clearly having collective<br/>6 discussions about it, aren't they?<br/>7 <b>A. Well, this is an internal email.</b><br/>8 Q. Yes, and he is reporting about what he knows internally?<br/>9 <b>A. Well, I can't comment on that.</b><br/>10 Q. I see. Okay. We can see what it says. Fair enough if<br/>11 you didn't receive it.<br/>12 The third point I wish to draw out is from item<br/>13 number 5. Do you see "coast"? One infers that is the<br/>14 same group of coastal agents that we looked at in<br/>15 the August email. Is that a fair inference?<br/>16 <b>A. I think Mark Small and coastal is correct.</b><br/>17 Q. So he says:<br/>18 "Mark Small done a big job ... big membership and<br/>19 appears to have all except M Cooke ..."<br/>20 I am not sure if that is a man or a woman or the<br/>21 name of an estate agent:<br/>22 "If all others go Z, I estimate NC likely to follow.<br/>23 If he does not, he can be marginalised."<br/>24 Can you offer any comment as to what was meant by<br/>25 your board member, Mr Rook?</p> <p style="text-align: center;">Page 167</p> |
| <p>1 <b>A. Yes.</b><br/>2 Q. People should turn to this board member in the North<br/>3 East; correct?<br/>4 <b>A. That's right.</b><br/>5 Q. And we can see what he's thinking at this time by some<br/>6 of the comments that he makes in this email. Picking it<br/>7 up in number 2 -- it is a little bit hard to discern, it<br/>8 goes numbered items. Can you just pick out the numbers?<br/>9 <b>A. Yes, I can.</b><br/>10 Q. And then second line of that one, he says:<br/>11 "All members to heavily promote to make number 1 and<br/>12 marginalise non-members."<br/>13 Misspelt. Do you see that?<br/>14 <b>A. Yes.</b><br/>15 Q. This is in advance of launch, isn't it?<br/>16 <b>A. Yes.</b><br/>17 Q. He refers to "nearly all members in our area have<br/>18 committed verbally to Z."<br/>19 <b>A. Yes.</b><br/>20 Q. So he clearly knows in advance of launch of the proposed<br/>21 decisions yet to be made because the portal hasn't<br/>22 launched, of the nearly all members in his area, doesn't<br/>23 he?<br/>24 <b>A. Yes, but if I look at the date of this, 24 November,</b><br/>25 <b>this will be after a proposal had been received by,</b></p> <p style="text-align: center;">Page 166</p>                                  | <p>1 MR MACLEAN: I am sorry, sir, we keep having the mantra of<br/>2 the board member, Mr Rook. Which of course is true, he<br/>3 was. But this is a Rook Matthews Sayer email and the<br/>4 witness has just been asked to comment on what Mr Rook<br/>5 had in mind, I think.<br/>6 MR HARRIS: That is why I said "Can you offer any comment?"<br/>7 And if he can't, he can't.<br/>8 THE CHAIRMAN: The document says what it says and the<br/>9 witness will say what he says.<br/>10 MR HARRIS: So it is an entirely fair question,<br/>11 Mr Springett, can you offer any comment about what he<br/>12 means when he says "if he does not, he can be<br/>13 marginalised"?<br/>14 <b>A. No.</b><br/>15 Q. So you didn't discuss that sort of thing with him then?<br/>16 <b>A. No.</b><br/>17 Q. Perhaps we'll go down to item number 8.<br/>18 <b>A. I don't think I went to the North East</b><br/>19 <b>between December 13 and early 2015.</b><br/>20 Q. Thank you. Can you offer any comment as to what he<br/>21 means by the sub-bullet 2 within number 8. Do you see 8<br/>22 and it says "strengths", misspelt and then it says<br/>23 second line down, 2, "we can successfully attack [again<br/>24 misspelt] non-members"?<br/>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 168</p>  |

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| <p>1 Q. Can you offer any comment as to what Mr Rook meant by<br/>2 that?</p> <p>3 <b>A. I think it goes back to what you were saying before,<br/>4 that use of portals being an element of competition<br/>5 between agents.</b></p> <p>6 Q. I am sorry, Mr Springett, I don't understand that.<br/>7 Would you mind explaining that further?</p> <p>8 <b>A. I think what you were saying was that you were asserting<br/>9 that competition amongst -- that membership of different<br/>10 portals was a factor in competition between estate<br/>11 agents.</b></p> <p>12 Q. I was saying that.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And at first you weren't accepting that?</p> <p>15 <b>A. Not pre the launch of OnTheMarket. I am not saying the<br/>16 principle is wrong. I am just saying what operated in<br/>17 practice before the launch.</b></p> <p>18 Q. What I am just a bit confused about, Mr Springett, is<br/>19 how does that relate to you offering a view, if you have<br/>20 one, about what Mr Rook says, when he says "can<br/>21 successfully attack non-members"?</p> <p>22 <b>A. He is talking as a Rook Matthews Sayer person. This is<br/>23 a Rook Matthews Sayer internal email.</b></p> <p>24 Q. Again, so -- I am lost. How does that relate to the<br/>25 question of how he can successfully attack non-members?</p> <p style="text-align: center;">Page 169</p>  | <p>1 <b>A. Mmm.</b></p> <p>2 Q. Thank you. So do you accept from me that this does<br/>3 show, at least to some extent, the way in which a man<br/>4 who was at the time of this email, a board member of<br/>5 Agents' Mutual, is approaching the question of choice of<br/>6 portals in the North East?</p> <p>7 <b>A. I wasn't party to the email. I hadn't had conversations<br/>8 with Clive Rook since, probably, early October, I think,<br/>9 on this sort of topic, so I don't know.</b></p> <p>10 Q. So that's the answer, you don't know whether it shows<br/>11 any of his internal thinking or not?</p> <p>12 <b>A. I don't know what he was thinking.</b></p> <p>13 Q. Well, you can see what he wrote in the email?</p> <p>14 <b>A. But I don't know what he was thinking.</b></p> <p>15 Q. But you would accept the board directors of<br/>16 Agents' Mutual, they are instrumental, aren't they, in<br/>17 how Agents' Mutual went about recruiting members and<br/>18 getting people to sign up; yes?</p> <p>19 <b>A. "Instrumental" is probably a bit strong. The other<br/>20 board members or the board members at this point in time<br/>21 were all non-executive.</b></p> <p>22 Q. Perhaps I will change the word then. Instrumental. You<br/>23 prefer they can provide guidance and reassurance?</p> <p>24 <b>A. Well, their role is strategy, policy, financial control,<br/>25 that's how we set up.</b></p> <p style="text-align: center;">Page 171</p>                   |
| <p>1 <b>A. Because if he believes he has a competitive advantage<br/>2 over them by being with OnTheMarket, depending what<br/>3 other agents are doing, it will affect the competitive<br/>4 landscape between them.</b></p> <p>5 Q. I see. So you are now with me, are you, about how<br/>6 number and choice and identity of portals is either<br/>7 a parameter or perhaps if Mr Freeman prefers, a way of<br/>8 competing between estate agents?</p> <p>9 <b>A. I was never not with you in principle. I am just saying<br/>10 to you it wasn't occurring prior to our launch.</b></p> <p>11 Q. Do you see in the third sub-point of item 8 at the end<br/>12 of the line, he is talking about -- well, at item 3:<br/>13 "Leaving Rightmove, saving some money and slow stop<br/>14 entry of online agents?<br/>15 Can you offer a view as to what he meant by that?</p> <p>16 <b>A. Not particularly.</b></p> <p>17 Q. And then do you see down at item 1, towards the bottom<br/>18 of the page, it goes 9, 10, 11, 2, 12, 10, but I am not<br/>19 quite sure why but I'm on item 11, can you see that?</p> <p>20 <b>A. "Other considerations"?</b></p> <p>21 Q. And do you see that Mr Rook is, amongst other things,<br/>22 reporting back at item 4 that a collective boycott is<br/>23 illegal?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. It doesn't say "is". "Collective boycott illegal"?</p> <p style="text-align: center;">Page 170</p> | <p>1 Q. But they can provide guidance and reassurance and they<br/>2 can influence the decision of either actual or<br/>3 prospective members, can't they?</p> <p>4 <b>A. Well, I think their reputations being on the line from<br/>5 the outset was what gave this traction in the first<br/>6 place.</b></p> <p>7 Q. Precisely, Mr Springett, because they did have the<br/>8 influence with the wider estate agent group; right?</p> <p>9 <b>A. No, I think it's because they would have been regarded<br/>10 as being responsible custodians of the company behind<br/>11 Agents' Mutual and OnTheMarket, so people would have<br/>12 expected it to be properly run, appropriately<br/>13 structured, all these things.</b></p> <p>14 Q. I am not sure, actually -- on this point, Mr Springett,<br/>15 I'm not actually I am actually disagreeing.</p> <p>16 <b>A. No.</b></p> <p>17 Q. All I am saying is including for the reasons that you<br/>18 have just given, they do have meaningful influence over<br/>19 other estate agents, don't they, the board members?</p> <p>20 <b>A. Yes, well let's see where you go with that.</b></p> <p>21 Q. Why don't we just answer the question, Mr Springett?</p> <p>22 <b>A. Because you are not defining what you mean by influence.<br/>23 I have just given you an answer as to what I think their<br/>24 influence is.</b></p> <p>25 Q. And what, are you now waiting for me to put a document</p> <p style="text-align: center;">Page 172</p> |

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| <p>1 to you?</p> <p>2 <b>A. I don't know what you are going to say but what kind of</b></p> <p>3 <b>influence do you mean that they have?</b></p> <p>4 Q. I suggest to you, Mr Springett, that they are put</p> <p>5 forward by you from time to time as providing</p> <p>6 reassurance to other prospective members about the aims</p> <p>7 and direction of Agents' Mutual. Is that right?</p> <p>8 <b>A. It didn't happen often but it has happened.</b></p> <p>9 Q. Yes, it has happened. Let me now give you an example.</p> <p>10 In bundle 5 --</p> <p>11 THE CHAIRMAN: Just pausing there. Looking at point 3 on</p> <p>12 4463A, "Nearly all members ...(Reading to the words)...</p> <p>13 committed verbally to Z." I infer that's Zoopla. Is</p> <p>14 that right?</p> <p>15 MR HARRIS: That is our inference. It is certainly</p> <p>16 consistent with all the other places where Z has been</p> <p>17 used.</p> <p>18 THE CHAIRMAN: And then the brackets, this is H8/4463A. The</p> <p>19 document you have just been cross-examining on,</p> <p>20 Mr Harris.</p> <p>21 MR HARRIS: Yes, thank you.</p> <p>22 THE CHAIRMAN: Then in brackets we have the -- well, these</p> <p>23 are the estate agents that are in discussions with</p> <p>24 Zoopla; is that right?</p> <p>25 MR HARRIS: Are you in item 3, sir?</p> <p style="text-align: center;">Page 173</p>  | <p>1 Q. Yes.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. That is right, isn't it?</p> <p>4 <b>A. It is from me.</b></p> <p>5 Q. To the grouping of the west Wales agents: yes?:</p> <p>6 "Dear Nigel, thank you for your message."</p> <p>7 And we'll be seeing this email at a later stage as</p> <p>8 well. But for right now there's some discussion in the</p> <p>9 paragraph beginning "I am not able", about leading</p> <p>10 a collective boycott, et cetera. I am going to be</p> <p>11 coming back to that, Mr Springett, but for now, on the</p> <p>12 point about directors, what you say to this agent is:</p> <p>13 "I thought you might well make conversation with one</p> <p>14 of our directors about this. Not least to give further</p> <p>15 reassurance about the board's commitment to the stated</p> <p>16 strategy."</p> <p>17 So there you are, offering either a director to</p> <p>18 provide further information about how the company</p> <p>19 operates and provide commitments about what the board</p> <p>20 strategy is; right?</p> <p>21 <b>A. Well the particular context here is that at this point</b></p> <p>22 <b>in time, in the run-up to our launch -- I think we are</b></p> <p>23 <b>in to 2014 -- some of our competitors are spreading</b></p> <p>24 <b>rumours around that they have signed up our board member</b></p> <p>25 <b>firms into longer term contracts which would make it</b></p> <p style="text-align: center;">Page 175</p>   |
| <p>1 THE CHAIRMAN: I am, Mr Harris, yes.</p> <p>2 MR HARRIS: Yes, that is what I understand to be the case.</p> <p>3 They are acronyms, as I understand it, for estate agents</p> <p>4 in that region and we know, for example, Mark Small</p> <p>5 which is not an acronym, he is, as we know, an estate</p> <p>6 agent in that region and because it begins with the</p> <p>7 words "Nearly all are members", and then there are</p> <p>8 brackets with what seems to be a list of members and it</p> <p>9 goes on to say "I am not yet sure about", and then there</p> <p>10 are various names. My understanding is that they are</p> <p>11 all agents in the --</p> <p>12 THE CHAIRMAN: Staying with Rightmove.</p> <p>13 MR HARRIS: Yes, that's right.</p> <p>14 THE CHAIRMAN: Yes, thank you.</p> <p>15 MR HARRIS: Thank you.</p> <p>16 So Mr Springett, I have now taken you, please, into</p> <p>17 bundle 5 at page 2577. I'm taking you to this email on</p> <p>18 this point about directors of the board of directors of</p> <p>19 Agents' Mutual being influential. So in that regard can</p> <p>20 you just note what this email is. It is 28 March 2014.</p> <p>21 You see at the bottom of the previous page?</p> <p>22 <b>A. I am sorry?</b></p> <p>23 Q. It is from you to some members of the west Wales</p> <p>24 grouping of agents, isn't it?</p> <p>25 <b>A. So this is page 2577?</b></p> <p style="text-align: center;">Page 174</p> | <p>1 <b>impossible, actually, for them to observe the one other</b></p> <p>2 <b>portal at the projected launch date. So we were keen</b></p> <p>3 <b>and we did actually, at some point in 2014, and it is in</b></p> <p>4 <b>the bundle somewhere, get their permission to issue</b></p> <p>5 <b>a statement saying that they were all committed and all</b></p> <p>6 <b>in a position to comply with the one other portal. And</b></p> <p>7 <b>if you look at the email -- I think the email on 2578,</b></p> <p>8 <b>the second paragraph of that email says exactly that.</b></p> <p>9 Q. Yes, thank you. Don't worry, Mr Springett, we are going</p> <p>10 to come back to this email. I am only raising it for</p> <p>11 the moment for the final paragraph. It is right, is it</p> <p>12 not, that you were putting forward to a grouping of</p> <p>13 agents in west Wales, a director, as being the person to</p> <p>14 speak to, to give reassurance about the board's</p> <p>15 direction and strategy. That is right, isn't it?</p> <p>16 <b>A. I see what I say to him. (Pause). Yes, a conversation</b></p> <p>17 <b>with one of our directors to give reassurance about the</b></p> <p>18 <b>board's commitment to the strategy.</b></p> <p>19 Q. Exactly. And in fact you then name the director,</p> <p>20 Mr Michael Hodgeson?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. He is a director, indeed a founder member director,</p> <p>23 isn't he?</p> <p>24 <b>A. He is.</b></p> <p>25 Q. And then you go on to say to this group of agents:</p> <p style="text-align: center;">Page 176</p> |

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| <p>1 "In any event, for you and your colleagues to have<br/>2 a direct line to the board, it seems appropriate"<br/>3 <b>A. Yes.</b><br/>4 Q. In other words, the company acting vis à vis this<br/>5 grouping of agents, not just through you but via a board<br/>6 director; yes?<br/>7 <b>A. That's right, well they are members of the company.<br/>8 They own it.</b><br/>9 Q. And in fact, it is the directors who are charged with<br/>10 implementing the OOP rule, isn't it?<br/>11 <b>A. It is, it is in the contract.</b><br/>12 Q. That is right. If you would like to -- members of the<br/>13 Tribunal, that is in the very first line of the<br/>14 membership contracts:<br/>15 "The company will, through its directors, seek to<br/>16 implement the OOP rule."<br/>17 Mr Springett accepts that.<br/>18 So we have seen so far, Mr Rook's involvement up in<br/>19 the North East and he's a director and we have seen that<br/>20 you put forward a Mr Hodgson towards another grouping of<br/>21 agents to give reassurance and direction about strategy<br/>22 and I suggest to you that you, personally, were keen to<br/>23 ensure that there was a collective alignment in the<br/>24 North East grouping -- we are going to go back there,<br/>25 now, Mr Springett -- including expressly as to the</p> <p style="text-align: center;">Page 177</p> | <p>1 <b>chose to retain would give them adequate air cover<br/>2 whilst we built up the business.</b><br/>3 Q. So let's take it in stages then, Mr Springett. The<br/>4 "they", that is the grouping of North East agents, isn't<br/>5 it?<br/>6 <b>A. Erm.</b><br/>7 Q. "I made the point to Clive that they should take the low<br/>8 risk option."<br/>9 <b>A. Yes, because he had emailed me that morning --</b><br/>10 Q. Yes?<br/>11 <b>A. -- 6 October, to ask my advice.</b><br/>12 Q. So I think we are ad idem on the first point. That is<br/>13 you knowing of actual or proposed collective decision<br/>14 making by the group in the North East, isn't it?<br/>15 <b>A. I was aware of their marketing group, yes.</b><br/>16 Q. No, collective decision making as to what you call a low<br/>17 risk option. You knew that that's what was going on in<br/>18 this North East group, didn't you?<br/>19 <b>A. I knew that they were making a decision by this time --<br/>20 actually, I'm not sure by this time, but I knew that<br/>21 there had been a presentation on 6 or 10 September.<br/>22 Beyond that, I don't think I received any information<br/>23 about the specifics of an offer having been made and<br/>24 I don't think I knew until some time later that an offer<br/>25 had been made.</b></p> <p style="text-align: center;">Page 179</p>   |
| <p>1 choice of portal, weren't you?<br/>2 <b>A. As to the choice of portal? No.</b><br/>3 Q. So I am suggesting to you, were keen to see collective<br/>4 alignment as to the choice of portal in the North East<br/>5 and your answer to that is?<br/>6 <b>A. I was keen to see -- no.</b><br/>7 Q. In that case, can I take you to another document. This<br/>8 time in bundle 7. Page 3992. That is an email from you<br/>9 to Ms Whiteley of 6 October, isn't it, 19.19; yes?<br/>10 <b>A. Yes.</b><br/>11 Q. What you say in the second line is -- this is to<br/>12 Ms Whiteley:<br/>13 "I made the point to Clive ... "<br/>14 That is Clive Rook, isn't it?<br/>15 <b>A. Yes.</b><br/>16 Q. "... that they should take the lowest option."<br/>17 The "they" is the grouping of agents in the North<br/>18 East, isn't it?<br/>19 <b>A. I was concerned, it is true, that agents might be<br/>20 proceeding on the basis that they were expecting a pop<br/>21 up Rightmove from us, if I could put it like that.<br/>22 Something that would instantly be as strong as the<br/>23 existing major portals and so when I advocate just<br/>24 considering whatever their decision turned out to be,<br/>25 they should make sure that whichever other portal they</b></p> <p style="text-align: center;">Page 178</p>   | <p>1 Q. You know perfectly well at this stage, don't you,<br/>2 Mr Springett, that the grouping in the North East of<br/>3 which Clive Rook, a board member, forms part, is<br/>4 discussing collectively, decisions about which portal or<br/>5 portals to choose, don't you?<br/>6 <b>A. I've told you, I'm aware of that marketing group.</b><br/>7 Q. No, discussions about which portal to choose. You know<br/>8 that they are having those discussions, don't you?<br/>9 <b>A. I'm telling you that I knew about the marketing group<br/>10 and I knew that they were receiving collective offers --</b><br/>11 Q. So how on earth then, in the light of that evidence, do<br/>12 you explain the next sentence:<br/>13 "He ran through the scenario in Whitley Bay, where<br/>14 there is a strong campaign for off both."<br/>15 The "he" is Clive, is it not?<br/>16 <b>A. That's right.</b><br/>17 Q. And he is therefore telling you about a prospective<br/>18 group decision for coming off both portals, isn't he, by<br/>19 the North East grouping?<br/>20 <b>A. He is.</b><br/>21 Q. So would you like to change your evidence of a moment<br/>22 ago, where you three times wouldn't accept that you knew<br/>23 at the time that there were collective groups discussing<br/>24 decisions about which portals to come off? Would you<br/>25 like to change that answer now, Mr Springett?</p> <p style="text-align: center;">Page 180</p> |

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| <p>1 <b>A. Well, he's clearly said to me, and the reason for the</b><br/> 2 <b>intervention that I made, in addition to answering his</b><br/> 3 <b>question from earlier that morning, was that there was</b><br/> 4 <b>a move in some parts to consider coming off both of the</b><br/> 5 <b>other portals.</b><br/> 6 Q. Is that now a yes? Are you changing your answer?<br/> 7 <b>A. What was the question?</b><br/> 8 Q. You did know at this time, didn't you, about the<br/> 9 grouping of the North East having collective discussions<br/> 10 about which portals to come off, didn't you?<br/> 11 <b>A. In the sense that it was reported to me in that</b><br/> 12 <b>conversation.</b><br/> 13 Q. So the answer is yes then?<br/> 14 <b>A. In that context, yes.</b><br/> 15 Q. Yes. Fine, thank you. Then it goes on and it says:<br/> 16 "I said [that is you, is it not, Mr Springett] that<br/> 17 that risks either portal breaching...(Reading to the<br/> 18 words)... in the short term and then agents flooding<br/> 19 back in an uncoordinated way. Easier to hold the line<br/> 20 on one other portal (especially if Rightmove)."<br/> 21 That is what your response is, is it not?<br/> 22 <b>A. That is to Mrs Whiteley. Not to Mr Rook.</b><br/> 23 Q. That is right. So the point is that you knew of this<br/> 24 collective decision making by the group in the North<br/> 25 East and you are suggesting, albeit at this moment to</p> <p style="text-align: center;">Page 181</p> | <p>1 in the penultimate paragraph of the same email, where<br/> 2 you say to Ms Whiteley, in essence, "They" -- that is<br/> 3 the North East group isn't it?<br/> 4 <b>A. Yes.</b><br/> 5 Q. "They would be mad to come off Rightmove and leave<br/> 6 Pattinson on there."<br/> 7 Pattinson, that's from another estate agent who<br/> 8 wasn't part of the group at that point, isn't it?<br/> 9 <b>A. That's right.</b><br/> 10 Q. Is that Caroline Pattinson and Keith Pattinson?<br/> 11 <b>A. Yes.</b><br/> 12 Q. What are they, a family estate agent?<br/> 13 <b>A. It is a family business.</b><br/> 14 Q. And you say:<br/> 15 "Better to come off Zoopla", don't you? That is<br/> 16 your view about what they should do as a collective?<br/> 17 <b>A. Mmm, as expressed to Ms Whiteley.</b><br/> 18 Q. But that is your view, isn't it?<br/> 19 <b>A. Yes, as expressed to Ms Whiteley.</b><br/> 20 Q. I accept that. I accept that. But that is your view,<br/> 21 isn't it, and why is that, Mr Springett?<br/> 22 <b>A. Because my interest is to make sure that the One Other</b><br/> 23 <b>Portal rule is effective and sticks. What I didn't want</b><br/> 24 <b>and what I was counselling Mr Rook and I did it</b><br/> 25 <b>elsewhere with other people who were involved in this</b></p> <p style="text-align: center;">Page 183</p>           |
| <p>1 Ms Whiteley, that you have a preference about what that<br/> 2 group decision should be, aren't you?<br/> 3 <b>A. "It would be easier to hold the line on one other portal</b><br/> 4 <b>(especially if Rightmove)." That was my view and</b><br/> 5 <b>I expressed it to Ms Whiteley.</b><br/> 6 Q. Absolutely.<br/> 7 <b>A. But I didn't express it to Mr Rook, as my later email,</b><br/> 8 <b>1944, referred to I think, on the Friday submissions,</b><br/> 9 <b>makes clear.</b><br/> 10 Q. Let us finish off with this email. I am sure we are<br/> 11 going to get to the email you want, Mr Springett. So<br/> 12 the view that you are holding at this time, knowing of<br/> 13 this collective decision making about which other portal<br/> 14 to choose, is that it would be better to just come off<br/> 15 one rather than two; yes?<br/> 16 <b>A. That's correct.</b><br/> 17 Q. And it would be better if that one to come off was<br/> 18 Rightmove; yes?<br/> 19 <b>A. Do you mean Zoopla or Rightmove?</b><br/> 20 Q. I beg your pardon, yes. I did mean Zoopla. When you<br/> 21 say "especially if Rightmove", you are saying it would<br/> 22 be better if they stayed on Rightmove and came off<br/> 23 Zoopla, isn't it?<br/> 24 <b>A. Yes.</b><br/> 25 Q. Thank you for correcting me. Indeed, you can see that</p> <p style="text-align: center;">Page 182</p>   | <p>1 <b>kind of group negotiation, was that they were doing so</b><br/> 2 <b>with expectations of OnTheMarket's initial performance</b><br/> 3 <b>which were, let's say, too inflated.</b><br/> 4 Q. With respect, Mr Springett, you say "better to come off<br/> 5 Zoopla", and you give the reason?<br/> 6 <b>A. I'm sorry?</b><br/> 7 Q. Straightaway?<br/> 8 <b>A. I'm talking to Ms Whiteley.</b><br/> 9 Q. I know. And you say --<br/> 10 <b>A. An internal conversation.</b><br/> 11 Q. What's the reason that you say it is better to come off<br/> 12 Zoopla and you go on to give the reason, don't you?<br/> 13 Because you want to render it useless, don't you?<br/> 14 <b>A. Where does it say that?</b><br/> 15 Q. "Better to come off Zoopla", do you see the penultimate<br/> 16 paragraph, "Better to come off Zoopla and render it<br/> 17 useless"?<br/> 18 <b>A. Yes.</b><br/> 19 Q. So that is your mind set, isn't it, at this time?<br/> 20 <b>A. I'm thinking about what would be better for the agents.</b><br/> 21 Q. I see.<br/> 22 <b>A. You can see that because it refers specifically to the</b><br/> 23 <b>local situation in relation to Pattinson.</b><br/> 24 MR HARRIS: Sir, I am entirely in your hands. I can carry<br/> 25 on going. I am happy to take a break and -- we are not</p> <p style="text-align: center;">Page 184</p> |

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| <p>1 finished with the North East topic but we won't be for<br/>2 a while.<br/>3 THE CHAIRMAN: Why don't you carry on until about 3 o'clock<br/>4 and then we'll have our break.<br/>5 MR HARRIS: Sir, thank you.<br/>6 Another thing's going on in this email, isn't it,<br/>7 Mr Springett, going back up to the top of it. You say,<br/>8 as I read out earlier:<br/>9 "That risks either portal breaching the damn in the<br/>10 short term and then agents flooding back."<br/>11 What you didn't want was a situation in which either<br/>12 people would come off both but then they would be<br/>13 chipped away at by one of the portals and the damn would<br/>14 breach that way and, equally, what you didn't want in<br/>15 any given region was to split the vote amongst the<br/>16 agents in that region as to the portal they would<br/>17 choose, did you?<br/>18 <b>A. No, I didn't care.</b><br/>19 Q. Really? The reason I suggest to you that you didn't<br/>20 want a split vote is because you knew very well that in<br/>21 situations where there was a split vote, it would be<br/>22 much harder for OTM to make progress as against<br/>23 Rightmove and Zoopla, didn't you?<br/>24 <b>A. I didn't care. I just wanted the maximum membership for</b><br/>25 <b>Agents' Mutual because that would mean that it would</b></p> <p style="text-align: center;">Page 185</p>   | <p>1 <b>A. Yes.</b><br/>2 Q. He's a board director and a founder member director,<br/>3 isn't he?<br/>4 <b>A. He is.</b><br/>5 Q. And this is dated February 2015, so it is a matter of<br/>6 a few days after launch isn't it?<br/>7 <b>A. Yes.</b><br/>8 Q. "Dear Trevor, I won't be able to look comments until<br/>9 this evening but will email you then."<br/>10 We are going to look at your email response in<br/>11 a minute:<br/>12 "But in the meantime you might be interested in<br/>13 a report. Outside London most members have chosen to<br/>14 stay with Rightmove. That puts us in second position in<br/>15 all price categories."<br/>16 So you are concerned about your relative positioning<br/>17 as a portal in the country, aren't you?<br/>18 <b>A. Sorry, I've lost the place, I beg your pardon.</b><br/>19 Q. It is probably my fault, Mr Springett. So I started at<br/>20 the bottom of 4976.<br/>21 THE CHAIRMAN: It is 4977, I think you are looking at.<br/>22 MR HARRIS: I have a feeling mine might be in a slightly<br/>23 different order. The email in your version of the<br/>24 bundle that I am looking at begins a third of the way<br/>25 down 4977; do you have that, "Dear Trevor"?</p> <p style="text-align: center;">Page 187</p> |
| <p>1 <b>create the maximum disruption of the market as it was.</b><br/>2 Q. I see, so your evidence is that you didn't care about<br/>3 a split vote or a diluted vote; is that right?<br/>4 <b>A. What do you mean by --</b><br/>5 Q. By that I mean that agents in any given locality, some<br/>6 might choose Rightmove as their other portal and some<br/>7 might choose Zoopla?<br/>8 <b>A. There is elsewhere in this bundle an email referring to</b><br/>9 <b>a conversation about Andrew Craig, who is mentioned</b><br/>10 <b>here, who expresses the same view which I agree with.</b><br/>11 Q. But what you are saying to me is that you --<br/>12 <b>A. My objective was to have the largest possible membership</b><br/>13 <b>of Agents' Mutual and to make sure that any decisions</b><br/>14 <b>that agents might make were not made on an assumption</b><br/>15 <b>that we would be an instant replacement for either one</b><br/>16 <b>of the major portals, because we weren't going to be and</b><br/>17 <b>it is evident that it takes time to build up.</b><br/>18 Q. So you are not accepting from me that you were opposed<br/>19 to split votes because that would make it harder for you<br/>20 to gain market position; right? You are not accepting<br/>21 that?<br/>22 <b>A. I have told you my answer.</b><br/>23 Q. Right. Okay, can we have a look now in bundle 9 then,<br/>24 at page 4976. Do you see this is an email you wrote to<br/>25 another board director, Mr Trevor Abrahamsohn?</p> <p style="text-align: center;">Page 186</p> | <p>1 <b>A. I do, thank you.</b><br/>2 Q. And then do you see it says:<br/>3 "I have attached a draft report."<br/>4 And a bit lower it says:<br/>5 "Outside London most members have chosen to stay<br/>6 with Rightmove which has put us in second position in<br/>7 all price categories."<br/>8 Yes?<br/>9 <b>A. Yes, I should clarify that it's £1 million plus,</b><br/>10 <b>£3 million plus, so properties below a million are not</b><br/>11 <b>included in that report.</b><br/>12 Q. No, that is right. But there is a focus, isn't there,<br/>13 on your relative positioning, amongst the numbers of<br/>14 portals in operation, in this case in England; yes?<br/>15 <b>A. Yes.</b><br/>16 Q. I know it is a long day, Mr Springett. Thank you for<br/>17 bearing with me.<br/>18 But then you go on to say in the next line:<br/>19 "However, in London the RMZ vote is split which,<br/>20 sadly, leaves us in third place."<br/>21 Still in third place.<br/>22 <b>A. Yes.</b><br/>23 Q. So in fact you weren't in favour of splitting the vote,<br/>24 were you, because it would lead you in third place as<br/>25 opposed to second place?</p> <p style="text-align: center;">Page 188</p>   |

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| <p>1 <b>A. That would depend on how many joined us.</b></p> <p>2 Q. Yes, exactly.</p> <p>3 <b>A. Just to be clear, it depends how big Agents' Mutual's</b></p> <p>4 <b>membership would become.</b></p> <p>5 Q. It is a matter --</p> <p>6 <b>A. There are various ways in which you can move past third</b></p> <p>7 <b>place and into second.</b></p> <p>8 Q. As a matter of principle though, if you split in any</p> <p>9 given locality, one of the portal choices by the groups</p> <p>10 of agents joining, half of them go off to Rightmove and</p> <p>11 half of them go off to Zoopla or some of them go off to</p> <p>12 somebody else, that is going to make your job as a new</p> <p>13 website harder, isn't it?</p> <p>14 <b>A. Well, in one sense not because don't forget, the other</b></p> <p>15 <b>reason for the One Other Portal rule was to create</b></p> <p>16 <b>a differentiated set of properties. So splitting it</b></p> <p>17 <b>50/50 would have given us that more strongly than the</b></p> <p>18 <b>hand we were dealt.</b></p> <p>19 Q. In fact, it is revealing, isn't it, the rest of this</p> <p>20 email because you don't say anything about that at all,</p> <p>21 do you? What you say:</p> <p>22 "These numbers bear out the discussions we had</p> <p>23 during last year, to the effect that the most efficient</p> <p>24 way to get swiftly to the number 2 position would be if</p> <p>25 members dropped ... "</p> <p style="text-align: center;">Page 189</p> | <p>1 <b>is after the launch, so it is clear what's already</b></p> <p>2 <b>happened at this point.</b></p> <p>3 Q. That is right. Then if we move forward now. In my</p> <p>4 copy, I think it is the same in yours, do you have</p> <p>5 a couple of pages earlier on at 4974, a continuation of</p> <p>6 the conversation?</p> <p>7 <b>A. I do.</b></p> <p>8 Q. So this is another email from you, isn't it, to</p> <p>9 Mr Abrahamsohn?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Still on the same topic, isn't it, about this grouping</p> <p>12 of agents. These are in north or north west London,</p> <p>13 aren't they?</p> <p>14 <b>A. Yes, and it is clear that they are in negotiation with</b></p> <p>15 <b>Zoopla about a group deal.</b></p> <p>16 Q. So it is a grouping of agents and they are sometimes</p> <p>17 called the re-app agents, aren't they?</p> <p>18 <b>A. Yes, that is the owner of the Fabric magazine.</b></p> <p>19 Q. Sometimes they are called the Fabric Group. It is</p> <p>20 effectively the same thing?</p> <p>21 <b>A. It is the same thing.</b></p> <p>22 Q. And Mr Abrahamsohn is a member of the group, isn't he?</p> <p>23 <b>A. Yes, he is.</b></p> <p>24 Q. And also a founder director and what you say is:</p> <p>25 "Dear Trevor, thanks for this and what follows is</p> <p style="text-align: center;">Page 191</p> |
| <p>1 Who?</p> <p>2 <b>A. Zoopla.</b></p> <p>3 Q. Yes, that's right, so that is your view, isn't it,</p> <p>4 Mr Springett, this time expressed to one of your other</p> <p>5 board directors?</p> <p>6 <b>A. It is unquestionable that that is the most efficient way</b></p> <p>7 <b>to get there.</b></p> <p>8 Q. That is right.</p> <p>9 <b>A. If everybody moves from the number 2 portal, then you</b></p> <p>10 <b>are going to accelerate a bit faster.</b></p> <p>11 Q. That is right. And the number 2 portal being Zoopla and</p> <p>12 what you then go on to say in this email at the bottom</p> <p>13 is:</p> <p>14 "You and your Fabric colleagues".</p> <p>15 So please accept from me, Mr Springett, that is you</p> <p>16 thinking of a group of agents, isn't it?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. As a group they represent a swing vote, don't they?</p> <p>19 <b>A. Yes, they do.</b></p> <p>20 Q. And your attempts to get to the number 2 position; yes?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And what you see as being the way to get there is that</p> <p>23 it would be quicker, most efficient and swifter if they</p> <p>24 all dropped Zoopla; correct?</p> <p>25 <b>A. That's correct and it is relevant to point out that this</b></p> <p style="text-align: center;">Page 190</p>   | <p>1 geared to help in any further negotiation in commercial</p> <p>2 terms.</p> <p>3 Then you go on to offer a view, don't you?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. "Of course, from a pure AM/OTM viewpoint, I would prefer</p> <p>6 you all to ditch them."</p> <p>7 So you are expressing your view to this grouping of</p> <p>8 agents as a group?</p> <p>9 <b>A. I am expressing it to Mr Abrahamsohn.</b></p> <p>10 Q. No, you are saying "I would prefer you all to ditch</p> <p>11 them", aren't you?</p> <p>12 <b>A. I'm expressing that to Mr Abrahamsohn.</b></p> <p>13 Q. I am sorry, I take that point, yes. You are expressing</p> <p>14 it in the email to Mr Abrahamsohn?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. But the view you are expressing to Mr Abrahamsohn is that</p> <p>17 you would prefer them all as a group to ditch Zoopla;</p> <p>18 correct?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. "I hope you will forgive me for signalling that. I want</p> <p>21 to make sure we deliver the endgame for our members as</p> <p>22 soon as possible and replacing Zoopla as number 2 has</p> <p>23 been board strategy since last February."</p> <p>24 <b>A. That's correct.</b></p> <p>25 Q. So for at least a year, the aims and objectives, as</p> <p style="text-align: center;">Page 192</p>  |



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| <p>1 expressed through the board strategy of the company,<br/>2 have been to replace Zoopla, haven't they?</p> <p>3 <b>A. Replace Zoopla as number 2 is the objective.</b></p> <p>4 Q. Yes. Thank you. And that, you say, is becoming ever<br/>5 more achievable. You go on to say:<br/>6 "I do recognise though, that AM/OTM's existence has<br/>7 helped create useful and valuable negotiating<br/>8 opportunities and most importantly, that these decisions<br/>9 are for members to take and not for me."<br/>10 So what you are saying is two things. "There are<br/>11 decisions for members to take and not for me", but<br/>12 nevertheless, you -- and you are chief executive of the<br/>13 company, aren't you -- explaining and reiterating that<br/>14 the strategy of the company is for the grouping all to<br/>15 ditch Zoopla, aren't you?</p> <p>16 <b>A. It is clear from the first line that from a pure<br/>17 Agents' Mutual/OTM viewpoint, in the light of what<br/>18 actually happened when the portal launched, it would be<br/>19 preferable for us, in order to get to the number 2<br/>20 position and overtake Zoopla, that that switch should<br/>21 happen. But if I -- if you look at what the bulk of<br/>22 this email is then about, it is about some thoughts that<br/>23 I had on how he could look at the negotiation with<br/>24 Zoopla.</b></p> <p>25 Q. What you say in the first bullet point below the first</p> <p style="text-align: center;">Page 193</p> | <p>1 know and wasn't for his ears, aren't you?</p> <p>2 <b>A. I am telling him in confidence.</b></p> <p>3 Q. Precisely because it is confidential information; that<br/>4 is right, isn't it?</p> <p>5 <b>A. No, I'm telling him in confidence. That's all it says.</b></p> <p>6 Q. I suggest to you, Mr Springett, that this email is clear<br/>7 evidence of you attempting to influence a grouping of<br/>8 agents to make a decision as a group to ditch Zoopla<br/>9 because that's the company's strategy, to replace Zoopla<br/>10 as number 2. That is right, isn't it?</p> <p>11 <b>A. It is not addressed to a group of agents.</b></p> <p>12 MR HARRIS: Sir, that may be a convenient moment.</p> <p>13 THE CHAIRMAN: Yes, we'll rise for five minutes.<br/>14 (3.00 pm)<br/>15 (A short break)<br/>16 (3.05 pm)</p> <p>17 THE CHAIRMAN: Mr Harris, before you resume, the questioning<br/>18 of the witness, I have one point on the pleadings which<br/>19 I would like to raise with you. I think it is probably<br/>20 best if I raise it in the absence of you, Mr Springett.<br/>21 I wonder if you would mind waiting outside court for<br/>22 five minutes.<br/>23 (The witness withdrew)</p> <p>24 THE CHAIRMAN: Everyone will recall the debate we had in<br/>25 opening about horizontal and vertical agreements and</p> <p style="text-align: center;">Page 195</p>  |
| <p>1 hole punch is that:<br/>2 "If REAP leave Zoopla, they are likely to wither in<br/>3 Prime London."<br/>4 That means they are going to fade away, doesn't it?</p> <p>5 <b>A. That would be true.</b></p> <p>6 Q. So that's what is your view of the company strategy was;<br/>7 correct? To get Zoopla to wither away in Prime London<br/>8 because what you are saying is "from the company's<br/>9 viewpoint, I would prefer you all to ditch Zoopla."<br/>10 That is right, isn't it?</p> <p>11 <b>A. I think you have got to separate paragraph 2 from the<br/>12 rest of the email because then I've moved on to saying<br/>13 how you might think about the negotiation.</b></p> <p>14 Q. And in putting forward your views in this email,<br/>15 Mr Springett, you are even prepared to use confidential<br/>16 information that wasn't otherwise known by<br/>17 Mr Abrahamsohn, aren't you?</p> <p>18 <b>A. I mentioned to him, yes.</b></p> <p>19 Q. So that is the final bullet point "(in confidence)."<br/>20 You shouldn't have been telling Mr Abrahamsohn this,<br/>21 should you?</p> <p>22 <b>A. I had no reason not to.</b></p> <p>23 Q. Well, you are telling him confidential information that<br/>24 you were privy to in your capacity as chief executive<br/>25 and in the generation of this venture, that he didn't</p> <p style="text-align: center;">Page 194</p>  | <p>1 Mr Harris, you in particular, referred both Mr Maclean<br/>2 and the Tribunal to paragraph 38 of your pleading, which<br/>3 we find at A3/tab 3, page 48. And you remember the<br/>4 debates that you and Mr Maclean had about what exactly<br/>5 the nature of the horizontal agreement was and you said<br/>6 that there was much more to the pleading than just the<br/>7 title, which refers to a collective boycott of Zoopla.</p> <p>8 MR HARRIS: Correct, sir, yes.</p> <p>9 THE CHAIRMAN: At some point, and I am sure it will be in<br/>10 closings, we will be wanting submissions on horizontal<br/>11 as well as vertical agreements and I know, Mr Harris,<br/>12 you have addressed that in your written submissions,<br/>13 perhaps less so on the part of Agents' Mutual, but no<br/>14 doubt that's a treat we'll have for closing.</p> <p>15 What is clear though, is that although, as you very<br/>16 fairly said, there are aspects in the pleading in<br/>17 paragraphs 38 and following which go more broadly than<br/>18 a collective boycott against Zoopla, one of the<br/>19 essential allegations you are making here is a concerted<br/>20 practice, collectively, to boycott Zoopla.</p> <p>21 MR HARRIS: Yes, sir.</p> <p>22 THE CHAIRMAN: What concerned me, and the reason I am<br/>23 raising it now is because it may affect how you want to<br/>24 put things to the witness, is that a lot of the<br/>25 documents you referred us and the witness to in</p> <p style="text-align: center;">Page 196</p> |

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| <p>1 cross-examination regarding the northeast England<br/>                 2 practice, related, you would say, to a collective<br/>                 3 position being taken but in respect of leaving<br/>                 4 Rightmove, not Zoopla.<br/>                 5 MR HARRIS: Yes, sir, that's correct.<br/>                 6 THE CHAIRMAN: And we see that H5/2578. I think H7/3992.<br/>                 7 And you took the witness to 3992 which was<br/>                 8 Mr Springett's thinking about this and to put it<br/>                 9 colloquially, you were putting to Mr Springett that his<br/>                 10 private view was that they would be mad to come off<br/>                 11 Rightmove but, nevertheless, the view of the estate<br/>                 12 agents was that their collective view, if you want to<br/>                 13 put it that way, and obviously, that is something we'll<br/>                 14 have to reach a view on, was to stay with Zoopla and<br/>                 15 come off Rightmove.<br/>                 16 Now, is it then part of your case that there was<br/>                 17 some form of communication by Mr Springett of<br/>                 18 Agents' Mutual to the collectivity of these agents,<br/>                 19 saying "change your mind"?<br/>                 20 MR HARRIS: Sir, let me take this in stages.<br/>                 21 THE CHAIRMAN: Yes.<br/>                 22 MR HARRIS: So part of our pleaded case involved impugning<br/>                 23 three types of horizontal agreements or, if you like,<br/>                 24 three variants, so there is, as I said in opening, and<br/>                 25 it has never been dealt with either in the skeleton or</p> <p style="text-align: center;">Page 197</p> | <p>1 And we have been very clear about this in the skeleton<br/>                 2 and in openings and in this pleading. What I do accept,<br/>                 3 and I said this very clearly, is that the short form<br/>                 4 heading to the particulars, only identifies that one<br/>                 5 against Zoopla but the characterisation of the breach is<br/>                 6 set out in paragraph 26 of the pleading. We<br/>                 7 characterised these going on as either concerted<br/>                 8 practices, agreements or decisions of associated<br/>                 9 undertakings as particularised.<br/>                 10 THE CHAIRMAN: So you have to go to 38 and following?<br/>                 11 MR HARRIS: Yes, that's right.<br/>                 12 THE CHAIRMAN: And when one looks at 38 and following, you<br/>                 13 will correct me if I am wrong, I am sure, but when one<br/>                 14 gets to paragraph 40, the collective decision regarding<br/>                 15 property portals to leave, as I see it, but do correct<br/>                 16 me if I'm wrong, refers only to ceasing to list with<br/>                 17 Zoopla.<br/>                 18 MR HARRIS: Well, sir, there are a number --<br/>                 19 THE CHAIRMAN: Is that right or am I missing something?<br/>                 20 MR HARRIS: Well, what one has to understand, sir, is the<br/>                 21 date upon which this document was written.<br/>                 22 THE CHAIRMAN: Right.<br/>                 23 MR HARRIS: So at the time of putting together the<br/>                 24 particulars in this pleading, in this expedited action,<br/>                 25 we of course hadn't had all of this disclosure, so</p> <p style="text-align: center;">Page 199</p>   |
| <p>1 in opening by my learned friend, there are concerted<br/>                 2 practices/decisions of an association of<br/>                 3 undertaking/agreements, collectively to join<br/>                 4 Agents' Mutual. So that's category number 1.<br/>                 5 THE CHAIRMAN: Yes, I understand that.<br/>                 6 MR HARRIS: So far so good.<br/>                 7 THE CHAIRMAN: So far so good.<br/>                 8 MR HARRIS: What we also say is that the undertaking<br/>                 9 substituted practical cooperation as to the property<br/>                 10 portals which the estate agent undertakings in question<br/>                 11 would use. That's paragraph 38, part of which you read<br/>                 12 out before.<br/>                 13 THE CHAIRMAN: Show me exactly what you are referring to.<br/>                 14 MR HARRIS: Yes, it begins at the very final word, (ii),<br/>                 15 paragraph 38, top of page 49.<br/>                 16 THE CHAIRMAN: Right.<br/>                 17 MR HARRIS: "Its members or some of them, by which those<br/>                 18 undertakings could substitute a practical cooperation as<br/>                 19 to the property portals which the estate agent<br/>                 20 undertakings in question would use."<br/>                 21 And then that splits into two types. So they can<br/>                 22 substitute practical cooperation as to the property<br/>                 23 portals they would use, being Rightmove, the one they<br/>                 24 would use, and in other cases, practical cooperation as<br/>                 25 to using Zoopla, Zoopla being the one that they use.</p> <p style="text-align: center;">Page 198</p>                          | <p>1 I wasn't in a position to particularise, at that stage,<br/>                 2 by specific examples or dates of collective decisions<br/>                 3 that fall within the general wording that were leaving<br/>                 4 Rightmove. What I was able to do and put my name to, as<br/>                 5 was Mr Livesey, the particulars that have been given and<br/>                 6 all I could say at that stage was included at<br/>                 7 paragraph 40F, included deliberately:<br/>                 8 "... by reason of the facts and matters set out<br/>                 9 above and the best particulars I had available at the<br/>                 10 date of the pleading, the defendant avers that such<br/>                 11 meetings are likely to have been used to invite<br/>                 12 potential members to state their intentions as to<br/>                 13 whether they intended to join OTM and/or which other<br/>                 14 portal they would use."<br/>                 15 It is very deliberately not confined to Zoopla. And<br/>                 16 what's emerged since then and, of course, this is why we<br/>                 17 were so clear about it in our skeleton and in our<br/>                 18 opening, is that now that we have seen, and as I have<br/>                 19 been trying to explain in opening and to some extent in<br/>                 20 the questioning, collective groupings making collective<br/>                 21 decisions and in different parts of the country they<br/>                 22 have turned in different ways. In fact, as I am about<br/>                 23 to develop, they haven't turned in different ways very<br/>                 24 often at all. But more disclosure had been generated<br/>                 25 because of the search terms for certain examples of</p> <p style="text-align: center;">Page 200</p> |

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| <p>1 collective decisions and, therefore, we have more<br/>                 2 documents about certain of them. And certain of them<br/>                 3 are ones that either ended up being collective decisions<br/>                 4 to leave Rightmove, certain of them, and certain of<br/>                 5 them, like the northeast, had some initial disclosure of<br/>                 6 the agents suggesting that they might, as a group, leave<br/>                 7 Rightmove but in actual fact, even in the northeast, the<br/>                 8 one we are currently dealing with, they all left Zoopla.<br/>                 9 THE CHAIRMAN: Mr Harris, all litigation is a journey, not<br/>                 10 always to a known destination but the whole thrust of<br/>                 11 your case will be different if you were in fact alleging<br/>                 12 a collective boycott of Rightmove. All the economic<br/>                 13 effects would be different. You would no longer be<br/>                 14 seeing a strategy to replace the number 2 by another<br/>                 15 number 2. It would be an entirely different analysis.<br/>                 16 I think you would accept that.<br/>                 17 MR HARRIS: That is quite right, sir, and that takes me on<br/>                 18 to the point that I just put on the back burner. That<br/>                 19 is because the 90 per cent is the key figure.<br/>                 20 Ninety per cent ended up ditching Zoopla. It happens to<br/>                 21 be the case that 10 per cent didn't and some of these<br/>                 22 materials in this file take -- in fact it is only two<br/>                 23 groups. You might want to note this down mentally or<br/>                 24 wherever. It is only two groupings in the country that<br/>                 25 ended up ditching Rightmove as a group. One was the</p> <p style="text-align: center;">Page 201</p> | <p>1 that's why you have come 90/10. I take your point,<br/>                 2 Mr Freeman, sir, it is completely right that evidence on<br/>                 3 the effects case in the property portal market would be<br/>                 4 different if it hadn't been 90/10 but it has been 90/10.<br/>                 5 They are entirely consistent. It is entirely<br/>                 6 consistent for me to run a case that there were illegal<br/>                 7 collective boycotts of Rightmove, for what turned out to<br/>                 8 be 10 per cent of cases. In fact, only two areas, west<br/>                 9 Wales and north London and an illegal collective boycott<br/>                 10 of Zoopla everywhere else, including as it happens, we<br/>                 11 haven't quite got there yet, in the northeast. They<br/>                 12 collectively left Zoopla.<br/>                 13 THE CHAIRMAN: You see you don't just have to make the<br/>                 14 allegation of collective leaving, you need to tie<br/>                 15 Agents' Mutual into that.<br/>                 16 MR HARRIS: Absolutely.<br/>                 17 THE CHAIRMAN: What we have at the moment and maybe the<br/>                 18 story is only part told which is why I am raising it now<br/>                 19 because I am a little concerned that the point hasn't<br/>                 20 been closed down in your cross-examination, is what we<br/>                 21 have got is a fairly clear indication that the estate<br/>                 22 agents in this part of the country are inclined to ditch<br/>                 23 Rightmove and stay with Zoopla. We have an internal<br/>                 24 communication that you have taken Mr Springett to, where<br/>                 25 he suggests that seems like a rather odd thing to do in</p> <p style="text-align: center;">Page 203</p> |
| <p>1 north London grouping, that was the REAP, Trevor<br/>                 2 Abrahamson group, and one which we haven't yet reached<br/>                 3 was in west Wales. Every single one of the other groups<br/>                 4 ended up coming to an, in our contention, illegal group<br/>                 5 decision to ditch Zoopla. And that is why you get the<br/>                 6 90 per cent versus the 10 per cent which is a common<br/>                 7 ground figure.<br/>                 8 MR FREEMAN: When you wrote your pleadings, you had in mind<br/>                 9 the existence of a possible collective decision that<br/>                 10 would impact mainly on Zoopla. That was your thinking<br/>                 11 and that was all the evidence supplied on the economic<br/>                 12 side. Nothing has really changed on that.<br/>                 13 MR HARRIS: No, sir, that is not fair. That is not fair.<br/>                 14 We have learnt a great deal more from the evidence, from<br/>                 15 the disclosure, about how the agents have been going<br/>                 16 about -- we say, as you know, facilitated, encouraged,<br/>                 17 et cetera, by the company, making group decisions. And<br/>                 18 what we now know and what we have been very clear about<br/>                 19 is that that gives rise to, potentially, three variants<br/>                 20 of the legal decisions. Group decisions to join and<br/>                 21 should have been individual, and group decisions, as it<br/>                 22 turns out in 90 per cent of the cases, to ditch Zoopla,<br/>                 23 as was indeed, we see, the strategy of Agents' Mutual,<br/>                 24 but I accept 10 per cent of the decisions that were<br/>                 25 group decisions on our case, to ditch Rightmove. And</p> <p style="text-align: center;">Page 202</p>                    | <p>1 the circumstances, but one has an altogether more<br/>                 2 neutral communication from Mr Springett to Clive Rook,<br/>                 3 one of those estate agents, where he's not saying this<br/>                 4 is mad, it's a much more measured document which you<br/>                 5 didn't take Mr Springett to, at page 3994.<br/>                 6 MR HARRIS: Sir, that is because --<br/>                 7 THE CHAIRMAN: You may be coming to it.<br/>                 8 MR HARRIS: Yes.<br/>                 9 THE CHAIRMAN: But the reason I am raising it now and you<br/>                 10 can understand why I am doing so because I am afraid<br/>                 11 I am not sure I, for one, entirely share your view that<br/>                 12 the position regarding the various different forms of<br/>                 13 collective agreement is quite as clear as you would<br/>                 14 suggest from the pleading. You are, when you are<br/>                 15 putting your case to Mr Springett, going to have to be<br/>                 16 much more precise in terms of what it is you are putting<br/>                 17 to him, what he did in respect of each region. So that<br/>                 18 we can tie in, if the evidence goes that way,<br/>                 19 Agents' Mutual into this, what you say is an illegal<br/>                 20 collective.<br/>                 21 MR HARRIS: Yes, sir, I think --<br/>                 22 THE CHAIRMAN: You may say I am raising this unnecessarily<br/>                 23 and if that's so, absolutely fantastic, but I felt it<br/>                 24 was important to raise it now because when I saw the<br/>                 25 documents that you have so far taken the witness to in</p> <p style="text-align: center;">Page 204</p>  |

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| <p>1 the northeast, I was a little bit confused. Now, no<br/>                 2 doubt it is entirely my fault but it does seem to me<br/>                 3 when there is that sort of confusion, one ought to lay<br/>                 4 it out on the table so you know where we are coming<br/>                 5 from.<br/>                 6 MR HARRIS: I am grateful.<br/>                 7 THE CHAIRMAN: And it may affect how you are going to put<br/>                 8 your questions to Mr Springett.<br/>                 9 MR HARRIS: Thank you, sir, yes. I suspect some of the<br/>                 10 questioning arises from the fact that we are midway<br/>                 11 through a particular issue in one particular area.<br/>                 12 THE CHAIRMAN: Yes, but you had moved on to London, you see.<br/>                 13 That's the thing.<br/>                 14 MR HARRIS: Yes, I had but we haven't finished the northeast<br/>                 15 and that one, I confess, that one came a little bit out<br/>                 16 of order in some ways because it followed on from<br/>                 17 another email but I haven't finished with the northeast<br/>                 18 and I certainly haven't finished with the email you have<br/>                 19 in mind and indeed there are others as well.<br/>                 20 THE CHAIRMAN: I am sure there are. There are 18-files and<br/>                 21 I can't pretend to be as familiar with them as you are.<br/>                 22 MR HARRIS: I mean about the northeast and Mr Springett's<br/>                 23 role in the northeast, including as regards ditching<br/>                 24 Zoopla. But I stand entirely by -- no suggestion has<br/>                 25 ever been made by the other side that this has been an</p> <p style="text-align: center;">Page 205</p>                                     | <p>1 you are saying there was a collective agreement, you<br/>                 2 will need to put your case to the witness.<br/>                 3 MR HARRIS: Yes, I accept that.<br/>                 4 THE CHAIRMAN: Say, yes, you were part of it. I'm probably<br/>                 5 teaching my grandmother to suck eggs.<br/>                 6 MR HARRIS: No, not at all. It is a very useful discussion<br/>                 7 as everything sort of filters through in collective<br/>                 8 understandings. One of the reasons that, as you know,<br/>                 9 I have been keen to just express how much there is to<br/>                 10 get through, includes because I have to deal with the<br/>                 11 northeast -- I have dealt, in part, with London -- but<br/>                 12 I have to deal with west Wales, I have to deal with<br/>                 13 north Devon and then there are a whole series of other<br/>                 14 ones I have to put, like the ones we mentioned to<br/>                 15 Mr Springett earlier on. There is Maidstone, East<br/>                 16 Anglia and I am afraid some of it is forensic. It is<br/>                 17 not quite as developed because we don't have as much<br/>                 18 disclosure on all of the points.<br/>                 19 But yes, and I entirely accept your point that<br/>                 20 indeed it is part of our case that there are collective<br/>                 21 arrangements by localities, if you like, regional<br/>                 22 groupings making decisions and overall, it ended up<br/>                 23 being 90 per cent in one direction and 10 per cent in<br/>                 24 the other but the mechanics and the details were<br/>                 25 different in each case because they were different</p> <p style="text-align: center;">Page 207</p> |
| <p>1 unclear case, whether in the pleadings or whether in the<br/>                 2 skeleton argument or in the openings. They have just<br/>                 3 chosen not to address it. That is a matter for them and<br/>                 4 no doubt we'll now have argument about it in closing,<br/>                 5 but we have been quite clear about what the nature of<br/>                 6 the variants are of the collective decisions. And<br/>                 7 I entirely take your point, sir, that part of my job is<br/>                 8 to seek to persuade you that Agents' Mutual, through its<br/>                 9 various board members, employees, senior employees or<br/>                 10 otherwise, is sufficiently, if I can use this word,<br/>                 11 "implicated".<br/>                 12 THE CHAIRMAN: Yes, I think the point which -- as I say, it<br/>                 13 is no doubt entirely my fault, but the point that I am<br/>                 14 only really beginning to see now and I think it does<br/>                 15 affect the way you question Mr Springett, is that you<br/>                 16 have got quite clear geographical variants. In other<br/>                 17 words, it is not simply saying: across the United<br/>                 18 Kingdom or across England, there was this single<br/>                 19 collective approach. Instead we have a variety of<br/>                 20 collective approaches which it may very well be, ended<br/>                 21 up in the same place, with everyone leaving Zoopla and<br/>                 22 staying on Rightmove, which is where they ended up but<br/>                 23 it may be the routes are different.<br/>                 24 MR HARRIS: Yes, sir.<br/>                 25 THE CHAIRMAN: But it does mean as regards each route that</p> <p style="text-align: center;">Page 206</p> | <p>1 groupings. So I take that point.<br/>                 2 THE CHAIRMAN: Good, in that case, thank you very much,<br/>                 3 Mr Harris, I am sorry to have taken you out of your way.<br/>                 4 MR HARRIS: Not at all. I am anxious that the Tribunal<br/>                 5 should at least understand my case, even if I don't get<br/>                 6 all the way there, at the end of the day.<br/>                 7 MR FREEMAN: We have a common purpose in that, Mr Harris.<br/>                 8 THE CHAIRMAN: You can have a collective agreement as well.<br/>                 9 MR HARRIS: Is there anything else?<br/>                 10 THE CHAIRMAN: No, thank you.<br/>                 11 (The witness returned to the witness box).<br/>                 12 THE CHAIRMAN: Welcome back, Mr Springett.<br/>                 13 MR HARRIS: Thank you, Mr Springett. Me again, I am afraid.<br/>                 14 <b>A. I wonder if I might be allowed to add a point of</b><br/>                 15 <b>clarification which I was reminded about at the bottom</b><br/>                 16 <b>of 4974 that we were looking at before. And no reason</b><br/>                 17 <b>to look at that unnecessarily, but I just wanted to make</b><br/>                 18 <b>clear that the choices made by OnTheMarket members as to</b><br/>                 19 <b>their other portal, are not fixed in stone. You may</b><br/>                 20 <b>have apprehended this from the documents but I just</b><br/>                 21 <b>wanted to make that clear, that they can be changed at</b><br/>                 22 <b>any time.</b><br/>                 23 THE CHAIRMAN: Providing it is only one other.<br/>                 24 <b>A. Yes.</b><br/>                 25 MR HARRIS: Thank you. I have one more last thing to say</p> <p style="text-align: center;">Page 208</p>           |

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| <p>1 about 4974, Mr Springett, so we are back in the final<br/>2 bullet point, "In confidence", and I think you were<br/>3 saying: no, no, what you meant was it was just keep it<br/>4 confidential.<br/>5 <b>A. Yes.</b><br/>6 Q. That is not right, is it?<br/>7 MR FREEMAN: Which bundle is it, sorry?<br/>8 MR HARRIS: It is number 9, sir. 4974. The final bullet<br/>9 point above the second hole punch, the one beginning<br/>10 "(In confidence)." And you said: no, no, that just<br/>11 means keep it confidential. But I'm suggesting to you<br/>12 that in fact you are revealing confidential information,<br/>13 aren't you, improperly?<br/>14 <b>A. Well, if I am, I am not aware that it is confidential.</b><br/>15 Q. Well, you surely know that Chestertons are a direct<br/>16 competitor of Glentree in the London market, don't you?<br/>17 <b>A. It is evident by this time that Chestertons chose to</b><br/>18 <b>list on Zoopla.</b><br/>19 Q. That is not the point, is it? You are talking here,<br/>20 about confidential information that you have about the<br/>21 nature of the deal that Chestertons got some time<br/>22 earlier with a portal and you are quite wrongly<br/>23 revealing that to a competitor of Chestertons, aren't<br/>24 you?<br/>25 <b>A. I am sure Chestertons got a very compelling deal, is</b></p> <p style="text-align: center;">Page 209</p> | <p>1 a board director; yes?<br/>2 <b>A. That's correct.</b><br/>3 Q. "He was saying that lots of the agents locally are<br/>4 thinking of pulling off both Rightmove/Zoopla. ...<br/>5 Understands he doesn't think that is a good idea. He<br/>6 did say that his view was that they should stick with<br/>7 Zoopla."<br/>8 So that is they as a group, isn't it?<br/>9 <b>A. Yes.</b><br/>10 Q. "So I believe that is his vote".<br/>11 What you say at the top of the page in response is:<br/>12 "I think they are all trying to eat their cake<br/>13 before it is cooked. Pattinson want off Rightmove so<br/>14 maybe this is influencing Clive. Much better for us if<br/>15 they leave Zoopla. Much less likely to go back. Should<br/>16 I have a go?"<br/>17 Do you see that?<br/>18 <b>A. Yes.</b><br/>19 Q. What you then do is you have a go, don't you, both as<br/>20 regards Mr Rook and after that, we shall see with<br/>21 somebody else as well. That is right, isn't it, you had<br/>22 a go, "As you suggested, Ms Whiteley, maybe you should<br/>23 do"?<br/>24 <b>A. With Mr Rook?</b><br/>25 Q. Yes.</p> <p style="text-align: center;">Page 211</p>   |
| <p>1 <b>what it says.</b><br/>2 Q. And you are quite wrongly revealing that to a competitor<br/>3 of Chestertons, aren't you?<br/>4 <b>A. Well, I am not sure what I'm revealing in that</b><br/>5 <b>particular instance because Chestertons isn't one of the</b><br/>6 <b>largest board member firms.</b><br/>7 Q. You accept, don't you, that Chestertons and Glentree are<br/>8 competitors in the London market, don't you?<br/>9 <b>A. I accept that. Yes, I do.</b><br/>10 Q. I have finished with number 9, Mr Springett. And there<br/>11 was a bit of a detour there to the north London market<br/>12 but I am afraid I haven't finished yet with the North<br/>13 East market. So I would like to invite your attention<br/>14 back, please, into bundle number 7. This time could you<br/>15 please open it up at 3977. Do you see that that's an<br/>16 email to you on 5 October --<br/>17 <b>A. Yes.</b><br/>18 Q. -- from Ms Whiteley; yes?<br/>19 <b>A. I do.</b><br/>20 Q. And she says:<br/>21 "Just to let you know I had an interesting<br/>22 conversation with Clive ... "<br/>23 That is Clive Rook, isn't it?<br/>24 <b>A. Mmm.</b><br/>25 Q. "... on Friday." This is a point where he is still</p> <p style="text-align: center;">Page 210</p>   | <p>1 <b>A. Yes, and I think we covered that conversation earlier</b><br/>2 <b>because "the trying to eat the cake before it is cooked"</b><br/>3 <b>refers to not making decisions based on the market being</b><br/>4 <b>an immediate replacement for either of the other two</b><br/>5 <b>portals, in terms of performance.</b><br/>6 Q. Perhaps we can take up the bundle in the email which<br/>7 seems to be you having a go at in the nicest possible<br/>8 way Mr Rook and that is at 3994 in bundle 7. So just<br/>9 a few pages further over.<br/>10 <b>A. Yes.</b><br/>11 Q. This is the 6 October 2014, isn't it?<br/>12 <b>A. Yes, it is, yes. So this is the evening and I had</b><br/>13 <b>a conversation with him on the telephone around the</b><br/>14 <b>early afternoon I think.</b><br/>15 Q. It is all prelaunch, isn't it?<br/>16 <b>A. It is prelaunch.</b><br/>17 Q. That is right, isn't it?<br/>18 <b>A. That's correct.</b><br/>19 Q. So you refer to your talk earlier and then you refer to<br/>20 the group of which Mr Rook is a leading light and, as<br/>21 you know, a board director, yes?<br/>22 <b>A. Yes.</b><br/>23 Q. You also copy in two other members of the group,<br/>24 Mr Henning and Mr Rogerson?<br/>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 212</p> |

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| <p>1 Q. "Your group is very strong so you have more options than<br/>2 most. The attention you are getting from Zoopla is<br/>3 testimony to that ..."<br/>4 I am happy for you to read. I am not going to read<br/>5 the whole email but I want to make sure that you are<br/>6 able to refer to whatever part you wish to do. (Pause).<br/>7 Do you see in the next paragraph -- I am going to go<br/>8 through bits of it so please feel free to refer to any<br/>9 other bits.<br/>10 <b>A. Thank you.</b><br/>11 Q. You say:<br/>12 "Taking first the idea that agents come off both<br/>13 Rightmove and Zoopla."<br/>14 Just pausing there. We are back to that territory<br/>15 aren't we, whereas at this date you knew there was<br/>16 a group and you knew that the group was proposing to<br/>17 make collective decisions as to the choices of portal,<br/>18 didn't you?<br/>19 <b>A. Well I knew what I had been told by Mr Rook.</b><br/>20 Q. That is right, that there was a proposed collective<br/>21 decision to come off both Rightmove and Zoopla, correct?<br/>22 <b>A. I think he says some agents.</b><br/>23 Q. Well, you say here:<br/>24 "Taking first the idea that agents come off both<br/>25 Rightmove and Zoopla."</p> <p style="text-align: center;">Page 213</p>  | <p>1 Q. Maybe, but this is addressed to a group of agents, isn't<br/>2 it?<br/>3 <b>A. It is a group of agents who I was aware were looking at<br/>4 a collective purchasing arrangement.</b><br/>5 Q. And what you are doing is trying to influence the<br/>6 decision of this group as a group which is why you<br/>7 address it to more than one person, don't you?<br/>8 <b>A. Well, okay --</b><br/>9 Q. Yes, you accept that?<br/>10 <b>A. I accept that.</b><br/>11 Q. Then what you go on to say in this email is that one<br/>12 other portal situation is much easier to sustain whether<br/>13 this is Rightmove or Zoopla. We are back in that<br/>14 territory, aren't we, of you would rather everyone<br/>15 chooses one or chooses the other as opposed to splitting<br/>16 or diluting the vote, aren't you?<br/>17 <b>A. No, what that says is that a one other portal situation<br/>18 is much easier to sustain than a situation where they<br/>19 choose no other portal.</b><br/>20 Q. But also as compared to a situation where some choose<br/>21 Rightmove and some choose Zoopla, right?<br/>22 <b>A. No, it doesn't say that. What it says is a one other<br/>23 portal situation is easier to sustain than a no other<br/>24 portal situation which is -- goes back to the origins<br/>25 where we said in an ideal world it would have been an</b></p> <p style="text-align: center;">Page 215</p> |
| <p>1 <b>A. Yes, and my perspective on that would be the same<br/>2 irrespective.</b><br/>3 Q. What in my submission and what I suggest to you is what<br/>4 you then tried to do is influence the collective<br/>5 decision making of this group away from the proposal<br/>6 that they are considering as a group, don't you, because<br/>7 what you say, effectively, is: don't come off both of<br/>8 them?<br/>9 <b>A. I am certainly saying that.</b><br/>10 Q. You say:<br/>11 "This is the route most likely to crumble as both<br/>12 Rightmove and Zoopla will be trying to breach the dam."<br/>13 So we are back to the dam and the flooding, yes?<br/>14 <b>A. Yes.</b><br/>15 Q. So you would accept from me, is it, that is you trying<br/>16 to influence the collective decision making of this<br/>17 group up in the North East, yes?<br/>18 <b>A. Well influence it in the sense of making sure that they<br/>19 weren't reaching their decision on a false assumption<br/>20 about how effective OnTheMarket would be from launch.</b><br/>21 Q. Yes, I am happy with that, Mr Springett. So influence<br/>22 them to make a collective decision as a group about<br/>23 which portals to join but just not that decision?<br/>24 <b>A. Collective or not would have been the same answer. It<br/>25 would have been one office.</b></p> <p style="text-align: center;">Page 214</p> | <p>1 <b>exclusive proposition but that wasn't sustainable.</b><br/>2 Q. And you go on to say:<br/>3 "The easiest situation to sustain is where OTM<br/>4 agents choose to retain the portal they each consider<br/>5 the strongest for their business."<br/>6 And then you go on to say:<br/>7 "There is at least one major competitor in the<br/>8 region outside the OTM tent."<br/>9 Is that Pattinson?<br/>10 <b>A. I am referring to Pattinson, yes.</b><br/>11 Q. So, as I understand it, they are a fairly significant<br/>12 local agent in the North East?<br/>13 <b>A. They are.</b><br/>14 Q. As we will see in a moment, you have some dealings with<br/>15 them. And you are saying if they remain outside the OTM<br/>16 tent -- well, you can see the rest of what you say<br/>17 there.<br/>18 <b>A. Mmm.</b><br/>19 Q. What you then go on to say is:<br/>20 "Clearly the above dynamics change if all the key<br/>21 agents are signed for five-year terms with us."<br/>22 So what I suggest to you is that you were advocating<br/>23 towards Mr Rook, Mr Henning and Mr Rogerson that<br/>24 dynamics move in a particular way if they act together<br/>25 as all the key agents, aren't you?</p> <p style="text-align: center;">Page 216</p>  |

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| <p>1 <b>A. No, I'm just saying if all the key -- it is the same as</b><br/> 2 <b>the outcome that occurred when we launched. If agents</b><br/> 3 <b>act in a particular way there will be a particular</b><br/> 4 <b>outcome.</b></p> <p>5 Q. Then you go on:<br/> 6 "But my advice would on balance still be that you<br/> 7 should each choose the lowest risk option for your<br/> 8 businesses and take the benefits we can deliver<br/> 9 progressively."<br/> 10 Do you see that?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And you don't say there that choosing the one other<br/> 13 portal collectively would be illegal, do you?</p> <p>14 <b>A. Well, I've already made my position clear on that, that</b><br/> 15 <b>Clive Rook is involved in this group and he is a senior</b><br/> 16 <b>agent in the area and he's fully au fait with the issues</b><br/> 17 <b>around collective negotiation.</b></p> <p>18 Q. But the confusion, you see, is Mr Springett, you said<br/> 19 a number of times that you -- I don't know if you used<br/> 20 the word "advised" or "told" Mr Rook that he has to do<br/> 21 these things including on the basis of legal advice but<br/> 22 what I don't see is where you are telling Mr Rook: you<br/> 23 can't do that, that's not legal?</p> <p>24 <b>A. Because by this time my advice to all of these agents</b><br/> 25 <b>who signed up in the first batch of gold membership, in</b></p> <p style="text-align: center;">Page 217</p> | <p>1 individual firms more easily. You certainly didn't want<br/> 2 that, did you, Mr Springett, you didn't want them acting<br/> 3 individually, you wanted them to be approaching Zoopla<br/> 4 as a group?</p> <p>5 <b>A. No.</b></p> <p>6 Q. That's why you say don't give the list?</p> <p>7 <b>A. That is not what that means and it is the same reason we</b><br/> 8 <b>have not given access to anybody on the whole. We</b><br/> 9 <b>haven't given access to lists or didn't give access to</b><br/> 10 <b>lists during that period because our competitors knew</b><br/> 11 <b>what was coming and we didn't want to make it easier for</b><br/> 12 <b>them to counteroffer and to derail the process.</b></p> <p>13 Q. I am sorry, Mr Springett, you didn't give access of<br/> 14 lists to whom?</p> <p>15 <b>A. Externally, we didn't publish them. We didn't want</b><br/> 16 <b>lists of our members getting into the hands of our</b><br/> 17 <b>competitors, a perfectly reasonable commercial position.</b></p> <p>18 Q. I may be at slightly cross-purposes with you. Where<br/> 19 does the publishing come into it? Nobody is suggesting<br/> 20 that somebody publishes a list?</p> <p>21 <b>A. If Zoopla ask for a list, I have said to -- I think the</b><br/> 22 <b>person asking the question is Clive Rook, he's emailed</b><br/> 23 <b>me on the facing page to say, what do I think about this</b><br/> 24 <b>idea of providing a list to Zoopla? And I simply</b><br/> 25 <b>respond saying, I don't think it is a very good idea.</b></p> <p style="text-align: center;">Page 219</p> |
| <p>1 <b>other words, when I was personally making the</b><br/> 2 <b>presentations to them, that they needed to make</b><br/> 3 <b>independent decisions and, therefore, my position was if</b><br/> 4 <b>they chose to depart from that, then they needed to be</b><br/> 5 <b>very clear what they were doing.</b></p> <p>6 Q. I see, so is it right then, Mr Springett, your view is<br/> 7 you effectively give, if you like, a blanket warning<br/> 8 against collective decision making such as the one you<br/> 9 had given a year earlier to Mr Henning alone in that<br/> 10 email that we saw in 2013 and then that's it, that's<br/> 11 enough?</p> <p>12 <b>A. No, of course not. It was on one of the final pages of</b><br/> 13 <b>every presentation I gave.</b></p> <p>14 Q. That is right. But it is not in this email, is it?</p> <p>15 <b>A. It is not in this email.</b></p> <p>16 Q. If we go on then in the next paragraph, the one<br/> 17 beginning "You mentioned" this moves on to a slightly<br/> 18 different topic about Zoopla having asked for a list of<br/> 19 all the member firms in the region and you saying they<br/> 20 don't need it. The last sentence I suggest to you is<br/> 21 telling:<br/> 22 "A list just lets them..." that means Zoopla,<br/> 23 doesn't it?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And this just lets them, Zoopla, target/pick off</p> <p style="text-align: center;">Page 218</p>   | <p>1 Q. That is right, and the reason you didn't want that is<br/> 2 because you would let them pick off with individual<br/> 3 deals to members of the group, isn't it?</p> <p>4 <b>A. No.</b></p> <p>5 Q. This is what it says. A list just lets them target/pick<br/> 6 off individual firms more easily?</p> <p>7 <b>A. It is a list of people who are signed up to us and they</b><br/> 8 <b>can be picked off.</b></p> <p>9 Q. That is right and you don't want that because you want<br/> 10 the group to act together, don't you?</p> <p>11 <b>A. No, well that's not -- that wasn't the intent of that</b><br/> 12 <b>paragraph.</b></p> <p>13 Q. I see. Can we just finish off then on this little train<br/> 14 because if you move over several pages to 4001 you will<br/> 15 see there is a response to this email from Mr Henning,<br/> 16 do you see at the top of the page?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. You can see at the bottom of the page it is the same<br/> 19 email we just looked at?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And then it looks as though a few -- well, that same day<br/> 22 Mr Henning responds and he responds to you, doesn't he?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. I suggest to you that the message hasn't really got<br/> 25 through very well, has it, to Mr Henning because what he</p> <p style="text-align: center;">Page 220</p>  |

55 (Pages 217 to 220)

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| <p>1 says, picking it up in the -- you can read to yourself</p> <p>2 the first couple of sentences. I don't want to exclude</p> <p>3 you from refreshing your memory. (Pause)</p> <p>4 He says:</p> <p>5 "In terms of what's right for individual</p> <p>6 businesses ... However, I think by continuing to drive</p> <p>7 our current strategy as a region we can all gain whether</p> <p>8 we individually subsequently choose to come off both</p> <p>9 stay with Rightmove or Zoopla."</p> <p>10 So what he is saying there is he wants to carry on,</p> <p>11 isn't he, acting as a region or as a grouping?</p> <p>12 <b>A. Well, he's in a grouping which is conducting collective</b></p> <p>13 <b>negotiations with portals, one portal in particular at</b></p> <p>14 <b>this point which is Zoopla.</b></p> <p>15 Q. Yes, that is right. He wants to carry on doing it as</p> <p>16 a grouping, doesn't he, notwithstanding what you said?</p> <p>17 <b>A. Apparently so.</b></p> <p>18 Q. You don't write back to him, do you, and say, "Look,</p> <p>19 haven't you really got the hang of this, Mr Henning, you</p> <p>20 can't do this?"</p> <p>21 <b>A. By this time I have given him very clear advice on what</b></p> <p>22 <b>they should do and if they want to depart from that, it</b></p> <p>23 <b>is theirs to take their own legal advice.</b></p> <p>24 Q. You don't say that it's illegal?</p> <p>25 <b>A. No, because I'd said that many times.</b></p> <p style="text-align: center;">Page 221</p>   | <p>1 So far so good?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And then she responds?</p> <p>4 <b>A. No, that's what I had agreed with Clive Rook that</b></p> <p>5 <b>I would do.</b></p> <p>6 Q. Thank you. The previous page in the bundle then you can</p> <p>7 see her response:</p> <p>8 "Hi Ian, I have been clear on our position. I am</p> <p>9 not prepared to commit to a five year agreement which</p> <p>10 could amount to 400,000 on a product which I have not</p> <p>11 seen which relies on most of my competitors doing</p> <p>12 something which they currently lack the courage to do."</p> <p>13 <b>A. Mmm.</b></p> <p>14 Q. And what you then say is in my suggestion to you that</p> <p>15 what you want is a collective decision on behalf of all</p> <p>16 the agents in the North East. You say:</p> <p>17 "Hi Caroline, thanks for this. I appreciate your</p> <p>18 position of course. I am simply thinking that if all of</p> <p>19 the main agents in the North East were aligned it would</p> <p>20 be easier for them to make courageous decisions about</p> <p>21 individual and, indeed, potentially all other portals."</p> <p>22 So you are expressly saying to her, aren't you, and</p> <p>23 advocating that she should be part of a collective</p> <p>24 decision about which portal to choose rather than take</p> <p>25 an individual one, aren't you?</p> <p style="text-align: center;">Page 223</p>  |
| <p>1 Q. Then in terms of having a go, to use your language, with</p> <p>2 Mr Rook, it is fair to say that you, if you like, also</p> <p>3 have a go at Miss Pattinson, don't you, in the North</p> <p>4 East?</p> <p>5 <b>A. I wouldn't characterise it as "having a go".</b></p> <p>6 Q. I don't mean in the sort of vernacular sense?</p> <p>7 <b>A. In any sense really because I was asked by Clive Rook,</b></p> <p>8 <b>I was told by him, I think during the course of the call</b></p> <p>9 <b>or -- I became aware whether it was the course of the</b></p> <p>10 <b>call, it may be in one of the emails, that he and some</b></p> <p>11 <b>other Agents' Mutual members were meeting Miss Pattinson</b></p> <p>12 <b>I think the following day and he said to me, "Could you</b></p> <p>13 <b>contact her and just offer any assistance and</b></p> <p>14 <b>a willingness to discuss terms on which she, her firm</b></p> <p>15 <b>could join Agents' Mutual."</b></p> <p>16 Q. Perhaps we can have a look at what happens with</p> <p>17 Miss Pattinson. If you are still in bundle number 7,</p> <p>18 please, and turn, please, to 3990. Do you see that is</p> <p>19 an email from you to Miss Pattinson on 6 October?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. "Dear Caroline, I hope you are well. Clive Rook</p> <p>22 mentioned to me that you are meeting with him and others</p> <p>23 tomorrow to discuss progress in the North East. It is</p> <p>24 just to say that following a meeting of member options I</p> <p>25 would be happy to come and to meet you."</p> <p style="text-align: center;">Page 222</p> | <p>1 <b>A. No, I'm not actually. I'm saying that Agents' Mutual</b></p> <p>2 <b>becoming stronger gives all agents more negotiating</b></p> <p>3 <b>strength with the other two portals.</b></p> <p>4 Q. You are specifically saying, Mr Springett, come on, that</p> <p>5 you would -- you were suggesting to her quite clearly</p> <p>6 that she could be part of an alignment in the North</p> <p>7 East, aren't you?</p> <p>8 <b>A. No.</b></p> <p>9 Q. What --</p> <p>10 <b>A. However, it is clear that there is already a substantial</b></p> <p>11 <b>membership agency in the North East and I am saying to</b></p> <p>12 <b>her if you come on board with Agents' Mutual, Agents'</b></p> <p>13 <b>Mutual will be stronger, it will strengthen your hand</b></p> <p>14 <b>vis à vis other portals.</b></p> <p>15 Q. That is not what you are saying, is it, Mr Springett?</p> <p>16 <b>A. That is exactly what I'm saying.</b></p> <p>17 Q. You are suggesting to her that she should become part of</p> <p>18 an alignment, that is a grouping of agents, so that she</p> <p>19 can make courageous decisions about portals. That is</p> <p>20 right, isn't it?</p> <p>21 <b>A. No.</b></p> <p>22 Q. And it is certainly right, isn't it, that this group of</p> <p>23 agents ultimately they came to a decision all to leave</p> <p>24 Zoopla, didn't they?</p> <p>25 <b>A. I don't have the details of what they all did.</b></p> <p style="text-align: center;">Page 224</p> |



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| <p>1 Q. Surely you know the answer to that question,<br/>2 Mr Springett?</p> <p>3 <b>A. We didn't keep any records of where people went.</b></p> <p>4 Q. Mr Springett as chief executive of the company you must<br/>5 surely know which areas of the country the regions have<br/>6 collectively gone with Zoopla as opposed to the<br/>7 90 per cent of the rest of the country where they have<br/>8 gone to Rightmove?</p> <p>9 <b>A. We didn't keep any record of where people had come from,<br/>10 what portals they had dropped. The only information we<br/>11 collected immediately in the run-up to the launch was<br/>12 which portal they were choosing as their one other<br/>13 portal.</b></p> <p>14 Q. I suggest to you, Mr Springett that is not right at all.<br/>15 You know perfectly well that this grouping of agents up<br/>16 there in the North East came to a group decision to<br/>17 leave Zoopla which was what you had always wanted them<br/>18 to do, and that is right, isn't it? I am sorry, was<br/>19 that a yes or a no?</p> <p>20 <b>A. Forgive me, I have forgotten the question now.</b></p> <p>21 Q. I have suggested that you do know perfectly well?</p> <p>22 <b>A. No, is the answer.</b></p> <p>23 THE CHAIRMAN: That was the answer, yes.</p> <p>24 MR FREEMAN: Could I just ask Mr Springett what Property<br/>25 Penguin is or was?</p> <p style="text-align: center;">Page 225</p>   | <p>1 MR HARRIS: Is this in bundle 7?</p> <p>2 MR FREEMAN: Yes.</p> <p>3 MR HARRIS: 3987, yes, sir.</p> <p>4 MR FREEMAN: Yes. And there was first of all a discussion<br/>5 about Property Penguin which I just had explained to me,<br/>6 thank you very much. Then I just note that the final<br/>7 thing in this correspondence was Miss Pattinson saying<br/>8 to Mr Springett: why didn't you buy Zoopla? I am just<br/>9 observing to you that was one of the hypothetical<br/>10 remarks I put to you which is would your analysis of<br/>11 this issue from the competition point of view be<br/>12 different if it was a merger situation rather than<br/>13 a vertical agreement and in a horizontal context?</p> <p>14 I am just observing that it is interesting that the<br/>15 idea of a merger is not entirely fanciful but<br/>16 Mr Springett has demonstrated that they didn't have the<br/>17 money.</p> <p>18 MR HARRIS: Yes, that is how I have marked up that email,<br/>19 yes, 3987, although I have also marked up the attitude<br/>20 towards one of the large portals at the bottom which is<br/>21 after dealing with the numbers:<br/>22 "Our plan is to put them right back in their box as<br/>23 a supplier to agents rather than their master."<br/>24 MR FREEMAN: I read that too.<br/>25 MR HARRIS: Which is a theme we'll be coming to later on.</p> <p style="text-align: center;">Page 227</p>           |
| <p>1 <b>A. Yes, I don't have precise details. I can tell you what<br/>2 I know and Property Penguin was a concept, and I don't<br/>3 know precisely how far they got with it but it was an<br/>4 attempt by agents in the North East to create a local<br/>5 property portal which they would run just between<br/>6 themselves regionally but with I suppose the similar<br/>7 objective of escaping the tyranny of the monster that<br/>8 had been created, but it never got traction. I think<br/>9 one of the reasons was there was a degree of distrust<br/>10 between local competitors.</b></p> <p>11 MR FREEMAN: Thank you. I see also, just finishing off this<br/>12 line of correspondence that Miss Pattinson asked you why<br/>13 you hadn't bought Zoopla and you gave her a fairly<br/>14 comprehensive answer and I only mention that because<br/>15 that was one of the hypothetical remarks I put to you<br/>16 which is what your analysis would be if this was<br/>17 a merger between Agents' Mutual and Zoopla, and I think<br/>18 you gave me an answer to that but Mr Springett has also<br/>19 explained that it was never possible financially.</p> <p>20 MR HARRIS: I am sorry, sir, I simply didn't hear the first<br/>21 part of it and now I am not on the same document so<br/>22 would you mind repeating. I am afraid I am not<br/>23 following.</p> <p>24 MR FREEMAN: I was just finishing the line of correspondence<br/>25 that you were putting to Mr Springett.</p> <p style="text-align: center;">Page 226</p> | <p>1 MR FREEMAN: You can put bundle H7 away now.</p> <p>2 MR HARRIS: I am sorry, sir, one of the things that,<br/>3 certainly on this side of the court we found<br/>4 occasionally, is we can't pick up quite what you are<br/>5 saying when you direct a question to a witness and so<br/>6 I apologise and put the bundle away but I genuinely<br/>7 didn't hear the first ...:</p> <p>8 My attention had been drawn, Mr Springett, to an<br/>9 answer you gave in the transcript today at page 204,<br/>10 line 6 to 12 and I quote:<br/>11 "My advice to all these agents is that they needed<br/>12 to take an independent decision."<br/>13 But that is exactly the opposite of what you are<br/>14 doing when you say to Miss Pattinson that you suggest<br/>15 that she should be aligned with other agents, isn't it?</p> <p>16 <b>A. Not at all. It just meant I was talking to her about<br/>17 joining Agents' Mutual.</b></p> <p>18 Q. I suggest to you that you say one thing on one occasion<br/>19 and then you do something on another occasion and that's<br/>20 right, isn't it?</p> <p>21 <b>A. No, it isn't.</b></p> <p>22 Q. Is it right that one of the keys to getting these<br/>23 regional groups of agents to operate was finding<br/>24 a motivated individual to lead the grouping?</p> <p>25 <b>A. No. I didn't seek out people who would take on any kind</b></p> <p style="text-align: center;">Page 228</p> |

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| <p>1 <b>of leadership role and in fact my experience was fairly</b><br/> 2 <b>random in that as I went round the country.</b><br/> 3 Q. So not key to finding a motivated individual then, is<br/> 4 that your evidence?<br/> 5 <b>A. Well, I am saying that it arose in different parts of</b><br/> 6 <b>the country and not in others.</b><br/> 7 Q. The reason I am just querying that with you,<br/> 8 Mr Springett, is because -- in fact those are your exact<br/> 9 words, if you look at bundle 15 at page 8310. So do you<br/> 10 see that this is starting at the first hole punch an<br/> 11 email that you, Ian Springett, wrote?<br/> 12 <b>A. Yes.</b><br/> 13 Q. This is in response to an email from Ms Whiteley to you,<br/> 14 isn't?<br/> 15 <b>A. Yes.</b><br/> 16 Q. She had suggested possible more formalised structures<br/> 17 for Agents' Mutual in local areas, hadn't she?<br/> 18 <b>A. In Northern Ireland specifically I think.</b><br/> 19 Q. Just on this point, you say that:<br/> 20 "The member groups should be self managing and<br/> 21 whilst the local..."<br/> 22 And there we have our acronym from yesterday, don't<br/> 23 we, business development consultant and regional sales<br/> 24 manager.<br/> 25 "... can be invited to attend there is no</p> <p style="text-align: center;">Page 229</p>   | <p>1 <b>a strong group functioning there was somebody separate</b><br/> 2 <b>from Agents' Mutual as a company who'd volunteered to</b><br/> 3 <b>take on whatever role they took on.</b><br/> 4 Q. Mr Rook is not separate from the company, is he? He is<br/> 5 a board director of the company?<br/> 6 <b>A. Yes, but that group had formed itself considerably</b><br/> 7 <b>before he became a board member of Agents' Mutual.</b><br/> 8 Q. At the time of all the emails that I have been showing<br/> 9 you he was a central figure in the group and he was<br/> 10 a board director, wasn't he?<br/> 11 <b>A. Yes, I think --</b><br/> 12 Q. Sorry, I cut you off.<br/> 13 <b>A. If we look back to the 2013 period, it was Mr Henning</b><br/> 14 <b>who was actually making a lot of the running trying to</b><br/> 15 <b>arrange meetings and help develop the membership there.</b><br/> 16 <b>So I am just trying to say to you that we didn't go out</b><br/> 17 <b>looking to appoint people from outside the company</b><br/> 18 <b>including members to take on any kind of liaison or</b><br/> 19 <b>leadership.</b><br/> 20 Q. But as regards where we were probably about half an hour<br/> 21 ago now, the REAP Fabric group in north London that also<br/> 22 had as a key member another board member of<br/> 23 Agents' Mutual, didn't it, Mr Trevor Abrahmsohn, from<br/> 24 Glentree?<br/> 25 <b>A. That's correct.</b></p> <p style="text-align: center;">Page 231</p>                                    |
| <p>1 representative from AM on the committee."<br/> 2 That is how the North East group operated, albeit<br/> 3 all members were able and most did attend. But of<br/> 4 course in the North East group one of the key members<br/> 5 that we have seen from all the emails we have been<br/> 6 looking at today was a board member, wasn't he, Mr Rook?<br/> 7 <b>A. He -- yes, he became a board member but after he joined</b><br/> 8 <b>Agents' Mutual. He became a board member in March 2014</b><br/> 9 <b>but had signed his contract in January 2014.</b><br/> 10 Q. All of those emails that we looked at earlier today<br/> 11 from June 2014 and then August and then September<br/> 12 and October, every one of them was at a time when<br/> 13 Mr Rook was a board member of Agents' Mutual, correct?<br/> 14 <b>A. Yes, that's correct.</b><br/> 15 Q. Then you say there was upset about Mr Rook's decisions<br/> 16 not to leave RM. "The West Wales group is similar and<br/> 17 intact. There is another in north Devon." We have seen<br/> 18 how you updated your RFI on that point earlier today,<br/> 19 and then you say in your words:<br/> 20 "In each case the key is a motivated individual or<br/> 21 group of individuals prepared to lead/coordinate."<br/> 22 So that is right, isn't it?<br/> 23 <b>A. Well, look, I took from your question that we had looked</b><br/> 24 <b>for a key individual and perhaps I misheard you or</b><br/> 25 <b>misunderstood but in each of those cases where there was</b></p> <p style="text-align: center;">Page 230</p> | <p>1 Q. And I think perhaps I misheard you this time,<br/> 2 Mr Springett, but I think just a moment ago you said<br/> 3 that it was -- or perhaps you can just remind me. Did<br/> 4 you say it was people inside or outside the company with<br/> 5 whom the group motivating individual liaises?<br/> 6 <b>A. What I'm trying to explain is that these groups are</b><br/> 7 <b>formed independently of the company.</b><br/> 8 Q. Right. But they have if you like, a point man or woman<br/> 9 within the company with whom they liaise, don't they?<br/> 10 <b>A. It varies enormously. The strongest illustration of</b><br/> 11 <b>that is Julie Emmerson in the North East just by virtue</b><br/> 12 <b>of the development of that group. There are other</b><br/> 13 <b>groups such as the west Wales group where my</b><br/> 14 <b>understanding is our local representative wasn't</b><br/> 15 <b>terribly closely involved. And that's partly because</b><br/> 16 <b>she came on the scene rather later.</b><br/> 17 Q. I am glad you raised the west Wales group, Mr Springett,<br/> 18 because that is the very next paragraph, isn't it? What<br/> 19 you say is the North East group have had Julie, and<br/> 20 actually we have seen your personal involvement up<br/> 21 there, haven't we, and indeed Ms Whiteley's yes, emails?<br/> 22 <b>A. Yes.</b><br/> 23 Q. "But west Wales used me really and also interact with<br/> 24 Patsy."<br/> 25 Who is Patsy?</p> <p style="text-align: center;">Page 232</p> |

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| <p>1 <b>A. Head of marketing. So this is in relation to -- we are</b><br/> 2 <b>in 2016 now of course so we are 15 months or so post</b><br/> 3 <b>launch and the focus of these groups has really been</b><br/> 4 <b>involving themselves in additional marketing activity</b><br/> 5 <b>OnTheMarket's behalf, so they group together and they'll</b><br/> 6 <b>buy space in local newspapers. Some of them have taken</b><br/> 7 <b>radio advertising. They pay for it themselves but we</b><br/> 8 <b>supply the relevant copy or the radio adverts.</b></p> <p>9 Q. So you are the, if you like, the point man for west<br/> 10 Wales, as you say here, "West Wales use me really". And<br/> 11 then you go on, don't you, in the next paragraph to<br/> 12 say -- the heading of the email is "Northern Ireland".<br/> 13 "I agree with you..." That is Helen, isn't it?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. That the focus should be on how the agents can<br/> 16 individually and collectively work to advance their<br/> 17 portal in Northern Ireland?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And then you say "and resolve any local issues". And<br/> 20 then you say this sentence:<br/> 21 "For example, the operation of the OOP rule where we<br/> 22 are slightly out on a limb but hopefully can contain<br/> 23 it."<br/> 24 <b>A. Yes.</b></p> <p>25 Q. You are out in on a limb there, aren't you, Mr Springett</p> <p style="text-align: center;">Page 233</p> | <p>1 <b>A. It aligns with the rest of the UK, yes, sir.</b></p> <p>2 MR HARRIS: You can put number 15 away, thank you. I do<br/> 3 apologise partly to Mr Springett in the sense that<br/> 4 I took you to the north London grouping in one of the<br/> 5 emails a little bit out of order because it followed an<br/> 6 email.</p> <p>7 <b>A. I understood.</b></p> <p>8 Q. And I just want to revisit for a moment back into the<br/> 9 territory of north London. So we had looked at the<br/> 10 email -- we don't need to turn it up again. I am just<br/> 11 reminding you -- at bundle 9 at 4749 78. That is the<br/> 12 you to Trevor Abrahmsohn one. Do you remember that one?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. I put to you how you were trying to influence future<br/> 15 portal choices of the group and you gave your evidence<br/> 16 about that. I suggest to you that you had known for<br/> 17 some time that there was a -- that was an email by the<br/> 18 way of February 2015, the Trevor Abrahmsohn one?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. I suggest to you that you had known for quite some time<br/> 21 that there was a group of decision makers in London and<br/> 22 that they were likely to collectively make decisions<br/> 23 about their portal choice, right? You had known that<br/> 24 for some time?</p> <p>25 <b>A. Do you mean REAP? Do you mean Fabric REAP?</b></p> <p style="text-align: center;">Page 235</p>  |
| <p>1 because you know that the OOP rule in Northern Ireland<br/> 2 which is where we began today is significantly less<br/> 3 restrictive for the first 12 month period than it is for<br/> 4 the rest of the country; that is right, isn't it?</p> <p>5 <b>A. That is right.</b></p> <p>6 Q. So you regard that as a vulnerability out on a limb,<br/> 7 don't you?</p> <p>8 <b>A. Absolutely.</b></p> <p>9 Q. Yes. And that's because what it demonstrates, amongst<br/> 10 other things, Mr Springett, is that there is a perfectly<br/> 11 acceptable less restrictive manner in which to launch<br/> 12 your venture even within one part of the same market,<br/> 13 doesn't it?</p> <p>14 <b>A. No, it doesn't do that. It allowed us to enter</b><br/> 15 <b>a national market that had different characteristics</b><br/> 16 <b>from the mainland UK and it was temporary in fact. It</b><br/> 17 <b>expires in March 2017.</b></p> <p>18 Q. Exactly, Mr Springett. So a less restrictive rule to<br/> 19 get you into the market and only lasting 12 months<br/> 20 before changing. That is right, isn't it?</p> <p>21 <b>A. Well becoming more restrictive than it originally was</b><br/> 22 <b>positioned.</b></p> <p>23 Q. Very much so?</p> <p>24 THE CHAIRMAN: So it ratchets up in other words the latitude<br/> 25 of--</p> <p style="text-align: center;">Page 234</p>  | <p>1 Q. I mean some of the members of REAP. Some influential<br/> 2 estate agents in central and north London?</p> <p>3 <b>A. Well, again, it is worth understanding what the role of</b><br/> 4 <b>REAP or at least the way that it sees itself. I mean,</b><br/> 5 <b>it came into being to create a magazine, an agent owned</b><br/> 6 <b>magazine in an environment where print media was</b><br/> 7 <b>becoming very expensive and where the local publisher</b><br/> 8 <b>had the whip hand in negotiations. And the role</b><br/> 9 <b>developed beyond that into again, group negotiation with</b><br/> 10 <b>other -- particularly print media, in that part of the</b><br/> 11 <b>world. So it had already been established as an entity</b><br/> 12 <b>which did that on behalf of its members.</b></p> <p>13 <b>Now, I think it is not constituted as a company</b><br/> 14 <b>limited by guarantee. I think it is a share based</b><br/> 15 <b>company, all the shares are held by agents.</b></p> <p>16 Q. So that's right, isn't it? If you look in bundle<br/> 17 number 1 this time, at page 390, you can see at the<br/> 18 bottom of the page, it is going earlier in time to 2012?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Mr Bartlett, he's a founder member director of<br/> 21 Agents' Mutual, isn't he?</p> <p>22 <b>A. He is.</b></p> <p>23 Q. I don't know who all of these people are but Mr Flint is<br/> 24 in the 'to' line?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 236</p> |

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| <p>1 Q. He is a founder member director of Agents' Mutual, isn't<br/>2 he?<br/>3 <b>A. He is.</b><br/>4 Q. Mr Masters, he is a director at Kinleigh Folkard &amp;<br/>5 Hayward, isn't he?<br/>6 <b>A. He is.</b><br/>7 Q. Somebody who you tried to woo early on in the picture?<br/>8 <b>A. But not a founder member.</b><br/>9 Q. No, I accept that but somebody you were keen to bring on<br/>10 board early?<br/>11 <b>A. I was certainly.</b><br/>12 Q. Mr Jarman; he is a director at Savills, isn't he?<br/>13 <b>A. Yes.</b><br/>14 Q. And you can see they are responding to the man who has<br/>15 been doing some group negotiation on their behalf?<br/>16 <b>A. Yes.</b><br/>17 Q. Haven't they?<br/>18 <b>A. He worked -- his organisation is a media buying agency,</b><br/>19 <b>amongst other things.</b><br/>20 Q. What you say is that they go back with a maximum of<br/>21 increase -- of details that don't really matter. Over<br/>22 the page:<br/>23 "I accept what you say, that they may then ask us to<br/>24 pull off a portal. Nothing can be agreed. This is<br/>25 something that we can consider as a group, once we know</p> <p style="text-align: center;">Page 237</p>   | <p>1 Because if he did pass it on and Mr Springett is<br/>2 replying to that email, there would be an intervening<br/>3 email showing the forwarding minutes.<br/>4 MR HARRIS: That is right. These are documents that have<br/>5 been disclosed to us so we are just doing the best we<br/>6 can.<br/>7 THE CHAIRMAN: Yes, of course.<br/>8 MR HARRIS: So what I am suggesting to you is, Mr Springett,<br/>9 that back in late 2012, you knew of a grouping of some<br/>10 influential and important central London and north<br/>11 London estate agents, including at least three of whom<br/>12 were founder member directors of the company --<br/>13 <b>A. Mmm.</b><br/>14 Q. -- that they were contemplating collective decisions to<br/>15 pull off a particular portal, if nothing can be agreed;<br/>16 right?<br/>17 <b>A. Well, as I have said, I don't know the detail. Clearly</b><br/>18 <b>I have been made aware that they, through a media agent,</b><br/>19 <b>were engaged in a joint negotiation with ZPG and,</b><br/>20 <b>presumably, ZPG was happy to be involved on that basis.</b><br/>21 <b>That's the extent of it.</b><br/>22 Q. Again, Mr Springett, we can see what the email says.<br/>23 You receive it?<br/>24 <b>A. Yes.</b><br/>25 Q. And it says "We consider, as a group, pulling off the</p> <p style="text-align: center;">Page 239</p>  |
| <p>1 their final stance"?<br/>2 <b>A. I'm not involved in this correspondence.</b><br/>3 Q. You are not involved on that email on 17 December, but<br/>4 this email chain gets passed to you, doesn't it, on the<br/>5 previous page, where you say at the top of 389:<br/>6 "Thanks for sending this through"?<br/>7 <b>A. Yes.</b><br/>8 Q. So what I am suggesting to you is you did know about<br/>9 this group, including several of your founder member<br/>10 directors, who were contemplating group decisions about<br/>11 pulling off a particular portal as long ago as 2012;<br/>12 right?<br/>13 <b>A. Well, I wasn't party to their negotiations at all.</b><br/>14 <b>I think -- I am trying to remind myself what the context</b><br/>15 <b>for it being sent to me was at all. It looks like it</b><br/>16 <b>was sent to me -- I can't see where it was -- I can't</b><br/>17 <b>see the email sending it to me, unfortunately. It seems</b><br/>18 <b>strange that it's not there.</b><br/>19 Q. One infers that you have at the bottom of 389,<br/>20 18 December 2012, 12.49. Not on it. And then you<br/>21 respond to Noel, who is one of them, at 18 December,<br/>22 14.39. So one infers that Noel, at least, passed it on<br/>23 to you in the interim. Though one can't see the --<br/>24 <b>A. No, it would be interesting to know what he said.</b><br/>25 THE CHAIRMAN: It doesn't really make sense, does it?</p> <p style="text-align: center;">Page 238</p> | <p>1 portal." As a group. So you did know that?<br/>2 <b>A. Where does it say they are going to pull off the group?</b><br/>3 Q. The top of 391.<br/>4 <b>A. I accept what you say, that they may then ask us to pull</b><br/>5 <b>off the portal. Well that's Zoopla talking.</b><br/>6 Q. Yes, that's right.<br/>7 <b>A. Zoopla might ask the agents to come off the portal.</b><br/>8 Q. It is a group decision about a pulling off the portal<br/>9 that you know about from these people, isn't it?<br/>10 <b>A. No, that's not what this says actually. It says:</b><br/>11 <b>"The consensus [which I assume is from among the</b><br/>12 <b>agents] is to seek a maximum increase of 10 per cent."</b><br/>13 <b>And he goes on to say:</b><br/>14 <b>"I accept what you say that they, Zoopla, may then</b><br/>15 <b>ask us to pull off the portal if nothing can be agreed."</b><br/>16 Q. That is right. What does it then go on to say?<br/>17 <b>A. "This is something we can consider as a group, once we</b><br/>18 <b>know their ..."</b><br/>19 Q. Exactly, "as a group"?<br/>20 <b>A. They are negotiating in a group context, aren't they?</b><br/>21 <b>You can't really negotiate in a group context and not be</b><br/>22 <b>able to walk away.</b><br/>23 THE CHAIRMAN: Before you move on, Mr Harris, Mr Springett,<br/>24 I wonder if you would look at page 389, the last email<br/>25 in the chain. You refer in your email to Mr Flint to</p> <p style="text-align: center;">Page 240</p> |

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| <p>1 a three-year deal. Now, I can't see any reference in<br/>                 2 this chain to a three-year deal, but obviously, someone<br/>                 3 has mentioned that to you.<br/>                 4 <b>A. Yes. I think we were in the latter stages of finalising<br/>                 5 the business plan and preparing to, early in 2013,<br/>                 6 expose the Agents' Mutual proposition to the market and<br/>                 7 we were aware, I think from this negotiation, but to be<br/>                 8 honest, I can't remember, that Zoopla in particular,<br/>                 9 were pushing agents to consider signing three year<br/>                 10 deals.</b><br/>                 11 MR HARRIS: If it assists the tribunal, or you Mr Springett,<br/>                 12 the reference is on 392 in the middle of the page.<br/>                 13 THE CHAIRMAN: That is very helpful, Mr Harris, thank you.<br/>                 14 <b>A. Is there a reference there to three years?</b><br/>                 15 THE CHAIRMAN: I think the second paragraph.<br/>                 16 MR HARRIS: Do you have a blanked out version of that page?<br/>                 17 <b>A. I can see it in yellow. Yes, a three-year deal.</b><br/>                 18 MR HARRIS: I'm pretty sure none of that is confidential but<br/>                 19 there we go.<br/>                 20 <b>A. Yes, I am not necessarily sure that that's what I was<br/>                 21 responding to. It may have been something that was<br/>                 22 discussed in one of the steering committee meetings,<br/>                 23 where three year deals were becoming more prevalent and<br/>                 24 I think what we were keen to do was get our proposition<br/>                 25 out into the market as soon as possible, before too many</b></p> <p style="text-align: center;">Page 241</p> | <p>1 Q. And then the actual email moves over.<br/>                 2 <b>A. Agreed.</b><br/>                 3 Q. So it is to a group of west Wales agents, isn't it?<br/>                 4 <b>A. Yes.</b><br/>                 5 Q. And also to one of the founder member -- partner<br/>                 6 directors, Michael Hodgson; is that right?<br/>                 7 <b>A. I am just checking the date because -- yes, it is that<br/>                 8 Michael Hodgson.</b><br/>                 9 Q. Sorry, there might have been someone else?<br/>                 10 <b>A. There are other Michael Hodgsons I found in our<br/>                 11 firmament but this is Michael Hodgson, our director,<br/>                 12 yes.</b><br/>                 13 Q. We have already seen this email because I took you to<br/>                 14 the bit about how the company makes use of its directors<br/>                 15 to promote its strategy; do you remember the final<br/>                 16 paragraph? That is why we were here earlier. Never<br/>                 17 mind.<br/>                 18 <b>A. Fine.</b><br/>                 19 Q. Now I am coming back to it for the remainder which is<br/>                 20 for a different reason.<br/>                 21 <b>A. Yes.</b><br/>                 22 Q. "Dear Nigel, thanks for your message. Starting with<br/>                 23 Rightmove's divide and rule ... "<br/>                 24 I don't need to detain you with that.<br/>                 25 The next paragraph:</p> <p style="text-align: center;">Page 243</p>                                |
| <p>1 <b>other agents entered into those sorts of deals.</b><br/>                 2 THE CHAIRMAN: Because either they will not sign up to Newco<br/>                 3 which becomes OnTheMarket or they will be leaving<br/>                 4 Rightmove because the deal with them is shorter?<br/>                 5 <b>A. Either way. I mean --</b><br/>                 6 THE CHAIRMAN: You think it could be both Rightmove and<br/>                 7 Zoopla pushing for three year deals?<br/>                 8 <b>A. Yes, absolutely.</b><br/>                 9 THE CHAIRMAN: Yes, I see.<br/>                 10 MR HARRIS: Thank you. I feel like I should have been<br/>                 11 a train conductor and sold you a train ticket at the<br/>                 12 beginning of this cross-examination. We are now going<br/>                 13 to move to another part of the country. The territory<br/>                 14 of west Wales. I think that is Mr James' territory<br/>                 15 although he is no longer here. Can I invite you,<br/>                 16 please, not for the first time, I am afraid,<br/>                 17 Mr Springett, to go to a document you have already seen<br/>                 18 with me. This is in bundle 5 and it begins at the<br/>                 19 bottom of 2576. You might recognise this.<br/>                 20 Twenty-eight March 2014, from you to a group of agents<br/>                 21 in west Wales; correct?<br/>                 22 <b>A. 2577 I have.</b><br/>                 23 Q. Yes, the date is on the bottom of 2576, the very bottom<br/>                 24 line; do you see that?<br/>                 25 <b>A. I am sorry, yes, yes.</b></p> <p style="text-align: center;">Page 242</p>  | <p>1 "Specifically on the point about founder board<br/>                 2 members ..."<br/>                 3 I don't need to detain you with that. I am just<br/>                 4 interested in taking you through the next paragraph.<br/>                 5 What you are saying to a group of west Wales agents is<br/>                 6 that:<br/>                 7 "I am not able to give you any information about the<br/>                 8 intentions of the board member firm as to their choice<br/>                 9 of other portal."<br/>                 10 Just pausing there. This is in advance of launch,<br/>                 11 isn't it?<br/>                 12 <b>A. Yes.</b><br/>                 13 Q. And what you were responding to is a request by one of<br/>                 14 these members for more information about what the board<br/>                 15 members are going to do, the founder and the board<br/>                 16 members; yes?<br/>                 17 <b>A. Yes.</b><br/>                 18 Q. And you say:<br/>                 19 "I am not able to give you any information about the<br/>                 20 intentions of the board member firms as to their choice<br/>                 21 of portal. As you know, we must take care not to be<br/>                 22 seen to be leading a collective boycott of an individual<br/>                 23 media ... the matter is not discussed between them at<br/>                 24 board meetings or elsewhere."<br/>                 25 Then what you do, having given that warning,</p> <p style="text-align: center;">Page 244</p> |

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| <p>1 Mr Springett, is you go on to give a very clear steer as<br/>2 to what they should do, don't you?:</p> <p>3 "I think I can, however, let you know the mood I'm<br/>4 encountering in conversations with other agents up and<br/>5 down the country, which is that whilst they would love<br/>6 to drop Rightmove, the likelihood is that they will not<br/>7 do so, as it is perceived as the must have portal."</p> <p>8 That is you giving a very clear steer, isn't it?</p> <p>9 You are not giving individual details or specifics but<br/>10 you are clearly indicating to this group what's<br/>11 happening elsewhere in the country and that people won't<br/>12 be dropping Rightmove, aren't you?</p> <p>13 <b>A. I am telling him/them what I've understood the mood to<br/>14 be, which is it was in the public domain as well by then<br/>15 because there were various reports by analysts towards<br/>16 the end of 2013 which were flagging that up, so I don't<br/>17 think it would have been news to anybody in that group.</b></p> <p>18 Q. No, with respect, Mr Springett, that's an after the<br/>19 event explanation, isn't it? You don't say: please find<br/>20 attached a public report?</p> <p>21 <b>A. No, but I'm telling him what I've found as I have been<br/>22 moving round the country.</b></p> <p>23 Q. Exactly. This is at a stage when there is a group of<br/>24 agents in west Wales considering as a group, which<br/>25 portal to keep and which portal to drop, isn't it? Is</p> <p style="text-align: center;">Page 245</p> | <p>1 <b>rest of the country.</b></p> <p>2 Q. Well, I put my point to you, what I suggest and then<br/>3 just finishing off on this email. Apologies if I put<br/>4 this to you before. I genuinely can't remember.</p> <p>5 <b>A. That's fine.</b></p> <p>6 Q. So in the final paragraph you say:</p> <p>7 "I thought you might welcome a conversation ... "</p> <p>8 And I suggest to you that what's going on there is<br/>9 you thought that a conversation with one of your<br/>10 directors about the question of what other portal to<br/>11 choose, would be better than putting it in writing<br/>12 because then it would give rise to less documents and<br/>13 materials in your possession. That is right, is it not?</p> <p>14 <b>A. No, it responds directly to the email I had been sent<br/>15 and the concern that Nigel Jones raised was that<br/>16 Rightmove, in particular, in this case, was promoting<br/>17 the myth that Agents' Mutual board members are<br/>18 committing to two other portals into 2015. So in other<br/>19 words, implying that they would not be in a position to<br/>20 observe the One Other Portal rule when we launched and<br/>21 that is the reason that that introduction was made. So<br/>22 that one of our directors could reassure that group that<br/>23 they were committed to doing that and we later put out<br/>24 an announcement to counter this propaganda, simply<br/>25 confirming that all the board member firms at the time</b></p> <p style="text-align: center;">Page 247</p>        |
| <p>1 that a yes?</p> <p>2 <b>A. I am just looking for the timing as to whether they had<br/>3 already begun and I think they had joint negotiations<br/>4 with Zoopla.</b></p> <p>5 Q. That is right, and what you are saying to them is that:<br/>6 I can't give you and I am not able to give you any<br/>7 specific information about a specific firm, but what<br/>8 I can tell you is what's going on everywhere else, up<br/>9 and down the country and it's that the other people are<br/>10 not going to drop Rightmove. It is a clear attempt to<br/>11 influence the decision of that collective grouping,<br/>12 isn't it?</p> <p>13 <b>A. Except I do finish off the paragraph by saying there is<br/>14 a strong critical mass of firms in the west Wales area<br/>15 and it resulted, in practice, in them accepting the<br/>16 Zoopla Group deal.</b></p> <p>17 Q. Yes, with respect, Mr Springett, that only fortifies my<br/>18 point. It is even worse where there is a strong<br/>19 critical mass of this grouping and you are trying to<br/>20 influence a strong critical mass in a decision not to<br/>21 drop Rightmove, because you are telling them that it is<br/>22 not happening elsewhere in the country. That is right,<br/>23 is it not?</p> <p>24 <b>A. That is not particularly relevant to them because<br/>25 I pointed out that their situation is different from the</b></p> <p style="text-align: center;">Page 246</p>  | <p>1 <b>were going to be in a position to observe the One Other<br/>2 Portal rule and fully intended to do so.</b></p> <p>3 MR HARRIS: I suggest to you, Mr Springett, that it is part<br/>4 of a theme about not wanting incriminating evidence to<br/>5 be created. What you say in the second line of the<br/>6 penultimate paragraph is "you must take care not to be<br/>7 seen to be leading the boycott", and then you suggest<br/>8 a conversation, as opposed to further writing and<br/>9 I suggest to you that is consistent with that email we<br/>10 saw you write to Helen Whiteley on, I think, 6 June, the<br/>11 one which is saying "Don't create", I am paraphrasing,<br/>12 "Don't create messages and documents", and it is<br/>13 consistent with the email that we saw with -- I believe<br/>14 it was Mr Henning, the gentleman whose wife was a lawyer<br/>15 and you said "We don't", and I paraphrase again, "We<br/>16 don't want materials in circulation that could be held<br/>17 against us." That is all correct, isn't it?</p> <p>18 <b>A. No, that is not remotely the case.</b></p> <p>19 Q. Can we then go to the -- I think this is the response to<br/>20 your email. So from Nigel, so I am going back earlier<br/>21 in the bundle and you can see the date of his response<br/>22 which is on 2575 at the bottom. So you can see<br/>23 28 March, later in the day?</p> <p>24 <b>A. 2575?</b></p> <p>25 Q. Yes, and then to get to the text of the email, you have</p> <p style="text-align: center;">Page 248</p> |

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|---|--|
| <p>1 to see it --</p> <p>2 <b>A. The bottom, I am sorry, yes.</b></p> <p>3 Q. -- over the page.</p> <p>4 <b>A. Nigel to me.</b></p> <p>5 Q. Yes.</p> <p>6 <b>A. "Ian, thanks for your email."</b></p> <p>7 Q. Yes, that's the one.</p> <p>8 <b>A. "I have now met and listened to Rightmove."</b></p> <p>9 Q. And you can see that in the second paragraph, what he</p> <p>10 talks about is going off and getting a group view from</p> <p>11 the agents, doesn't he?</p> <p>12 <b>A. Mmm.</b></p> <p>13 Q. And then the final sentence "whether there is a strong</p> <p>14 body of support within his grouping to go with Zoopla."</p> <p>15 And then going up the chain again, Mr Hodgson, so he's</p> <p>16 the man who we saw you directed Nigel Jones to as being</p> <p>17 the board contact; correct? Mr Hodgson is?</p> <p>18 <b>A. Yes, so we are now on 2575 in the middle.</b></p> <p>19 Q. That is right, yes, thank you. And he's reporting to</p> <p>20 you, Mr Hodgson, isn't he, about his conversation with</p> <p>21 Mr Jones?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. He puts a direct line to the board in the form of</p> <p>24 Mr Hodgson?</p> <p>25 <b>A. That's correct.</b></p> <p style="text-align: center;">Page 249</p>  | <p>1 yours, then they must all, as a group, be coming off</p> <p>2 Rightmove?</p> <p>3 <b>A. If they were on Rightmove.</b></p> <p>4 Q. Exactly, if they were on it?</p> <p>5 <b>A. But they may not have been on it.</b></p> <p>6 Q. But it follows, doesn't it, that if they were on it,</p> <p>7 they were coming off it as a group?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. That is presumably why Mr Hodgson then says "I am not</p> <p>10 sure where that stands re competition law"?</p> <p>11 <b>A. Yes, that's right.</b></p> <p>12 Q. And that is how you understood it, didn't you?</p> <p>13 <b>A. Well, again, it was a situation that arose because that</b></p> <p>14 <b>group of agents wanted to negotiate collectively with</b></p> <p>15 <b>Zoopla and Zoopla were very keen to have that</b></p> <p>16 <b>opportunity and this is one of the circumstances where</b></p> <p>17 <b>I told them they needed to get their own legal advice on</b></p> <p>18 <b>whether or not to do so.</b></p> <p>19 Q. Really, where do you say that?</p> <p>20 <b>A. What do --</b></p> <p>21 Q. I have never seen anywhere in these 10,000 pages, you</p> <p>22 writing to the west Wales group and saying --</p> <p>23 <b>A. No, I wouldn't have written to the west Wales group,</b></p> <p>24 <b>I would have give that advice to Mr Nigel Jones.</b></p> <p>25 Q. When and where?</p> <p style="text-align: center;">Page 251</p>                                     |
| <p>1 Q. And so what Mr Hodgson says is:</p> <p>2 "Ian, I spoke with Nigel and gave him the necessary</p> <p>3 assurances. I did cover off the potential overlap</p> <p>4 problem which is likely to lead to agents attracting to</p> <p>5 both post AM launch ... he talked about negotiating</p> <p>6 en bloc and making a group decision."</p> <p>7 So that is further knowledge on the part of you and</p> <p>8 Mr Hodgson, isn't it, that the west Wales grouping is</p> <p>9 going to proceed en bloc and as a group; correct?</p> <p>10 <b>A. Well, they're negotiating with Zoopla around a group</b></p> <p>11 <b>offer.</b></p> <p>12 Q. And they're negotiating with Zoopla as to whether or not</p> <p>13 Zoopla should be the one other portal, aren't they?</p> <p>14 <b>A. That's correct.</b></p> <p>15 Q. So by negotiating in a group manner with Zoopla, that</p> <p>16 means also taking a group decision to leave Rightmove,</p> <p>17 doesn't it?</p> <p>18 <b>A. I think it is a positive decision as to -- it depends</b></p> <p>19 <b>whether they are with Rightmove for a start, doesn't it?</b></p> <p>20 <b>In that part of the world, Zoopla was pretty strong.</b></p> <p>21 <b>Some of them would have been with both. Some of them</b></p> <p>22 <b>will only have been with Zoopla.</b></p> <p>23 Q. It is the function of your One Other Portal rule, isn't</p> <p>24 it, Mr Springett, that if they are negotiating a group</p> <p>25 deal with Zoopla and as you say, they are members of</p> <p style="text-align: center;">Page 250</p> | <p>1 <b>A. In one of numerous telephone calls I had with him or</b></p> <p>2 <b>potentially face-to-face, because I did go to Wales more</b></p> <p>3 <b>frequently.</b></p> <p>4 Q. But presumably it would have been disclosed to us if you</p> <p>5 had it written down somewhere in these 10,000 pages;</p> <p>6 right?</p> <p>7 <b>A. What can I tell you? I think the advice to Clive Rook</b></p> <p>8 <b>would have been by telephone as well or face-to-face</b></p> <p>9 <b>because I was seeing him reasonably frequently around</b></p> <p>10 <b>this time, because it's when he became a director.</b></p> <p>11 Q. Where is the witness statement from Mr Jones confirming</p> <p>12 that?</p> <p>13 <b>A. Well, what witness statement?</b></p> <p>14 Q. Exactly. Where do you say that in your witness</p> <p>15 statement?</p> <p>16 <b>A. I can't anticipate every question you are going to ask</b></p> <p>17 <b>me.</b></p> <p>18 Q. I see. Then what we see from this email is that</p> <p>19 Mr Hodgson tries to influence the collective decision,</p> <p>20 doesn't he, of this grouping in west Wales. He goes on</p> <p>21 to say:</p> <p>22 "Given that his group [that is Mr Jones's group]</p> <p>23 apparently has such a dominant position in their market</p> <p>24 [I am sure he doesn't mean that in a competition law</p> <p>25 sense], I put the view that they might be better served</p> <p style="text-align: center;">Page 252</p> |

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| <p>1 to see both sides lose stock to enhance Agents' Mutual's<br/>2 profile and hasten the point at which it becomes the<br/>3 only/main portal."<br/>4 So he is trying to influence the group collective<br/>5 decision of the group in west Wales, is he not, in<br/>6 a particular direction?<br/>7 <b>A. I think he's having a discussion with them and being<br/>8 even handed, actually, is what he's being. It's the<br/>9 complete opposite of what you have been saying earlier,<br/>10 we were agitating to try to achieve.</b><br/>11 Q. On the contrary, you had tried to engineer the same<br/>12 direction for a group decision in the North East, at<br/>13 a point where there was a view that they should leave<br/>14 both Rightmove and Zoopla in the North East. So it is<br/>15 exactly the same, isn't it?<br/>16 <b>A. No, if anything comes out of that middle paragraph, it's<br/>17 Mr Hodgson saying it is better to have both sides lose<br/>18 some stock which was our original strategy when it was<br/>19 developed and published early in 2013.</b><br/>20 Q. So he's talking about this group decision making as to<br/>21 portals. He raises points about competition law. He<br/>22 tries to influence it in a certain direction and then<br/>23 you respond to him, "That's great, thank you very much,"<br/>24 don't you, at the top?<br/>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 253</p>  | <p>1 Mr Springett.<br/>2 MR MACLEAN: We can do it right now. I will give you the<br/>3 reference, if that would help, Mr Harris. It is bundle<br/>4 7/3627 and I suspect the passage Mr Springett has in<br/>5 mind is paragraph 10 of 3630.<br/>6 MR HARRIS: Sir, may I have a look at that overnight. I'm<br/>7 not in a position to do it now.<br/>8 MR MACLEAN: It won't take, Mr Harris --<br/>9 MR HARRIS: With respect, please --<br/>10 MR MACLEAN: -- a matter of a moment. It is three lines.<br/>11 MR HARRIS: With respect, Mr Maclean, can I have a look at<br/>12 that overnight? It is not a document I have seen<br/>13 before. It is unfair for me to have to deal with it in<br/>14 the midst of cross-examination. I said to Mr Springett<br/>15 I will look at it. I will do so.<br/>16 THE CHAIRMAN: I don't see any harm in the witness seeing<br/>17 it. You don't have to ask any questions if you don't<br/>18 want to, until tomorrow.<br/>19 MR HARRIS: That is fine. But Mr Springett already knows<br/>20 what it says.<br/>21 THE CHAIRMAN: I don't. I would like to see it.<br/>22 MR MACLEAN: 3630 of bundle 7.<br/>23 THE CHAIRMAN: Which paragraph?<br/>24 MR MACLEAN: Sir, Mr Springett knows better than I. 10,<br/>25 I suspect.</p> <p style="text-align: center;">Page 255</p>                      |
| <p>1 Q. And you don't say to him, let alone to Mr Jones, "Whoah,<br/>2 hang on a minute, you can't be taking these group<br/>3 decisions as to which portal to drop", do you?<br/>4 <b>A. Both of these gentlemen are very fully aware of our<br/>5 continuous position about this, that it is up to agents<br/>6 to make their own individual decisions. If they chose<br/>7 to depart from that, then that is up to them and in<br/>8 those circumstances where I became aware of them,<br/>9 particularly in relation to this kind of thing, which<br/>10 was not contemplated at all when we were formulating the<br/>11 business plan and the strategy, I simply said to them,<br/>12 "Take your own legal advice."</b><br/>13 Q. That's right, so we are back to that same point, aren't<br/>14 we, Mr Springett, which is that you claim that you have<br/>15 been saying this to them orally on many occasions but<br/>16 you don't mention it in your witness statement, you<br/>17 don't have evidence from these other people and it is<br/>18 not in any of these documents. That is right, isn't it,<br/>19 Mr Springett?<br/>20 <b>A. I think I mentioned earlier that there is a reference to<br/>21 it in the board minutes of our July 2014 board meeting,<br/>22 where it was raised by Mr Abrahamsohn and there is<br/>23 a reference there to my having told those people about<br/>24 the advice they would need to take.</b><br/>25 Q. I am sure we can have a look at that overnight,</p> <p style="text-align: center;">Page 254</p> | <p>1 <b>A. Yes, 10.</b><br/>2 THE CHAIRMAN: Let's just read it and then we can close for<br/>3 the evening. (Pause) Would that be a convenient moment,<br/>4 Mr Harris?<br/>5 MR HARRIS: Well, sir, now that I have had regard to it,<br/>6 this is no evidence of you, Mr Springett, telling the<br/>7 agents, is it?<br/>8 <b>A. Well, okay, my evidence is that I told them.</b><br/>9 Q. Yes, because this is, in fact, evidence of you<br/>10 mentioning something to board members within a board<br/>11 meeting, isn't it? It is a completely different point,<br/>12 isn't it?<br/>13 <b>A. It is not -- well my evidence is that they were advised<br/>14 on that point.</b><br/>15 MR HARRIS: Thank you, sir. If you would prefer, that's --<br/>16 I mean I have plenty more to do but it has been a very<br/>17 long day and we are very grateful on this side of the<br/>18 room for the indulgence that you have given us. I see<br/>19 Mr Woolfe may have one thing to say and I have<br/>20 a housekeeping postscript. Perhaps Mr Woolfe should go<br/>21 first.<br/>22 THE CHAIRMAN: Yes, Mr Springett, by all means remove<br/>23 yourself from the stand if you wish. You can stay in<br/>24 the courtroom or on the stand.<br/>25 <b>A. I will stay to watch, sir.</b></p> <p style="text-align: center;">Page 256</p> |



1 THE CHAIRMAN: A glutton for punishment. Mr Woolfe.  
 2 MR WOOLFE: Sir, I am simply rising to update your Honour  
 3 that something has changed since the application  
 4 finished this morning. As you will recall, when the  
 5 application concluded, you asked us whether X would  
 6 consent to having his identity revealed and as you will  
 7 recall, we went away and he said no. Now that remains  
 8 the same. Now, at the same time, he also confirmed  
 9 again that Y, the person who made the recordings,  
 10 wouldn't be willing to have their identity revealed  
 11 either. However, in the course of the day, that has  
 12 changed. So the person who was responsible for the  
 13 making of the recordings is willing to have their  
 14 identity revealed within the confidentiality ring and  
 15 also to Agents' Mutual. They are quite content for  
 16 that. They don't want to reveal to the wider world  
 17 because they are concerned about the effect it would  
 18 have on them, I think in a personal and social sense as  
 19 well as a business sense.  
 20 One other point is that it is also now become  
 21 apparent to us, well we found out since the close of the  
 22 application, that Y is in fact two people. One person  
 23 who made two of the recordings and one person who is  
 24 closely associated with that person, who made the third  
 25 recording and both are willing to have their names

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1 provided in that way.  
 2 Now, that is all I know, additional at this stage.  
 3 THE CHAIRMAN: Thank you, Mr Woolfe, that is very helpful  
 4 thank you. Mr Harris.  
 5 Housekeeping  
 6 MR HARRIS: Sir, a short housekeeping postscript. You will  
 7 recall that in Mr Livesey's evidence it emerged,  
 8 including as news to us, about a funding arrangement of  
 9 some description and you asked some questions and my  
 10 learned friend asked some questions and wrote a letter.  
 11 My instructions are that we have written back a letter  
 12 dealing with that matter but that since the time of  
 13 writing that letter, we have now learnt some more  
 14 information and so we will be writing another letter,  
 15 obviously as soon as we can get that out, so it is still  
 16 a little bit of an ongoing process. And I just wanted  
 17 to make sure that I was upfront about it.  
 18 THE CHAIRMAN: Thank you for keeping us posted.  
 19 MR MACLEAN: Sir, you won't have seen this letter but the  
 20 letter dated 9 February -- I don't know which time in  
 21 the middle of the night this one was written --  
 22 essentially told us, more or less politely, to sod off  
 23 with the questions we asked about the details of the  
 24 funding arrangements, so if we are now going to be  
 25 furnished with some more helpful information, that would

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1 be very welcome. As far as Mr Woolfe's point is  
 2 concerned, what he says, it doesn't affect my position  
 3 at all.  
 4 THE CHAIRMAN: Thank you both very much.  
 5 MR HARRIS: May I just enquire again, I've lost track, did  
 6 we say 10 o'clock start tomorrow?  
 7 THE CHAIRMAN: I said 10 o'clock tomorrow.  
 8 MR HARRIS: And there is also a ruling. Is that going to be  
 9 the 10 o'clock or --  
 10 THE CHAIRMAN: The ruling will be simply the outcome and  
 11 I will hand something down in writing, so it will be 30  
 12 seconds but we will finish the evidence pro tem tomorrow  
 13 between 4.15 and 4.30. We won't have a long day, apart  
 14 from the 10 o'clock start and then finish Mr Springett  
 15 on Monday.  
 16 MR MACLEAN: I have a personal difficulty tomorrow morning.  
 17 I am 95 per cent confident I can be here by 10 o'clock.  
 18 I may be five minutes late. I hope that won't cause  
 19 anybody too much inconvenience but I will do my very  
 20 best to be here by 10 o'clock.  
 21 THE CHAIRMAN: What we will do is endeavour to make up any  
 22 time, if it is five or so minutes, in the short  
 23 adjournment.  
 24 MR MACLEAN: I will do my very best.  
 25 MR HARRIS: Thank you ever so much. Nothing further.

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1 THE CHAIRMAN: Thank you all.  
 2 (4.45 pm)  
 3 (The court adjourned until the following day at 10.00 am)  
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