

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

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Between:

AGENTS' MUTUAL LIMITED  
Claimant

and

GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)  
Defendant

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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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<p>1 Monday, 6 February 2017 2 (10.30 am) 3 MR HARRIS: Good morning, sir, members of the Tribunal. 4 Unless there are any preliminaries, I propose to call my 5 first witness, Miss Glynis Frew. 6 MISS GLYNIS FREW (sworn) 7 Examination-in-chief by MR HARRIS 8 MR HARRIS: Miss Frew, good morning, thank you for coming 9 today. From time to time you will be handed some 10 bundles. Please can you be handed bundle D with the 11 witness statements in, unless it is already on your 12 desk. It may be behind you. And does that have in 13 tab 5, "Miss Frew's witness statement"?</p> <p>14 <b>A. Yes, it does.</b> 15 MR HARRIS: If you could perhaps hand that up to the 16 witness, that would be great. 17 Miss Frew, do you recognise that as a front page of 18 a witness statement that you prepared for use in these 19 proceedings? 20 <b>A. Yes, I do.</b> 21 Q. And please could you turn to the back of that tab, the 22 sixth page of the witness statement, and is that a copy 23 of your signature? 24 <b>A. Yes, it is.</b> 25 Q. And are the contents of this witness statement true and</p> <p style="text-align: center;">Page 2</p>	<p>1 respect of the annual price increases." 2 That was a concern which Hunters, your organisation, 3 shared, wasn't it? 4 <b>A. Well, I think as I say in my statement, when you've only 5 got two portals, then you know, it was interesting and 6 positive, potentially positive to have a third portal 7 and yes, there was no doubt about it, you know, there 8 were obviously annual price increases, you know, for the 9 two major portals.</b> 10 Q. And there had been annual price increases for several 11 years, hadn't there? 12 <b>A. Yes, for most. I mean, I can't talk about -- I can only 13 talk about Hunters, of course, so I can't talk about any 14 other agents and what agreements they had. So you know, 15 from Hunters' point of view, then yes, every year you 16 would go into a discussion on price.</b> 17 Q. So there were annual negotiations about the listing 18 fees? 19 <b>A. Yes.</b> 20 Q. Is that right? 21 <b>A. Yes, there would.</b> 22 Q. And both with Rightmove and with Zoopla? 23 <b>A. Yes, there would.</b> 24 Q. Did you participate in those listing negotiations on 25 Hunters' behalf?</p> <p style="text-align: center;">Page 4</p>
<p>1 accurate and the evidence you wish to give to this 2 Tribunal? 3 <b>A. Yes, it is.</b> 4 Q. Do you have any corrections to make? 5 <b>A. No.</b> 6 Q. Thank you. There may be some questions for you. 7 <b>A. Thank you.</b> 8 <b>Cross-examination by MR MACLEAN</b> 9 MR MACLEAN: Good morning, Miss Frew. 10 <b>A. Good morning.</b> 11 Q. You agree, don't you, that a situation in which there 12 are only two portals, Rightmove and Zoopla, with all the 13 power that they have, is not desirable, don't you? 14 <b>A. Well, I think as I say, in the statement, you know, the 15 fact that there was potentially a third portal coming on 16 stream, you know, was a good thing, for a third portal 17 to come on stream.</b> 18 Q. And it was a good thing, in particular, for independent 19 estate agents, wasn't it? 20 <b>A. Well, as I say, it was a good thing for the industry as 21 a whole, for a third portal to be coming on stream.</b> 22 Q. And in your statement in paragraph 14 you say in the 23 middle of the paragraph: 24 "Many agents were concerned about being beholden to 25 Rightmove and to a lesser extent, Zoopla, including in</p> <p style="text-align: center;">Page 3</p>	<p>1 <b>A. At that time --</b> 2 Q. What time, sorry? 3 <b>A. At the time that OnTheMarket launched, I would not 4 necessarily have been involved in those negotiations, 5 no, and not every time, I have to say, did it mean that 6 the prices went up every year. I think that, you know, 7 that's not necessarily the case but every year there 8 would be a discussion, but at that time, it was the 9 managing director that would do that.</b> 10 Q. Who was that then? 11 <b>A. That was Kevin Hollinrake.</b> 12 Q. The MP for Thirsk? 13 <b>A. That's right.</b> 14 Q. He was your predecessor? 15 <b>A. Yes.</b> 16 Q. You became acting managing director when he was elected 17 to Parliament; is that right? 18 <b>A. That's right.</b> 19 Q. So you said in that answer that you didn't necessarily 20 take part in these negotiations. I just want to make 21 absolutely clear, did you or did you not participate in 22 the listing fee negotiations with Rightmove, when OTM 23 entered the market? 24 <b>A. Well, I think it's too simple a question to say did 25 I or -- was I not involved in the negotiation because</b></p> <p style="text-align: center;">Page 5</p>

<p>1 everybody knows that part of a negotiation with any 2 supplier involves a number of people, but you might not 3 be the person that sits in front of that supplier. But 4 you would be part of the discussion prior to it.</p> <p>5 Q. I am not trying to fall out with you. I am just trying 6 to find out what your position was and the question is 7 quite straightforward. Is this the gist of your answer, 8 that your role in these negotiations was at the Hunters' 9 end of the deal but you weren't sitting across the table 10 from the people representing Rightmove or, as the case 11 may be, Zoopla, yourself; is that right?</p> <p>12 <b>A. That's absolutely right, yes.</b></p> <p>13 Q. So when I said did you participate in the negotiations 14 about listing fees, the answer is "not directly myself, 15 face-to-face, with either Rightmove or Zoopla"?</p> <p>16 <b>A. That's the answer, yes, but I think it is important to 17 make sure that throughout that, you would need to -- it 18 is a company thing because you would have all your 19 analysis and all your opinions and so on.</b></p> <p>20 Q. Right. You are the MD of an organisation called Hunters 21 Plc; is that right?</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. There is another organisation called Hunters Group 24 Limited, isn't there?</p> <p>25 <b>A. Right.</b></p> <p style="text-align: center;">Page 6</p>	<p>1 <b>A. Well he still runs those branches, that's part of the</b> 2 <b>agreement, so he still runs those branches and that</b> 3 <b>agreement finishes in July of this year.</b></p> <p>4 Q. When was the deal done, when was the acquisition done 5 between Hunters Plc and Hunters Group Limited?</p> <p>6 <b>A. That would be about three years ago.</b></p> <p>7 Q. About 2014?</p> <p>8 <b>A. That's right, so it's a three year agreement, so it</b> 9 <b>would be July.</b></p> <p>10 Q. So that deal was done before the launch of OTM but 11 I think you must be saying after Hunters Group Limited 12 had committed to join OTM; is that right?</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. Okay, I understand. Now you began working in real 15 estate, as you put it, in 1999, didn't you, paragraph 4 16 of your statement?</p> <p>17 <b>A. I started with Hunters, yes, in 1999. Prior to that</b> 18 <b>I had worked for a number of organisations.</b></p> <p>19 Q. Doing what?</p> <p>20 <b>A. I had run my own international sales consultancy.</b></p> <p>21 Q. What were you selling?</p> <p>22 <b>A. And prior to that -- training, consultancy in terms of</b> 23 <b>structures. Prior to that I worked for PepsiCo and</b> 24 <b>I worked my way up to UK board level and prior to that,</b> 25 <b>I worked for United Biscuits.</b></p> <p style="text-align: center;">Page 8</p>
<p>1 Q. Let's take it in stages.</p> <p>2 <b>A. Yes, Hunters Plc has 180 branches, of which 11 are owned</b> 3 <b>and the rest are franchisees. The Hunters Group in the</b> 4 <b>Midlands are part of our own branches, but when we</b> 5 <b>bought those branches, they had already signed an</b> 6 <b>agreement with OnTheMarket.</b></p> <p>7 Q. Right. So let me get this right then: so Hunters Plc, 8 of which you are the managing director, acquired, what, 9 100 per cent of Hunters Group Limited at some stage?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And at that stage, those Hunters Group Limited offices 12 had already become members of OTM?</p> <p>13 <b>A. They had.</b></p> <p>14 Q. And all offices of Hunters Group Limited had become 15 members of OTM; is that right?</p> <p>16 <b>A. I'm sorry, would you mind repeating that?</b></p> <p>17 Q. All offices of Hunters Group Limited --</p> <p>18 <b>A. Joined on --</b></p> <p>19 Q. -- were advertising on OTM at the time of that 20 acquisition?</p> <p>21 <b>A. That's right.</b></p> <p>22 Q. So Mr Ozwell was the chairman of Hunters Group Limited, 23 wasn't he?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What's his role now?</p> <p style="text-align: center;">Page 7</p>	<p>1 Q. So what's your professional, academic -- what's your 2 qualification? You have a degree in?</p> <p>3 <b>A. I have a degree in --</b></p> <p>4 Q. Business management or?</p> <p>5 <b>A. No, I have a degree in politics and modern history,</b> 6 <b>actually.</b></p> <p>7 Q. You should have become a barrister.</p> <p>8 <b>A. I know, well I always wanted to be a barrister, until</b> 9 <b>I saw these documents.</b></p> <p>10 Q. So did I, (inaudible).</p> <p>11 THE CHAIRMAN: I hope we are not putting you off.</p> <p>12 MR MACLEAN: You say when you joined Hunters, your role was 13 covering training and HR.</p> <p>14 <b>A. Mmm.</b></p> <p>15 Q. Who were you training?</p> <p>16 <b>A. My job was I used to train all the staff and all the</b> 17 <b>franchisees, so I used to write the training courses and</b> 18 <b>I would deliver the training courses.</b></p> <p>19 Q. Training for what?</p> <p>20 <b>A. Listers, negotiators, managers.</b></p> <p>21 Q. To train them to do what? To give them what skills?</p> <p>22 <b>A. To give them skills in sales, to give them skills to go</b> 23 <b>into people's houses and you know, for vendors to get</b> 24 <b>their properties for sale, for landlords, to get the</b> 25 <b>properties to let.</b></p> <p style="text-align: center;">Page 9</p>

<p>1 Q. In order to improve the quality of the job they did in 2 selling houses?</p> <p>3 <b>A. In order to improve the quality of the job that they 4 did, yes, and to make sure that they were working in the 5 interests of the company and also in the interests of 6 the customer.</b></p> <p>7 Q. You have never set up a portal business, have you?</p> <p>8 <b>A. I have never set up a portal business, no. I have never 9 actually set up a portal business. But having said 10 that, you know, as I was saying before, I do have quite 11 a bit of experience in business generally and I do 12 understand the power of the web and the internet.</b></p> <p>13 Q. But these property portals came along, I think we know 14 Rightmove was founded in about 2000, right, so just 15 about the time you joined Hunters, Rightmove was coming 16 on the scene; is that right?</p> <p>17 <b>A. That's right.</b></p> <p>18 Q. You have never worked for a portal business, have you?</p> <p>19 <b>A. No, I have never worked for a portal business, no.</b></p> <p>20 Q. And you became, as we discussed a minute ago, you became 21 I think, the acting managing director of Hunters, after 22 Mr Hollinrake was elected to Parliament at the last 23 election; is that right?</p> <p>24 <b>A. Yes, that's right. Prior to that I was the operations 25 director, so Kevin, you know, would be in charge and</b></p> <p style="text-align: center;">Page 10</p>	<p>1 Q. Yes?</p> <p>2 <b>A. Not to my knowledge, no.</b></p> <p>3 Q. Would you take bundle H5, please, and turn to 2646.</p> <p>4 <b>A. Do I give this one back now then?</b></p> <p>5 Q. No, just keep a hold of that because that is your 6 witness statement. 2646. If you look at 2646, you see 7 there is an email from Mr Halman. Do you see at the top 8 of the page there is an email from Mr Halman to various 9 people, including Mr Ozwell; do you see that on 10 10/04/14?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And at the bottom there is an email from Mr Ozwell to 13 various people. And over the page he says: 14 "I went to a seminar on digital marketing hosted by 15 Zoopla last week and Jon Notley, the boss of Zoopla, 16 said he wanted to meet with me after the event, to 17 discuss a proposition for IEAG members."</p> <p>18 My question is: have you ever attended a seminar on 19 digital marketing hosted by Mr Notley or anyone else 20 from Zoopla?</p> <p>21 <b>A. Well, would you mind if I just read these? I don't 22 understand the context in which you are talking about, 23 actually. So can I just -- can I read these?</b></p> <p>24 Q. Well, you can certainly read it but my question wasn't 25 directed to what follows. My question was very simple:</p> <p style="text-align: center;">Page 12</p>
<p>1 <b>I would do all the execution and make sure that 2 everything was executed throughout the organisation, so 3 that was my job.</b></p> <p>4 Q. You were his number 2?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. What is IAEG?</p> <p>7 <b>A. IAEG, I don't know what you are referring to.</b></p> <p>8 Q. Are you familiar with the acronym IAEG?</p> <p>9 <b>A. I don't know, I think you might have to explain it.</b></p> <p>10 Q. IEAG, I'm sorry, an organisation of estate agents of 11 which Hunters Group Limited was a member?</p> <p>12 <b>A. Oh, right. Well, we -- at one stage we were members of 13 the national association and we are also still members 14 of ARLA. I think that's the independent --</b></p> <p>15 Q. Estate Agents Group, I think it is?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Are you familiar with that?</p> <p>18 <b>A. Vaguely, I don't think we're part of it now.</b></p> <p>19 Q. But Mr Ozwell's organisation was part of it, wasn't it?</p> <p>20 <b>A. Yes, he was. We were part of it for a while but we are 21 not now. But he still is, yes.</b></p> <p>22 Q. And has Hunters ever negotiated its Zoopla listing fees 23 on a group basis, with other agents?</p> <p>24 <b>A. When you say on a group basis with other agents, do you 25 mean other agents that aren't Hunters?</b></p> <p style="text-align: center;">Page 11</p>	<p>1 my question was: have you ever attended a seminar on 2 digital marketing hosted by Mr Notley, or anyone else on 3 behalf of Zoopla?</p> <p>4 <b>A. I have been on many seminars for digital marketing and 5 have they been hosted by Zoopla? Yes, we've had some 6 presentations hosted by Zoopla, not in this context.</b></p> <p>7 Q. So you know Mr Notley, do you?</p> <p>8 <b>A. I don't know Mr Notley, no.</b></p> <p>9 Q. Mr Ozwell goes on to say -- and remember this 10 is April 2014: 11 "I think that, basically, Zoopla are becoming 12 increasingly concerned about what will happen 13 next January, when Agents' Mutual members have to make 14 a decision to drop Zoopla or Rightmove." 15 Now, you must have been aware, I suggest, in 2014, 16 as your role as number 2 at Hunters Plc, that Zoopla was 17 indeed becoming increasingly concerned about what would 18 happen when Agents' Mutual entered the market 19 in January 2015; is that right?</p> <p>20 <b>A. I don't think that we've made it a secret that, 21 actually, we were extremely concerned with the other 22 portal rule, the One Other Portal rule.</b></p> <p>23 Q. My question is directed to Zoopla's concern, Zoopla was 24 concerned about the impending arrival in the market of 25 OnTheMarket, wasn't it?</p> <p style="text-align: center;">Page 13</p>

4 (Pages 10 to 13)

<p>1 <b>A. Well, to be fair, I think you would need to ask Zoopla</b>  2 <b>for that information but I think it is fair to say that</b>  3 <b>there was without question, some -- felt to be some kind</b>  4 <b>of move to get rid of Zoopla, upstage Zoopla, whichever</b>  5 <b>way you want to put it.</b>  6 Q. Where does that come from?  7 <b>A. Because you asked me what I thought at the time and</b>  8 <b>that's what I thought at the time and that's in my</b>  9 <b>statement.</b>  10 Q. I am not sure I did ask for that but no doubt -- we will  11 come to Zoopla and targeting Zoopla in a minute. Just  12 look at page 2648, would you, please. This is an email  13 from Mr Notley to Mr Ozwell?  14 <b>A. Right. If you don't mind, and I don't want you to think</b>  15 <b>I'm being rude in any way because I'm not, but I do</b>  16 <b>think that you're trying to push me too quick because</b>  17 <b>I don't know what context this is and then you're trying</b>  18 <b>to get me to read that, so would you mind if I just read</b>  19 <b>this?</b>  20 THE CHAIRMAN: If the witness wants to read the email,  21 then --  22 <b>A. Is that okay?</b>  23 MR MACLEAN: Miss Frew, that's absolutely fine. Can I tell  24 you what I want you to focus on in particular, if it  25 helps, is at 2648, would you focus particularly on the</p> <p style="text-align: center;">Page 14</p>	<p>1 a lot quicker. Do you see anything objectionable in  2 what's said in that sentence, about promoting marketing  3 and giving prominence to brands within offices? That's  4 one of Mr Notley's suggestions. Do you see anything  5 objectionable in that suggestion?  6 <b>A. I think an estate agent has a duty to a consumer and</b>  7 <b>a consumer wants to see as many buyers for their</b>  8 <b>property, be that to sell or to let, and therefore, any</b>  9 <b>advertising for any portal or any way of advertising has</b>  10 <b>to be a good thing for the customer.</b>  11 Q. So you don't identify anything objectionable in that  12 sentence?  13 <b>A. I think you -- as I say, an estate agent has a duty of</b>  14 <b>care to their customers and to make sure that a customer</b>  15 <b>has access to the greatest numbers of buyers and the</b>  16 <b>greatest numbers of tenants, and a way to do that is</b>  17 <b>through the internet and through portals and advertising</b>  18 <b>those portals.</b>  19 Q. All right, I'll move on.  20 Now, what Mr Notley was doing in this email in the  21 bits that you have now had an opportunity to read, you  22 see that he was offering a discount to Mr Ozwell and  23 others, in return for a long-term package, as much as  24 five years; do you see that? You have read that, have  25 you; yes?</p> <p style="text-align: center;">Page 16</p>
<p>1 paragraph beginning "So I see an opportunity", and up to  2 the end of the second paragraph on the next page, ending  3 with the words "group discussion". All right? Have you  4 read that?  5 <b>A. I'm still halfway through the page 2648. (Pause). And</b>  6 <b>you wanted me to go up to 2649?</b>  7 Q. Yes, please. (Pause). Up to "group discussion". Do  8 you see that?  9 <b>A. Oh yes. (Pause).</b>  10 Q. Just tell me when you have finished those two  11 paragraphs. (Pause)  12 <b>A. Okay.</b>  13 Q. Now, look at the top of 2649:  14 "One of the points Mr Notley makes is all we ask is  15 that the group supports us by ensuring that our brands  16 are given prominence within offices, marketing material,  17 et cetera, where possible. Certainly it would make  18 sense for each group member to push us, given the  19 preferential nature of the agreement, and I can only see  20 good coming from us removing the sometimes painful  21 annual discussion around pricing."  22 Do you find anything objectionable in that  23 suggestion about marketing brand prominence?  24 <b>A. Do I see anything objectionable about marketing a brand?</b>  25 Q. Just listen to the question, Miss Frew and we'll get on</p> <p style="text-align: center;">Page 15</p>	<p>1 <b>A. Yes.</b>  2 Q. And did Zoopla make similar blandishments to your part  3 of the Hunters organisation in 2014, offering lower fees  4 and extended periods of contract?  5 <b>A. I can absolutely categorically state we had no extended</b>  6 <b>period of contract with Zoopla or anybody else, over</b>  7 <b>a five year period.</b>  8 Q. So the type of blandishments we see Mr Notley offering  9 to Mr Ozwell at Hunters Group Limited, were not being  10 offered to your organisation in 2014?  11 <b>A. I didn't say they weren't offered. They might have been</b>  12 <b>offered but it certainly wasn't anything that we were --</b>  13 <b>you know, we entered into.</b>  14 Q. Let's assume that they weren't offered to your  15 organisation but they were being offered to Mr Ozwell,  16 as we see in this email. Can you think of any reason as  17 to why that might be the case, that Mr Notley should be  18 making these blandishments to Mr Ozwell but not to you?  19 <b>A. I think that within business there are all sorts of</b>  20 <b>areas like that, but, you know, I come back to what</b>  21 <b>I was saying before. At this moment in time it was</b>  22 <b>fairly obvious that Zoopla were facing, with some</b>  23 <b>trepidation, what they felt was coming down the line,</b>  24 <b>that's my view.</b>  25 Q. The obvious answer I suggest, Miss Frew, as I suggest</p> <p style="text-align: center;">Page 17</p>

<p>1 you know full well, is that the reason why these 2 blandishments were being offered to Hunters Group 3 Limited and not to you, is that Hunters Group Limited 4 had signed up to OnTheMarket, whereas your organisation 5 hadn't and Zoopla was reacting in a targeted way in 6 order to protect the (inaudible) of its business, by 7 cutting its prices, wasn't it?</p> <p>8 <b>A. Well, that's what you say. I don't know that that's the</b> 9 <b>case. That may be the case, but each business has</b> 10 <b>a duty to its employees to protect its business, so long</b> 11 <b>as it is not doing anything illegal.</b></p> <p>12 Q. I don't want to debate company law with you, Miss Frew. 13 I'm not sure that is quite right but let's carry on. 14 In paragraph 5 of your statement you say there are 15 180 branches within the Hunters network, of whom 169 are 16 franchisees and 11 are wholly owned by the group. And 17 we have already discussed this.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. So the 11 that are wholly owned by the group, that is 20 Mr Ozwell 's part of the empire; right?</p> <p>21 <b>A. Yes, his five.</b></p> <p>22 Q. His five?</p> <p>23 <b>A. He's got five branches.</b></p> <p>24 Q. And somebody else has got what, the other six?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 18</p>	<p>1 Q. I am sure it is me. I found it slightly confusing. So 2 everybody is on Rightmove. Most people are on Zoopla 3 and Rightmove and a smallish number of people are on OTM 4 and Zoopla?</p> <p>5 <b>A. OnTheMarket and Rightmove, yes.</b></p> <p>6 Q. Now, from the vendor -- you told us earlier about 7 training these estate agents to provide a better service 8 to the customers and so on?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So I want you to put yourself into the position of the 11 vendor or the landlord, right, who has engaged an estate 12 agent to sell or rent out their property. Do you agree 13 from the vendor or landlord point of view, there is 14 a qualitative difference in the service offered by full 15 service local estate agents, rather than online estate 16 agents?</p> <p>17 <b>A. I think it is the duty of the estate agent to make sure</b> 18 <b>that for a vendor or a landlord, their properties are</b> 19 <b>put in front of the widest audience possible.</b></p> <p>20 Q. Yes, that was the answer to a previous question, Miss 21 Frew. Let us just focus on this question, please. From 22 the vendor/landlord point of view, do you agree or do 23 you disagree that there is a qualitative difference in 24 the service offered by full service local estate agents 25 rather than online agencies?</p> <p style="text-align: center;">Page 20</p>
<p>1 Q. What's the somebody else then?</p> <p>2 <b>A. That's us. These are our own branches, so that's how we</b> 3 <b>started with our own branches, so we've retained those.</b></p> <p>4 Q. Right, so of the 180, everybody is on Rightmove; right?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And 158 of the 180 are on Zoopla --</p> <p>7 <b>A. Mmm.</b></p> <p>8 Q. -- as well as Rightmove; is that right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And then in the next paragraph, 7, you say: 11 "I am aware a number of branches within two of the 12 networks, Hunters Group Limited and County Properties, 13 list instead on OnTheMarket." 14 What number is "a number of branches?" Is it all 15 22? No, it can't be.</p> <p>16 <b>A. No.</b></p> <p>17 Q. What's the number?</p> <p>18 <b>A. Well, John Ozwell's branches, as you rightly point out,</b> 19 <b>in the Midlands, his branches are on OnTheMarket. There</b> 20 <b>are a number of Country Properties branches that are on</b> 21 <b>OnTheMarket and some are not and are still on Zoopla.</b> 22 <b>It does look, if you see both those paragraphs, 6 and 7,</b> 23 <b>that somebody can't actually add up, but in fact there</b> 24 <b>are 8 Bairstow Eves branches that are on Zoopla as well,</b> 25 <b>so that's why it looks the way that it does.</b></p> <p style="text-align: center;">Page 19</p>	<p>1 <b>A. Rather than online agencies?</b></p> <p>2 Q. Yes?</p> <p>3 <b>A. Oh, yes, sorry. I think that the local agent, yes, is</b> 4 <b>a very important agent for landlords and vendors rather</b> 5 <b>than just online.</b></p> <p>6 Q. Why?</p> <p>7 <b>A. It's important because a local agent understands a local</b> 8 <b>market, understands the pricing, has a knowledge of</b> 9 <b>local buyers, local tenants, who's wanting to move where</b> 10 <b>and I think that that's a very important part of the</b> 11 <b>process, crucial in fact. But that doesn't alter the</b> 12 <b>fact that people do obviously want to see tenants and</b> 13 <b>buyers and look online for that, so you've got to have</b> 14 <b>both.</b></p> <p>15 Q. Yes, now, thank you. Could you be handed, please, 16 bundle H8. Could you, please, be helped to find 17 page 4272. The content of this email, I promise you 18 doesn't matter, other than just to see what it's doing. 19 The 7 November 2014: 20 "Please find attached a vendor/landlord leaflet for 21 member agents to use when briefing existing or potential 22 new clients." 23 Alright? If you turn over the page, you see there 24 is a leaflet and if you turn over the page to the back 25 side of the leaflet, the front and the back -- so you</p> <p style="text-align: center;">Page 21</p>

6 (Pages 18 to 21)

<p>1 can see this is a two sided leaflet. Do you see that?                  2 <b>A. Yes.</b>                  3 Q. And I think it probably folds up, actually. You can                  4 imagine picking it up in the estate agent's office.                  5 I want you to focus on page 4275 and just cast your                  6 eye -- do you see the middle column which is headed                  7 "Locally based expert agents"; do you see that?                  8 <b>A. Yes.</b>                  9 Q. Just cast your eye over that column, down to "suits them                  10 best"; do you see in bottom right hand corner? Right.                  11 So there are a series of bullet points identified by the                  12 OTM logo. Just cast your eye over that, please.                  13 <b>A. Just the middle bit you wanted me to look at?</b>                  14 Q. Just the middle bit. It seems to me, tell me if you                  15 agree or disagree, that the sorts of points made in that                  16 middle column are very much along the lines of the                  17 answer you just gave me a couple of minutes ago, about                  18 the value of locally based estate agents; is that right?                  19 <b>A. Locally based estate agents, definitely and as far as</b>                  20 <b>local leaflets are concerned, we probably deliver</b>                  21 <b>something like 15,000 a month, local leaflets.</b>                  22 Q. And in the same bundle, would you turn on to page 4344,                  23 please. In the third line of this email there is                  24 a sentence beginning "This"; do you see that?                  25 <b>A. In the third line?</b></p> <p style="text-align: center;">Page 22</p>	<p>1 estate agents, who, by definition, don't have that same                  2 local experience or expertise; right?                  3 <b>A. Yes, I think the difficulty with the online, that's</b>                  4 <b>something separate to this though, in the sense that</b>                  5 <b>some people have criticised online because of the</b>                  6 <b>valuations that they have, because they don't have</b>                  7 <b>local -- they don't have the local knowledge and then</b>                  8 <b>the other thing is that -- specifically in sales, once</b>                  9 <b>an offer has been accepted, then there has to be the</b>                  10 <b>execution of that offer and the conveyancing and that's</b>                  11 <b>not always done through online, so ...</b>                  12 Q. Okay. Look at paragraph 8 of your statement, please,                  13 Miss Frew. You say:                  14 "When deciding which property portal to list on, the                  15 most important consideration for an agent is the number                  16 of potential customers that the portal can and does                  17 reach."                  18 <b>A. Yes.</b>                  19 Q. Now, obviously, the number of customers that the portal                  20 can and does reach is important. I am not suggesting                  21 otherwise, but would you agree that the number of unique                  22 customers that the portal can and does reach, is of                  23 particular importance?                  24 <b>A. I would say that the number is the most important and in</b>                  25 <b>all our marketing and in everything that we do, we base</b></p> <p style="text-align: center;">Page 24</p>
<p>1 Q. Do you see the word "This -- this continues"?                  2 <b>A. Yes.</b>                  3 Q. Take it from me that this is a reference to full service                  4 local agents; okay? So:                  5 "Full service local agents continues to be the                  6 service most property sellers choose and our proposition                  7 will make it clear that a consumer finding a property                  8 they are interested in by OnTheMarket, can be reassured                  9 that they will then deal with an agent acting for the                  10 seller or landlord, who can answer their queries, based                  11 on detailed knowledge about the property and the                  12 circumstance of the sale or letting."                  13 I have two questions. The first is, do you agree                  14 that full service local agencies continues, in your                  15 experience from Hunters Plc's perspective, to be the                  16 service most property sellers choose?                  17 <b>A. I would agree, yes, that local agents is the vehicle</b>                  18 <b>through which most would either sell or want to let</b>                  19 <b>their properties.</b>                  20 Q. And the local agent experience, if I can put it like                  21 that, is something that on the whole, is valued by the                  22 estate agents' customers, isn't it?                  23 <b>A. Local agents, yes, would be valued by the local</b>                  24 <b>customers, yes.</b>                  25 Q. And that valuable experience is threatened by the online</p> <p style="text-align: center;">Page 23</p>	<p>1 <b>the sale or let of our property on what we call the</b>                  2 <b>auction principle. And the auction principle says the</b>                  3 <b>more people you get interested in a property, be that to</b>                  4 <b>sell or to let, the better price you are going to get</b>                  5 <b>and, therefore, the better it is for that landlord or</b>                  6 <b>for the vendor.</b>                  7 Q. I appreciate it's important, but if Mr Holmes has set up                  8 his property portal and there is a potential audience                  9 for the portal of 100 people in the country and all                  10 100 people use his portal and I come along with the most                  11 whizz bang portal that you've ever seen and you say "How                  12 many customers can you reach?" and I say "I can reach                  13 all 100", all I'm suggesting to you is that if I was                  14 able to come along to you and say "I can reach                  15 a different 100 from Mr Holmes's portal", I would be                  16 a much more attractive proposition than if I came along                  17 and said "I can reach the same 100 people that he's                  18 already reaching, that you are already paying for."                  19 That is obvious, isn't it?                  20 <b>A. I don't want to be rude in any way but actually, you</b>                  21 <b>know, like I said, the most important thing for an</b>                  22 <b>estate agent is the fact that they get to as many</b>                  23 <b>people, buyers or tenants, as possible. I have yet to</b>                  24 <b>meet a landlord or a vendor that would say, "I don't</b>                  25 <b>care how long it takes to let or sell my property and</b></p> <p style="text-align: center;">Page 25</p>

7 (Pages 22 to 25)

<p>1 <b>I really don't mind what price I get." They want,</b>  2 <b>absolutely, to make sure that their properties go in</b>  3 <b>front of the most number of people that are willing to</b>  4 <b>let or buy a property. So --</b>  5 Q. Let's focus on the estate agent's position. Not the  6 person trying to sell the property or the person trying  7 to buy the property, the estate agent. Let's take my  8 example again. You tell me why it is not obvious. If  9 somebody's got an existing portal reaching 100 people,  10 100 people being all that's available, and I come along,  11 pitching another portal and I tell you that I can reach  12 the same 100 people but only the same 100 people, I am  13 suggesting to you that's an, obviously, less attractive  14 proposition than if I'm able to come to you and say "My  15 portal will reach different people, people that his  16 portal doesn't reach." Now, isn't that, obviously,  17 sensible?  18 <b>A. Well, I think -- personally, I think there's two parts</b>  19 <b>to your question. The first is in terms of what does an</b>  20 <b>estate agent -- what's in the interests of an estate</b>  21 <b>agent. An estate agent has to work in the interests of</b>  22 <b>the customer. That's the first thing. The second thing</b>  23 <b>is that I think that regardless of portals, before</b>  24 <b>anybody ever went to portals, people used to advertise</b>  25 <b>in the newspapers, they do leaflets and so on now. And</b></p> <p style="text-align: center;">Page 26</p>	<p>1 <b>get that is because we expose those properties to the</b>  2 <b>greatest audience.</b>  3 Q. Was the answer to my question, given in the first three  4 or four words of that answer? You said "obviously we've  5 got shareholders." Was that your way of saying that you  6 do appreciate that your primary obligation is to the  7 shareholders of the company?  8 <b>A. We have a responsibility to shareholders.</b>  9 Q. That is your primary obligation as a director, you  10 understand that?  11 <b>A. There are a number of obligations, I think, as</b>  12 <b>a director which I think it is impossible just to narrow</b>  13 <b>it down to that, shareholders.</b>  14 Q. Do you agree with me that appraisal leads are much more  15 valuable than leads from prospective purchasers or  16 tenants?  17 <b>A. Well, we measure all the sources of our leads.</b>  18 Q. That is an answer to a different question, Miss Frew.  19 We would get on much quicker if you just answered my  20 question. Do you agree that appraisal leads are much  21 more valuable than leads from prospective purchasers or  22 tenants?  23 <b>A. I think it depends on the circumstances.</b>  24 Q. In what circumstances would an appraisal lead be less  25 valuable than a lead from a prospective tenant?</p> <p style="text-align: center;">Page 28</p>
<p>1 okay, you know, you might advertise in this newspaper  2 and that newspaper and that might have a read across  3 with some joint readership but, ultimately, you would  4 want to be in the newspapers or on the portals that  5 reached the most people, not a limited number. That is  6 not in the vendor or the landlord's interests, in my  7 view.  8 Q. Are you now the full-time managing director?  9 <b>A. Yes.</b>  10 Q. So you sit on the board of Hunters Plc?  11 <b>A. I do.</b>  12 Q. So what's your primary obligation as a director of  13 Hunters Plc? To whom do you owe your primary duty, do  14 you think?  15 <b>A. Well, obviously we've got shareholders, but our reason</b>  16 <b>for being is to look after franchisor's business and</b>  17 <b>make sure that they maximise their business, obviously</b>  18 <b>do it legally, and compliantly and make sure that we</b>  19 <b>provide a good service for our customers. Because if we</b>  20 <b>don't provide a good service for our customers, they</b>  21 <b>won't come back and repeat business is very important</b>  22 <b>for us. We phone up every single vendor and every</b>  23 <b>landlord once the property is exchanged or the let's</b>  24 <b>been completed and we get 96 per cent customer</b>  25 <b>satisfaction. And one of the reasons that I believe we</b></p> <p style="text-align: center;">Page 27</p>	<p>1 <b>A. Because if you have a landlord who wants to let his</b>  2 <b>property, I would have thought the landlord would have</b>  3 <b>thought that was very important.</b>  4 Q. I am not interested in what the landlord thinks. I am  5 interested in what the estate agent thinks, Miss Frew?  6 <b>A. But for the estate agent that's important too because</b>  7 <b>for the estate agent, that's their reason for being, to</b>  8 <b>sell or let properties. So I'm not disputing that</b>  9 <b>a lead for an appraisal is very important, it's very</b>  10 <b>important to get new business.</b>  11 Q. It is much more valuable than a lead from a prospective  12 purchaser or a tenant, isn't it? It is obvious?  13 <b>A. Well, like I say, I think that depends on the</b>  14 <b>circumstances because if you've got a property to sell</b>  15 <b>or a property to let, then a lead from a buyer or</b>  16 <b>a tenant is very valuable.</b>  17 Q. You see, take the witness statement bundle then. Turn  18 to tab 1.  19 <b>A. Is this D?</b>  20 Q. D, that's right. Turn to tab 1. This is the  21 statement -- well, it doesn't matter whose statement it  22 is. Turn to page 3, paragraph 7. This witness says:  23 "In general, property portals generate four main  24 types of leads for estate agents, sales lead, rental  25 lead, appraisal leads and landlord appraisal leads."</p> <p style="text-align: center;">Page 29</p>



<p>1 You recognise those concepts, do you?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And then:</p> <p>4 "Of these, the most important driver of revenue and</p> <p>5 profit for an estate agent and hence the most important</p> <p>6 for present purposes, is appraisal leads from vendors</p> <p>7 that are looking to sell their property."</p> <p>8 Do you agree with that or not?</p> <p>9 <b>A. I think they're all important but he's absolutely right,</b></p> <p>10 <b>when you relate it to revenue and profit then, yes, but</b></p> <p>11 <b>it depends on the circumstances. But yes, I agree</b></p> <p>12 <b>they're very important. I didn't say it wasn't.</b></p> <p>13 Q. So yes, you do agree, depending on the circumstances?</p> <p>14 <b>A. Yes, because each one of those are important. Each one</b></p> <p>15 <b>of them is important.</b></p> <p>16 Q. One of them is the most important. He says the most</p> <p>17 important is appraisal leads from vendors?</p> <p>18 <b>A. Right.</b></p> <p>19 Q. Do you agree or not with that?</p> <p>20 <b>A. I think all four of them are important and if this</b></p> <p>21 <b>particular gentleman thinks that's the most important,</b></p> <p>22 <b>then I think that's his view. I think all four of them</b></p> <p>23 <b>are important.</b></p> <p>24 Q. Let's look at the next sentence:</p> <p>25 "Estate agents generate the majority of their income</p> <p style="text-align: center;">Page 30</p>	<p>1 a property for sale or rent, may result in a sale offer</p> <p>2 but the estate agent will, in the short term, only</p> <p>3 receive revenues on the vendor side of that transaction.</p> <p>4 However, sales leads may subsequently result in an</p> <p>5 appraisal lead if a house-hunter uses the estate agent</p> <p>6 that they have contacted to find the property to</p> <p>7 purchase, to also sell their own property."</p> <p>8 That is also true, isn't it?</p> <p>9 <b>A. That's true.</b></p> <p>10 Q. And that's a statement from somebody called Mr Glasgow.</p> <p>11 If you look at the first page. And he's chief</p> <p>12 information officer at Connells Limited. Do you know</p> <p>13 Mr Glasgow?</p> <p>14 <b>A. I don't.</b></p> <p>15 Q. Do you know what the Mayfair Office refers to?</p> <p>16 <b>A. Mayfair Office, I can't say I do, no.</b></p> <p>17 Q. Hunters is not a participant in the Mayfair Office which</p> <p>18 is a group of estate agents who maintain, essentially,</p> <p>19 a pigeonhole office in Mayfair which allows them to</p> <p>20 claim to have a presence in London, when in fact they</p> <p>21 are based elsewhere in the country?</p> <p>22 <b>A. No, we don't. We have an office in the Old Bailey where</b></p> <p>23 <b>we do some training but we don't have a Mayfair office,</b></p> <p>24 <b>no.</b></p> <p>25 Q. You don't engage with the public in London at all?</p> <p style="text-align: center;">Page 32</p>
<p>1 from commissions and other services sold to the vendor</p> <p>2 of a property, usually when the transaction exchanges</p> <p>3 contracts."</p> <p>4 I do hope you can agree that's correct, do you?</p> <p>5 <b>A. I think that as far as most of our estate agents are</b></p> <p>6 <b>concerned, then they would get the income from the</b></p> <p>7 <b>commissions.</b></p> <p>8 Q. What about the minority, where would they get their</p> <p>9 income from, if not commissions? You say the majority</p> <p>10 would, what about the minority?</p> <p>11 <b>A. But that's saying the majority get their income from</b></p> <p>12 <b>commissions and other services, so the minority probably</b></p> <p>13 <b>just get them from commissions.</b></p> <p>14 Q. Exactly, so for everybody, commission is central to the</p> <p>15 success of the estate agent business, isn't it?</p> <p>16 <b>A. Commission, indeed.</b></p> <p>17 Q. So next sentence:</p> <p>18 "Obtaining instructions to list the property from</p> <p>19 a vendor is key to revenue generation for the estate</p> <p>20 agent."</p> <p>21 That is true, isn't it?</p> <p>22 <b>A. Everybody wants new leads. There's no question about</b></p> <p>23 <b>that. Yes.</b></p> <p>24 Q. So you agree with that. The next sentence:</p> <p>25 "A lead from a house-hunter in relation to</p> <p style="text-align: center;">Page 31</p>	<p>1 <b>A. Yes, we have an office -- we have various offices in</b></p> <p>2 <b>London, Hunters offices in London but we don't -- and</b></p> <p>3 <b>from time to time we would invite people in to the</b></p> <p>4 <b>offices in the Old Bailey, but mainly it's done for</b></p> <p>5 <b>training purposes, used for training.</b></p> <p>6 Q. Now, paragraph 10 of your statement you say:</p> <p>7 "In --"</p> <p>8 <b>A. Just a minute, can I find it again. Where was that?</b></p> <p>9 Q. Yes. Tab 5. Page 77:</p> <p>10 "In 2013 I attended two Agents' Mutual</p> <p>11 presentations. One at a meeting in York and one at the</p> <p>12 NALS conference."</p> <p>13 What does NALS stand for? National Association</p> <p>14 of -- what?</p> <p>15 <b>A. Lettings, it is a lettings council, lettings</b></p> <p>16 <b>organisation.</b></p> <p>17 Q. These were multi-agent presentations, were they? They</p> <p>18 weren't specific to Hunters?</p> <p>19 <b>A. No, no, all multi-agents.</b></p> <p>20 Q. Was Mr Springett at both of these?</p> <p>21 <b>A. No, he was at the NALS one in London which was a number</b></p> <p>22 <b>of letting agents and the one in York was for ARLA</b></p> <p>23 <b>members.</b></p> <p>24 Q. For what members, sorry?</p> <p>25 <b>A. ARLA members, so that's the Association of Residential</b></p> <p style="text-align: center;">Page 33</p>

<p>1 <b>Lettings.</b></p> <p>2 Q. You don't refer to any notes or any documents that</p> <p>3 formed part of either of these presentations, do you?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Where did the NALS conference take place?</p> <p>6 <b>A. That was in London, I couldn't tell you the address.</b></p> <p>7 Q. If I told you that the only NALS conference that</p> <p>8 Mr Springett made a presentation at wasn't in 2013 at</p> <p>9 all, what would you say?</p> <p>10 <b>A. I know I've seen his statement. I think it's 2014, so</b></p> <p>11 <b>sorry about that. I got the year wrong.</b></p> <p>12 Q. So you accept this is wrong then, this reference to</p> <p>13 2013, do you?</p> <p>14 <b>A. Yes, I think it must have been 2014, yes.</b></p> <p>15 Q. In November 2014, to be precise?</p> <p>16 <b>A. Probably, mmm.</b></p> <p>17 Q. You can't really remember, can you?</p> <p>18 <b>A. Well, I don't have it in front of me but I accept it was</b></p> <p>19 <b>probably 2014, yes, and it was the back end of the year,</b></p> <p>20 <b>so it could have been November because it was quite</b></p> <p>21 <b>cold.</b></p> <p>22 Q. Right. So when you came to write your statement, you</p> <p>23 didn't have any diary or other record of this meeting</p> <p>24 that would help you even to get the correct year of when</p> <p>25 it took place, never mind the right month, did you? You</p> <p style="text-align: center;">Page 34</p>	<p>1 paragraph 10 but you tell me if I am wrong, that when</p> <p>2 you say you have been shown one of these information</p> <p>3 memoranda, in particular, you have read page 3, that you</p> <p>4 were shown it at about the time you prepared this</p> <p>5 statement; is that right?</p> <p>6 <b>A. Probably.</b></p> <p>7 Q. It wasn't something that you were shown at the</p> <p>8 presentation in 2013 or as it turns out, November 2014.</p> <p>9 It was something that happened two years later; is that</p> <p>10 right?</p> <p>11 <b>A. Right, in 2014 I saw a presentation from Agents' Mutual.</b></p> <p>12 <b>I saw it twice. I saw it once in York, that was</b></p> <p>13 <b>delivered by a lady and I saw it once in London, that</b></p> <p>14 <b>was delivered by Ian Springett.</b></p> <p>15 Q. And it was the same presentation both times?</p> <p>16 <b>A. More or less the same, yes.</b></p> <p>17 Q. And have you been shown any of the slides, presentations</p> <p>18 which are in the bundles? For example, the one that was</p> <p>19 shown to Gascoigne Halman, have you seen that?</p> <p>20 <b>A. Would you like to remind me?</b></p> <p>21 Q. Yes, let me just find that for you. While we are</p> <p>22 finding that for you, I'll come back to that in just</p> <p>23 a second. Let's go to paragraph 11.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. You say you considered listing:</p> <p style="text-align: center;">Page 36</p>
<p>1 were just having to rely on memory?</p> <p>2 <b>A. Yes, I relied on memory.</b></p> <p>3 Q. Which, it turns out, was mistaken; right?</p> <p>4 <b>A. Yes, the year was wrong.</b></p> <p>5 Q. You say that you attended these presentations and you</p> <p>6 are familiar with the One Other Portal rule and you said</p> <p>7 you have been shown one of the Agents' Mutual</p> <p>8 information memoranda and, in particular, read page 3.</p> <p>9 Do I take it that you were shown that memorandum by</p> <p>10 somebody at about the time you were preparing this</p> <p>11 statement; is that right?</p> <p>12 <b>A. It could have been. I mean, that has nothing to do with</b></p> <p>13 <b>clause 10 though, this paragraph 10, because I attended</b></p> <p>14 <b>both those meetings. I saw there were two different</b></p> <p>15 <b>people that presented at the meetings, so that paragraph</b></p> <p>16 <b>was about how I saw those meetings.</b></p> <p>17 Q. Yes, I am just exploring what the last sentence is doing</p> <p>18 in paragraph 10, you see, because it doesn't seem to</p> <p>19 have much to do with the presentations. I think you</p> <p>20 have just confirmed that. You see?</p> <p>21 <b>A. Right, okay.</b></p> <p>22 Q. The first sentence talks about presentations. The next</p> <p>23 sentence talking about OOP and the next sentence talks</p> <p>24 about something different. I am asking you about the</p> <p>25 third sentence. I am asking you, I infer from</p> <p style="text-align: center;">Page 35</p>	<p>1 "We considered listing on OTM ..."</p> <p>2 The "we" is Hunters Group presumably?</p> <p>3 <b>A. Yes, that's right.</b></p> <p>4 Q. "... but decided not to because of the OOP rule and</p> <p>5 because we could not see how, in the eyes of consumers,</p> <p>6 it would achieve its objective of being a credible and</p> <p>7 significant player, replacing Zoopla and/or Rightmove."</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. You appear, but tell me if I am wrong, you appear to be</p> <p>10 equating becoming a credible and significant player with</p> <p>11 replacing Zoopla and/or Rightmove. Is that what you</p> <p>12 mean to suggest?</p> <p>13 <b>A. Yes, because of the One Other Portal rule, yes.</b></p> <p>14 Q. But why can't you become a credible and significant</p> <p>15 player by competing with Zoopla and Rightmove, without</p> <p>16 replacing them? What do you mean by replacing? You</p> <p>17 mean knock them out of the market, do you?</p> <p>18 <b>A. Well, it's related to the One Other Portal rule, so we</b></p> <p>19 <b>would have to choose whether we were going to go with</b></p> <p>20 <b>OnTheMarket and/or Zoopla and/or Rightmove, so we</b></p> <p>21 <b>believed that that wasn't the way forward. We didn't</b></p> <p>22 <b>think it was right for our franchise partners and we</b></p> <p>23 <b>didn't think it was right for the consumer.</b></p> <p>24 Q. But just exploring what you mean by replace. What do</p> <p>25 you mean by replace? You mean sending Zoopla or</p> <p style="text-align: center;">Page 37</p>

<p>1 Rightmove out of the market altogether?</p> <p>2 <b>A. No, we would have had to replace as a listing, an</b></p> <p>3 <b>agreement with a portal. We would have had to say to</b></p> <p>4 <b>either Zoopla or Rightmove, "No, we're not going with</b></p> <p>5 <b>you." We would have had to choose one or the other.</b></p> <p>6 <b>That's what I mean by replacing.</b></p> <p>7 Q. In paragraph 19 you make the same point. Look at</p> <p>8 paragraph 19. You say:</p> <p>9 "OTM has also not been as successful as was hoped,</p> <p>10 in that it has not taken the position of the second</p> <p>11 major portal and it does not show any sign of being</p> <p>12 a truly effective third option."</p> <p>13 Now, what's the basis of that sentence? What</p> <p>14 material did you have regard to, in order to write that</p> <p>15 sentence, Miss Frew?</p> <p>16 <b>A. Well, we do get -- from time to time, we do get the data</b></p> <p>17 <b>which talks about the leads, in terms of, you know,</b></p> <p>18 <b>market appraisals or leads through for -- to buy or to</b></p> <p>19 <b>let properties and it would say that OnTheMarket has not</b></p> <p>20 <b>delivered the quality of leads that you would have</b></p> <p>21 <b>expected at this time.</b></p> <p>22 Q. Let me just show you that presentation that I mentioned.</p> <p>23 If you would be given volume H2, please, and turn to</p> <p>24 page 1080. Have you seen these slides before?</p> <p>25 <b>A. I don't recognise these actually.</b></p> <p style="text-align: center;">Page 38</p>	<p>1 say:</p> <p>2 "My impression from the Agents' Mutual presentations</p> <p>3 I attended was that there was a clear implication that</p> <p>4 Agents' Mutual believed that agents would drop Zoopla as</p> <p>5 a weaker agent in the market, at the time OTM launched.</p> <p>6 I understood that it was expected that the majority of</p> <p>7 agents would choose to drop Zoopla rather than</p> <p>8 Rightmove."</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. You don't refer to any particular part of any</p> <p>11 presentation as the foundation of that impression, do</p> <p>12 you?</p> <p>13 <b>A. No, I don't. It was the general -- the presentation</b></p> <p>14 <b>started with the profits that both portals made and</b></p> <p>15 <b>about how, yes, they wanted to be a disruptor into the</b></p> <p>16 <b>portal market and then it went on, you know, to talk</b></p> <p>17 <b>about different things in terms of leads coming through.</b></p> <p>18 <b>But throughout it all, my impression was at that time,</b></p> <p>19 <b>that Zoopla were the ones that would be in the firing</b></p> <p>20 <b>line.</b></p> <p>21 Q. What the presentation showed, as was obviously true, was</p> <p>22 that Rightmove was the number one player in the market;</p> <p>23 right?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And Zoopla was the number two?</p> <p style="text-align: center;">Page 40</p>
<p>1 Q. If you turn over the page, if you look at 1082 and 1083,</p> <p>2 is this the type of presentation that you saw in York or</p> <p>3 at the NALS conference?</p> <p>4 <b>A. I think that there was a bigger thing about the profits,</b></p> <p>5 <b>in terms of both of the big portals.</b></p> <p>6 Q. All right. So you don't recognise this?</p> <p>7 <b>A. I can't say I really recognise it, no.</b></p> <p>8 Q. But if you turn to page 1115, do you see the reference</p> <p>9 there in the first line:</p> <p>10 "...to consider our information memorandum with your</p> <p>11 colleagues"; do you see that?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And:</p> <p>14 "Each firm must make its own independent decision."</p> <p>15 Do you see that? It was always made clear, wasn't</p> <p>16 it, by Agents' Mutual, that the decision as to whether</p> <p>17 to become a member and a decision as to which other</p> <p>18 portal to maintain, was a matter for each individual</p> <p>19 firm to make its own independent decision, wasn't it?</p> <p>20 <b>A. I think that there's no doubt about it, that that's what</b></p> <p>21 <b>was said. There is equally no doubt about it that what</b></p> <p>22 <b>was said was that Zoopla would be the one that most</b></p> <p>23 <b>would be expected to go for and they -- and</b></p> <p>24 <b>Agents' Mutual were going for too.</b></p> <p>25 Q. You see in paragraph 20 of your witness statement, you</p> <p style="text-align: center;">Page 39</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. So if somebody was coming into the market and trying to</p> <p>3 build up their business, then obviously, the first</p> <p>4 existing player they were likely to catch up with was</p> <p>5 a number 2 rather than a number 1; right?</p> <p>6 <b>A. Yes, I think that's absolutely true. You would go for</b></p> <p>7 <b>the one that was closest. There's no doubt about that</b></p> <p>8 <b>and you know, from the time that I worked at Pepsi, who</b></p> <p>9 <b>were a very forward thinking, almost aggressive company,</b></p> <p>10 <b>they would have done exactly the same. There would also</b></p> <p>11 <b>have been at -- simultaneously, a very strong marketing</b></p> <p>12 <b>programme that appealed to the consumer.</b></p> <p>13 Q. Now you don't suggest, do you, that the presentations</p> <p>14 you attended made any mention of which other portal</p> <p>15 would be chosen?</p> <p>16 <b>A. I don't. I don't say that. I think it was implied that</b></p> <p>17 <b>everybody would go -- that it would be Zoopla, but --</b></p> <p>18 Q. It wasn't said by anybody on behalf of Agents' Mutual.</p> <p>19 It was an impression that you say you derived; is that</p> <p>20 right?</p> <p>21 <b>A. Absolutely, it was an impression.</b></p> <p>22 Q. No more and no less than that?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Now, let's look at paragraph 20 over the page, page 80,</p> <p>25 please, Miss Frew. You say:</p> <p style="text-align: center;">Page 41</p>

<p>1 "This has meant [that, I think, is a reference to 2 dropping Zoopla] that the effect of OTM has undoubtedly 3 been to weaken Zoopla and to strengthen Rightmove's 4 position as the number one portal in the market." 5 Do you see that? 6 <b>A. Yes.</b> 7 Q. That sentence wouldn't hold true, would it, if Zoopla 8 had not been a constraint on Rightmove, when OTM entered 9 the market, would it? 10 <b>A. No, I mean, I stand by what I say there, that I think 11 because OnTheMarket came into the market, then it has 12 weakened Zoopla because Zoopla were looking over their 13 shoulder. Rightmove, at first, were a bit: well what's 14 going to happen now? But really they've moved on quite 15 significantly in the market.</b> 16 Q. They have carried on as relatively unhindered by OTM and 17 Zoopla, as they were by Zoopla before OTM entered at 18 all. Isn't that right? 19 <b>A. Well, yes, they were then. There is no doubt about it 20 Rightmove are very, very strong. I do think that Zoopla 21 have become weaker through it (inaudible).</b> 22 Q. Since OnTheMarket entered -- we had the discussion 23 earlier about Mr Notley going round to Mr Ozwell to 24 offer him a discounted deal and so on, which he didn't 25 offer to you. Remember that discussion we had half an</p> <p style="text-align: center;">Page 42</p>	<p>1 speaking about your own personal knowledge? 2 <b>A. Yes, I don't know. My own personal knowledge. So he 3 may have done. I don't know.</b> 4 THE CHAIRMAN: I don't want you to feel constrained about 5 something that you know about. 6 <b>A. No, no, no, I don't know. No.</b> 7 MR MACLEAN: Right. You say in paragraph -- let's go back 8 to paragraph 14. This is a paragraph where you talk 9 about beholden to Rightmove and to a lesser extent, 10 Zoopla. 11 <b>A. Yes.</b> 12 Q. And then at the beginning of the paragraph you say: 13 "I believe Agents' Mutual would have signed up many 14 more agents if they had not insisted on the OOP rule." 15 You haven't conducted, no reason why you should have 16 done, but you haven't conducted any analysis of the 17 economics of the portal market, have you? 18 <b>A. We haven't conducted any of the analysis on the 19 economics, no. But we do have, obviously, a number of 20 franchisees and the relationship between a franchisor 21 and a franchisee is very different to owning your own 22 branches, so they do have an input. We do take their 23 view and I think most agents would have thought: this is 24 a good thing, there's another portal coming in but the 25 difficulty is the One Other Portal rule.</b></p> <p style="text-align: center;">Page 44</p>
<p>1 hour ago? Since OTM entered the market, Zoopla hasn't 2 cut its listing fees to Hunters Plc, to your 3 organisation, has it? 4 <b>A. Well, I don't think I'm at liberty to talk about pricing 5 here, am I?</b> 6 Q. You are at liberty to tell me whether they've cut 7 the prices or not? Yes, you are. I am not asking you 8 for the precise number, I am asking whether they are 9 high or low? 10 <b>A. We are a growing organisation, so at this time, at this 11 time that we are talking about, with the launch, we had 12 about 100 branches. We have now got 180. Consequently 13 with that, we do have a certain amount of negotiating 14 power. So, you know, prices probably haven't increased 15 for us as they might have done for other agents. 16 I can't comment on other agents.</b> 17 Q. Right. So -- 18 <b>A. Can I just come back -- is it okay if I just come back 19 to something that you just said before, about Mr Notley 20 did not offer us, you know, a deal or whatever?</b> 21 Q. Of course. 22 <b>A. I mean, I am not at liberty to say that that definitely 23 did not take place. I don't know. I didn't hear of it 24 but it doesn't mean to say it didn't.</b> 25 THE CHAIRMAN: When you say at liberty, you mean you are</p> <p style="text-align: center;">Page 43</p>	<p>1 Q. There is no way the business could have got started if 2 there was no disruption to the status quo as regards the 3 listing on Zoopla and Rightmove; is that right? 4 <b>A. You would have to get people behind it, yes.</b> 5 Q. That is a different point. There is no way the business 6 would have got started if there was no disruption to the 7 status quo as regards listing on Zoopla and Rightmove, 8 no matter how many people you had behind them? 9 <b>A. Right.</b> 10 Q. Even if you had Google or Tesco or? 11 <b>A. Yes, it's the way you get it though, isn't it?</b> 12 Q. So you have got to cause the disruption in order to get 13 the in, haven't you? 14 <b>A. The fact that you're there causes the disruption and 15 then you have your marketing plan behind it.</b> 16 Q. But if you turn up with no disruption, then you are not 17 going to successfully get it, are you? 18 <b>A. No, okay.</b> 19 Q. You agree? 20 <b>A. They had an opportunity to be a major disruptor in the 21 market, absolutely, I agree.</b> 22 Q. Right. And as I touched on earlier, why on earth would 23 Hunters have paid to list on OTM, even considered 24 listing on OTM, if all its properties were on Rightmove 25 and Zoopla and all the property seekers looked at one or</p> <p style="text-align: center;">Page 45</p>

12 (Pages 42 to 45)

<p>1 other or both?</p> <p>2 <b>A. Because the reason that they would do that, and I go</b></p> <p>3 <b>right back to everything that I've said with regard to</b></p> <p>4 <b>our marketing and everything that we do in our training,</b></p> <p>5 <b>is all based on the auction principle. The auction</b></p> <p>6 <b>principle is the more buyers, the more tenants you get</b></p> <p>7 <b>interested in a property, the better price you're likely</b></p> <p>8 <b>to get and the quick -- and in a quicker timeframe. So</b></p> <p>9 <b>absolutely, I do not think that we would not have gone</b></p> <p>10 <b>on with a third portal. When we advertised and spent</b></p> <p>11 <b>a considerable amount of money in newspapers, we didn't</b></p> <p>12 <b>just advertise in two. We advertised in a lot.</b></p> <p>13 Q. You are not in the business of throwing your</p> <p>14 shareholders' money down the drain?</p> <p>15 <b>A. No.</b></p> <p>16 Q. You don't light the fire with it on a Friday evening</p> <p>17 when you go home, do you?</p> <p>18 <b>A. No, absolutely not.</b></p> <p>19 Q. So why would Hunters have paid to list on OTM if all its</p> <p>20 properties were on Rightmove or Zoopla and all the</p> <p>21 property seekers looked at one or the other or both.</p> <p>22 There would be no earthly reason to do so, would there,</p> <p>23 ever?</p> <p>24 <b>A. There is -- agents spend a considerable amount of money</b></p> <p>25 <b>not just on portals to get leads but in terms of</b></p> <p style="text-align: center;">Page 46</p>	<p>1 <b>marketplace.</b></p> <p>2 Q. That is my point.</p> <p>3 <b>A. Yes, well it was a completely different market place.</b></p> <p>4 <b>In the marketplace that we have today and have had for</b></p> <p>5 <b>a number of years, is that the customer expects that</b></p> <p>6 <b>they can transact online.</b></p> <p>7 Q. So the key mechanism which was available to Rightmove</p> <p>8 and available to Primelocation, way back in what they</p> <p>9 called the noughties, 2000s thereabouts, was simply not</p> <p>10 available to my client because the market had moved on.</p> <p>11 Exclusivity was just not possible?</p> <p>12 <b>A. Well, I am no -- I don't set up portal businesses.</b></p> <p>13 Q. No.</p> <p>14 <b>A. But I do know that the principle of OnTheMarket, most</b></p> <p>15 <b>agents would have supported it. They could not have</b></p> <p>16 <b>afforded to necessarily pay the full price that there</b></p> <p>17 <b>were two such as Rightmove and Zoopla but there could</b></p> <p>18 <b>have been a way where they could perhaps have done it</b></p> <p>19 <b>differently, with a cheaper price or got agents on board</b></p> <p>20 <b>because at the end of the day, agents spent then and</b></p> <p>21 <b>still spend now, a considerable amount of money in other</b></p> <p>22 <b>forms of marketing too.</b></p> <p>23 Q. You see, look at paragraph 21, please, Miss Frew, of</p> <p>24 your statement. You say:</p> <p>25 "If Agents' Mutual were now to drop the OOP rule,</p> <p style="text-align: center;">Page 48</p>
<p>1 <b>canvassing and all such as that and newspapers and</b></p> <p>2 <b>so on. So I am not saying for one minute that</b></p> <p>3 <b>OnTheMarket could have launched into the market at the</b></p> <p>4 <b>same price as Zoopla and Rightmove. I think that is</b></p> <p>5 <b>unrealistic. I do, however, believe there were other</b></p> <p>6 <b>ways you could have -- they could have done it and I do</b></p> <p>7 <b>believe that other agents would have supported them</b></p> <p>8 <b>because that's in their interests.</b></p> <p>9 Q. You don't suggest, I don't think, but tell me if I'm</p> <p>10 wrong, you don't suggest that in 2015, OnTheMarket could</p> <p>11 suddenly have successfully entered this market on the</p> <p>12 basis of an exclusivity arrangement, do you?</p> <p>13 <b>A. An exclusivity arrangement with who?</b></p> <p>14 Q. With the agents, on the basis that the agents would</p> <p>15 agree exclusively to list their properties with the OTM</p> <p>16 portal. That would never have worked, would it?</p> <p>17 <b>A. It wouldn't be right for the agents, it wouldn't be</b></p> <p>18 <b>right for the customer.</b></p> <p>19 Q. It was right for the agents when Primelocation launched,</p> <p>20 wasn't it?</p> <p>21 <b>A. Well, I wasn't party to Primelocation, when</b></p> <p>22 <b>Primelocation launched.</b></p> <p>23 Q. And it was right for the founder members of Rightmove as</p> <p>24 well, wasn't it, in 2000?</p> <p>25 <b>A. Yes, but you are talking about a completely different</b></p> <p style="text-align: center;">Page 47</p>	<p>1 I believe that many more agents would sign up,</p> <p>2 especially if Agents' Mutual offered discounted pricing</p> <p>3 to attract agents to join and they were no longer</p> <p>4 required to change their current listing arrangements.</p> <p>5 As outlined above, Hunters is attracted to an agent</p> <p>6 owned portal and is willing to list on more than two</p> <p>7 portals, so long as we are satisfied that they are</p> <p>8 generating leads in a cost-effective way and not</p> <p>9 undermining our ability to trade."</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. So what you are saying is that if there was no OOP rule,</p> <p>12 if it was cheaper, you would find it more attractive,</p> <p>13 provided you had a guarantee that it worked; is that</p> <p>14 a fair summary?</p> <p>15 <b>A. Well, as it says there, you would want to -- you would</b></p> <p>16 <b>track how it worked, you would help them to make it</b></p> <p>17 <b>work. It is in agents' interests and if it is in the</b></p> <p>18 <b>customer's interest too, even better.</b></p> <p>19 Q. Do you know what a collective action problem is,</p> <p>20 Miss Frew?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Right.</p> <p>23 <b>A. Why, do you want to ask me a question about it?</b></p> <p>24 Q. No, no, I have asked the question and you have given me</p> <p>25 the answer, thank you. Paragraph 15 of your statement,</p> <p style="text-align: center;">Page 49</p>

<p>1 please. You say:</p> <p>2 "I understand that one important factor -- but not</p> <p>3 the only factor -- for a portal to be successful is that</p> <p>4 it needs to have a critical volume of property stock</p> <p>5 with which to entice customers to look at the site which</p> <p>6 then in turn attracts more agents ..."</p> <p>7 That is part of the network effect; right?</p> <p>8 <b>A. Mmm.</b></p> <p>9 Q. "This relationship between listings volumes and</p> <p>10 customers is then built up and expanded on both sides</p> <p>11 through an effective marketing strategy, that drives</p> <p>12 brand awareness and generates interest from both sides</p> <p>13 of the market. Agents' Mutual decided to focus on</p> <p>14 signing up a large number of agents and in doing so,</p> <p>15 I believe it had several options open to it other than</p> <p>16 the OOP rule."</p> <p>17 Are you criticising Agents' Mutual for focusing and</p> <p>18 signing up a large number of agents or not?</p> <p>19 <b>A. No, I think the problem, as I say -- before, I think the</b></p> <p>20 <b>problem that we had as a company was the One Other</b></p> <p>21 <b>Portal rule.</b></p> <p>22 Q. Look at paragraph 16 then. You talk about:</p> <p>23 "My clients could have waived fees [that would have</p> <p>24 helped the marketing budget no end, no doubt] or offered</p> <p>25 discounted rates, something that both Rightmove and</p> <p style="text-align: center;">Page 50</p>	<p>1 Q. "One other possible way Agents' Mutual could have</p> <p>2 considered for entry was to identify the strongest</p> <p>3 independent agent in each region and try to persuade</p> <p>4 them to join, setting the local standard then, in each</p> <p>5 business area."</p> <p>6 Miss Frew, what do you know about the strategy that</p> <p>7 Mr Springett did in fact follow?</p> <p>8 <b>A. Well, the point I am trying to make here in paragraph 16</b></p> <p>9 <b>is outside of the One Other Portal rule, in that you</b></p> <p>10 <b>know, I come back to say, as I have said all along, that</b></p> <p>11 <b>estate agents supported the idea of an agent's portal.</b></p> <p>12 <b>And so what could have happened is the reduced rates or</b></p> <p>13 <b>getting strong independents to join and so on, but</b></p> <p>14 <b>without the One Other Portal rule.</b></p> <p>15 Q. What do you know about the strategy Mr Springett did in</p> <p>16 fact follow, to build up this business? Is the answer</p> <p>17 not much or nothing or what?</p> <p>18 <b>A. I only saw him -- I saw him at the presentation and</b></p> <p>19 <b>his --</b></p> <p>20 Q. That was in November 2014, so it was all done and dusted</p> <p>21 by then?</p> <p>22 <b>A. Yes, but he made it very clear that what he had done and</b></p> <p>23 <b>the way that they had built it was that they had to try</b></p> <p>24 <b>to get some independents in an area, but obviously, the</b></p> <p>25 <b>One Other Portal rule was instrumental in it.</b></p> <p style="text-align: center;">Page 52</p>
<p>1 Zoopla did effectively, when they entered the market."</p> <p>2 You have just accepted very fairly, when Rightmove</p> <p>3 entered the market, it was a very different market than</p> <p>4 the market that OTM was facing, wasn't it?</p> <p>5 <b>A. It was but the point that you were making before was</b></p> <p>6 <b>actually different to that one because the point that</b></p> <p>7 <b>you were making before was about exclusivity.</b></p> <p>8 Q. Yes, that's correct. But the market was very different,</p> <p>9 wasn't it?</p> <p>10 <b>A. When Rightmove entered the market?</b></p> <p>11 Q. The marketing, for example, required now, to enter this</p> <p>12 market, which has grown so hugely since when Rightmove</p> <p>13 entered, the marketing requirement is greater, not less</p> <p>14 than it was when Rightmove and Zoopla entered; right?</p> <p>15 <b>A. There is no doubt about it, the marketing spend is huge</b></p> <p>16 <b>for all agents.</b></p> <p>17 Q. And so that would mean that the idea of offering no fees</p> <p>18 or discounted rates to somebody entering in 2015, would</p> <p>19 have severe implications for their ability adequately to</p> <p>20 market their portal; right?</p> <p>21 <b>A. It would need to go into a business plan, wouldn't it?</b></p> <p>22 Q. Not just being written down as a business plan. It</p> <p>23 would have to be funded, in order to make it work?</p> <p>24 <b>A. Exactly. It would need to be funded as part of the</b></p> <p>25 <b>business plan.</b></p> <p style="text-align: center;">Page 51</p>	<p>1 Q. In paragraph 18 you say:</p> <p>2 "I do not believe the OOP rule was necessary for</p> <p>3 Agent's Mutual to be able to enter the market."</p> <p>4 Do you mean -- what do you mean by --</p> <p>5 <b>A. That goes back to paragraph 16. I don't think it was</b></p> <p>6 <b>essential because I think you could have got independent</b></p> <p>7 <b>agents to support Agents' Mutual without having the One</b></p> <p>8 <b>Other Portal rule.</b></p> <p>9 MR MACLEAN: Thank you very much, Miss Frew.</p> <p>10 MR HARRIS: In your hands about the short break. I only</p> <p>11 have a short question. I am happy to do that now or if</p> <p>12 we take a short break?</p> <p>13 THE CHAIRMAN: Why don't we break after you have finished</p> <p>14 your re-examination.</p> <p>15 Re-examination by MR HARRIS</p> <p>16 MR MACLEAN: Miss Frew, good morning again. You were asked</p> <p>17 some questions toward the beginning of the</p> <p>18 cross-examination about Hunters Plc buying 100 per cent</p> <p>19 of Hunters Group Limited. Do you recall that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And I think you identified the date as being about the</p> <p>22 middle of 2014?</p> <p>23 <b>A. Mmm.</b></p> <p>24 Q. Do you recall that? And I think you agreed with my</p> <p>25 learned friend that it was after the time that Hunters</p> <p style="text-align: center;">Page 53</p>

<p>1 Group Limited had joined OTM?</p> <p>2 <b>A. Yes, they'd already -- he'd made his commitment.</b></p> <p>3 Q. Do you recall Hunters ever being told that all the rest</p> <p>4 of your branches throughout the Hunters network had to</p> <p>5 become listed on OTM, because Hunters Group Limited was</p> <p>6 listed on OTM prior to you acquiring them?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Miss Frew, you were asked some questions about the</p> <p>9 meetings to which you refer in your witness statement,</p> <p>10 the one that you told the Tribunal was in York and the</p> <p>11 other being in London. Do you recall those questions?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And you said quite clearly that in your view, it was</p> <p>14 implied in those meetings that all the agents would go</p> <p>15 for Zoopla, ie did you mean by that, drop Zoopla?</p> <p>16 <b>A. Definitely.</b></p> <p>17 Q. Can you think back then, doing your best now,</p> <p>18 I appreciate it is some time ago, think back to those</p> <p>19 meetings. Imagine where they were. You said it was</p> <p>20 cold, one of the meetings. One was presented by</p> <p>21 a woman, one was presented by Mr Springett. Just think</p> <p>22 back. Can you explain to the Tribunal in your own</p> <p>23 words, by reference to that recollection, why exactly it</p> <p>24 was that you got that clear impression?</p> <p>25 <b>A. I got that clear impression because that was the way the</b></p> <p style="text-align: center;">Page 54</p>	<p>1 <b>their back, worried about "How will that affect our</b></p> <p>2 <b>business?" And so they were distracted with that which,</b></p> <p>3 <b>you know, you can understand that from a business point</b></p> <p>4 <b>of view and Rightmove, I think as I said at the time,</b></p> <p>5 <b>had a certain amount of trepidation but they knew "This</b></p> <p>6 <b>isn't going to affect us", and they've got stronger with</b></p> <p>7 <b>it.</b></p> <p>8 Q. Just picking up on that answer, in what way has</p> <p>9 Rightmove got stronger, in your view?</p> <p>10 <b>A. Well, they have got stronger because they know that</b></p> <p>11 <b>they're not one of those that's the major portal that's</b></p> <p>12 <b>threatened with it and that undoubtedly strengthens</b></p> <p>13 <b>their negotiating position.</b></p> <p>14 Q. Thank you.</p> <p>15 THE CHAIRMAN: Just a moment. Mr Harris. When you say, for</p> <p>16 instance, "They know that they're the major portal", are</p> <p>17 you giving your views as an estate agent involved in the</p> <p>18 market or are you speaking of having had conversations</p> <p>19 with Rightmove and/or Zoopla, where they've disclosed</p> <p>20 the thinking to you?</p> <p>21 <b>A. Would you mind repeating the first bit? I didn't quite</b></p> <p>22 <b>hear it.</b></p> <p>23 THE CHAIRMAN: Yes, of course. In the course of the last</p> <p>24 couple of answers you've said, for instance, "They know</p> <p>25 that they're the major portal". You have --</p> <p style="text-align: center;">Page 56</p>
<p>1 <b>presentation came over. That's how I felt when</b></p> <p>2 <b>I watched it. There's no question about that in my</b></p> <p>3 <b>mind. There was also at one of them -- I smoke and</b></p> <p>4 <b>I went out for a cigarette and one of the other agents</b></p> <p>5 <b>came out and said "We all need to stick together. This</b></p> <p>6 <b>is what we need to do. And we need to drop Zoopla and</b></p> <p>7 <b>go with OnTheMarket." So I had said at that time "We've</b></p> <p>8 <b>decided that the timing isn't right."</b></p> <p>9 Q. Thank you. Shortly after those questions, you were</p> <p>10 asked about your view, also expressed in your witness</p> <p>11 statement, about Zoopla becoming weaker after the entry</p> <p>12 of OTM into the market. Do you recall that?</p> <p>13 <b>A. I do.</b></p> <p>14 Q. And you said, and I do my best to quote here:</p> <p>15 "I do think that Zoopla have become weaker since</p> <p>16 then."</p> <p>17 Do you remember saying that?</p> <p>18 <b>A. I do.</b></p> <p>19 Q. You were then cut off and moved on to a different</p> <p>20 question but can you explain to the Tribunal why it is</p> <p>21 that you do think that Zoopla have become weaker since</p> <p>22 the entry of OTM into the portals market?</p> <p>23 <b>A. Because by the nature of what happened with OnTheMarket,</b></p> <p>24 <b>there were a number of agents then, that came off</b></p> <p>25 <b>Zoopla. So Zoopla were then worried about and watching</b></p> <p style="text-align: center;">Page 55</p>	<p>1 <b>A. Rightmove.</b></p> <p>2 THE CHAIRMAN: You were talking about Rightmove there. And</p> <p>3 what I wanted to get a feel for is the source of that</p> <p>4 evidence. Is it simply your thinking of what they might</p> <p>5 think as an estate agent in the market or is it the</p> <p>6 result of a conversation that you might have had with</p> <p>7 either Zoopla or Rightmove?</p> <p>8 <b>A. I think it's a combination of the two and of course</b></p> <p>9 <b>there's -- there is anecdotal evidence too, that --</b></p> <p>10 THE CHAIRMAN: Speaking with other estate agents in the</p> <p>11 market?</p> <p>12 <b>A. That's right, yes. That would say the same.</b></p> <p>13 THE CHAIRMAN: Thank you.</p> <p>14 MR HARRIS: Thank you, Miss Frew. Then the last question</p> <p>15 is, you were asked, nearing the end of your</p> <p>16 cross-examination, some questions about listing on more</p> <p>17 than two portals and part of your answer was: well, back</p> <p>18 in the day, we didn't just list on two newspapers. Do</p> <p>19 you remember that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And my question to you is: are you aware whether or not</p> <p>22 any Hunters own branches or franchisees' branches now</p> <p>23 list on more than two property portals?</p> <p>24 <b>A. Yes, there are some that are on LonRes, for example.</b></p> <p>25 <b>There are others that are on portals where you pay for</b></p> <p style="text-align: center;">Page 57</p>

<p>1 <b>leads as you get them, so, you know, that's part of</b>  2 <b>their own individual marketing strategy. But very</b>  3 <b>important to the national -- Hunters marketing strategy</b>  4 <b>is the portals. And also, we do quite a lot of separate</b>  5 <b>canvassing but other than that, if they want to go on</b>  6 <b>another portal, no problem at all.</b></p> <p>7 Q. Thank you. I think you mentioned a particular one in  8 that answer, LonRes?</p> <p>9 <b>A. LonRes.</b></p> <p>10 Q. Can you just tell the Tribunal what that is?</p> <p>11 <b>A. LonRes is a portal which actually is London based. So</b>  12 <b>a lot of agents will use LonRes and that, you know, is</b>  13 <b>properties just for London.</b></p> <p>14 Q. I see, so is the effect of that answer put together  15 then, is that some of your branches and/or franchisee  16 branches currently list on at least three portals, one  17 of them being LonRes. Who would the other two portals  18 be?</p> <p>19 <b>A. If they are on LonRes, they would be on Zoopla and</b>  20 <b>Rightmove.</b></p> <p>21 MR HARRIS: Thank you very much, Miss Frew. I have no  22 further questions, unless the Tribunal have any  23 questions.</p> <p>24 MR FREEMAN: Miss Frew, during your evidence you talked at  25 various places about customers and your consumers. As</p> <p style="text-align: center;">Page 58</p>	<p>1 (11.55 am)</p> <p>2 MR HARRIS: With the Tribunal's permission, I would like to  3 call my next witness, Mr Livesey.</p> <p>4 MR DAVID CHRISTOPHER LIVESEY (affirmed)  5 Examination-in-chief by MR HARRIS</p> <p>6 MR HARRIS: Mr Livesey, can you please be provided with  7 bundle D of the defendant's witness statements, unless  8 it is already on your table. And could you have it  9 open, at least to tab number 3. Do you recognise that  10 as the front page of a witness statement you created for  11 these proceedings?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. And can you turn to the final page, page 20 of that tab.  14 Is that the copy of your signature?</p> <p>15 <b>A. It is.</b></p> <p>16 Q. And save for one matter that you wish to update, is it a  17 true and accurate account of the evidence you wish to  18 give to this Tribunal?</p> <p>19 <b>A. It is.</b></p> <p>20 Q. And is there an update you wish to give as regards  21 paragraph 14?</p> <p>22 <b>A. Yes, paragraph 14 talks about the contractual</b>  23 <b>arrangements that we had with Zoopla at the time and it</b>  24 <b>was really an update, which is that the current contract</b>  25 <b>that I have with Zoopla commenced at the start of last</b></p> <p style="text-align: center;">Page 60</p>
<p>1 an estate agent, can I just ask you, who do you regard  2 as the consumer in this industry?</p> <p>3 <b>A. Our customers and also, partly, consumers are the</b>  4 <b>vendors and the landlords and, of course, then --</b>  5 <b>I think estate agency is quite unique because we also</b>  6 <b>have buyers and we have tenants.</b></p> <p>7 MR FREEMAN: Do you regard yourselves as acting in their  8 interests, as well as in the interests of vendors and  9 lessors?</p> <p>10 <b>A. Yes.</b></p> <p>11 MR FREEMAN: So when you talk about a consumer, you mean  12 everybody who might be interested in buying, selling,  13 renting or leasing a property?</p> <p>14 <b>A. Yes, and of course, legally, an estate agent does have</b>  15 <b>a duty of care that's already in statute over tenants.</b></p> <p>16 MR FREEMAN: Thank you.</p> <p>17 THE CHAIRMAN: Thank you very much, Miss Frew.</p> <p>18 MR HARRIS: Thank you, you are finished, Miss Frew.</p> <p>19 <b>A. Thank you.</b></p> <p>20 MR HARRIS: Sir, that may be a convenient moment. My next  21 witness is Mr Livesey.</p> <p>22 THE CHAIRMAN: We'll rise for five minutes and resume for  23 Mr Livesey then.</p> <p>24 (11.50 am)</p> <p>25 (A short break)</p> <p style="text-align: center;">Page 59</p>	<p>1 <b>year, 2016, and runs until the end of next year, 2018.</b>  2 <b>So it is a three-year contract that supersedes the one</b>  3 <b>referred to.</b></p> <p>4 Q. At the time you wrote the statement, this was active but  5 it has now been superseded by events; is that -- Thank  6 you. Then in the same bundle, could you please turn to  7 tab number 7. Do you recognise that, the front page of  8 a second witness statement that you created for these  9 proceedings?</p> <p>10 <b>A. I do.</b></p> <p>11 Q. Is that a true copy of your signature on the final page,  12 at page 15?</p> <p>13 <b>A. It is.</b></p> <p>14 Q. And is this a true and accurate account of the further  15 evidence you wish to give in these proceedings?</p> <p>16 <b>A. It is.</b></p> <p>17 Q. And finally, Mr Livesey, would you please turn in the  18 same bundle to tab 11. Do you have a tab 11?</p> <p>19 <b>A. I do.</b></p> <p>20 Q. Because this was a later statement. Do you recognise  21 that as the front page of a third witness statement by  22 you in these proceedings?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Is that a true copy of your signature on the final page?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 61</p>



1 Q. And are the contents of this statement also true and  
 2 accurate for the purposes of these proceedings?  
 3 **A. Yes.**  
 4 Q. Thank you, Mr Livesey, there may be some questions for  
 5 you.  
 6 Cross-examination by MR MACLEAN  
 7 MR MACLEAN: Good afternoon, it just about is, Mr Livesey.  
 8 **A. Yes.**  
 9 Q. You are fully supportive of the idea of a portal run by  
 10 agents for agents, aren't you?  
 11 **A. I am.**  
 12 Q. And you don't see a portal run by agents for agents as  
 13 being, in principle, objectionable on any basis, do you?  
 14 **A. No, in principle, it's fine.**  
 15 Q. You don't see it as being regressive and protectionist,  
 16 for example, do you?  
 17 **A. Not the principle of it.**  
 18 Q. I assume but tell me if I'm wrong, that you are not the  
 19 sort of person who signs official documents without  
 20 taking care to understand them, understand their  
 21 contents and purpose; is that right?  
 22 **A. That's a fair comment.**  
 23 Q. What's the purpose of a witness statement in proceedings  
 24 such as these, Mr Livesey?  
 25 **A. To give my statement of the events.**

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1 Q. It's to set out the evidence-in-chief of the maker of  
 2 the statement, isn't it?  
 3 **A. Correct.**  
 4 Q. To tell your part of the story; right?  
 5 **A. Correct.**  
 6 Q. Do you know that it is expressly not the function of  
 7 a witness statement to provide a commentary on the  
 8 documents in the case?  
 9 **A. I'm not an expert on legal proceedings.**  
 10 Q. I thought you said that you understood the purpose of  
 11 the witness statement?  
 12 **A. I answered your question.**  
 13 Q. So do you or do you not understand that the function of  
 14 a witness statement is emphatically not to provide  
 15 a commentary on the documents in the case which have got  
 16 nothing to do with the witness?  
 17 **A. I'm sorry, I don't understand your question.**  
 18 Q. Let's start again. What's the purpose of the witness  
 19 statement?  
 20 **A. To explain my version of the events.**  
 21 Q. To tell your part of the story; right?  
 22 **A. Yes.**  
 23 Q. Not to provide a commentary on emails between X and Y or  
 24 Y and Z or A and B, that have nothing to do with you;  
 25 right?

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1 **A. They're not part of the story.**  
 2 Q. Nobody ever explained that to you?  
 3 **A. Not specifically, no.**  
 4 Q. You see, to take an example, paragraph 21 of your second  
 5 witness statement at tab 7.  
 6 **A. Sorry, where am I looking?**  
 7 Q. Bundle D, tab 7, paragraph 21. What you are doing there  
 8 is providing a commentary on some emails that weren't  
 9 sent to you, weren't sent by you, weren't copied to you,  
 10 have nothing to do with you; right?  
 11 **A. I am providing commentary on emails that were being  
 12 referred to by the other parties.**  
 13 Q. But if it's not the function of a witness statement to  
 14 provide a commentary on the documents in the case and if  
 15 you understood the purpose of the witness statement,  
 16 what's paragraph 21 doing there, Mr Livesey?  
 17 **A. Well, I'm providing a response there, to documents that  
 18 were provided by the other side.**  
 19 Q. No, they weren't, Mr Livesey. These are documents which  
 20 you produced, in a little exercise that we'll explore  
 21 a bit later.  
 22 **A. These are the North East documents.**  
 23 Q. It is your statement, Mr Livesey, look at paragraph 21?  
 24 **A. Okay, I'll read the paragraph. (Pause).**  
 25 Q. It is not your fault, Mr Livesey, probably. It is

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1 probably not your fault, it is no business of mine whose  
 2 fault it is, but this witness statement, indeed your  
 3 witness statement strays far beyond your telling your  
 4 part of the story, from your own knowledge. Do you  
 5 accept that?  
 6 **A. No, I'm providing commentary on documents that were in  
 7 front of me which related directly to the subject.**  
 8 Q. I am not going to ask you whether you are right or wrong  
 9 in what you say in paragraph 21 about what Mr Springett  
 10 clearly knew, on the basis of some email that was  
 11 nothing to do with you. Mr Harris can put questions to  
 12 Mr Springett but this is a completely illegitimate  
 13 exercise, Mr Livesey?  
 14 **A. Well, I didn't take your point that this is nothing to  
 15 do with me. These are emails that are being referred  
 16 to. They're emails from people within my business that  
 17 are directly relevant to the case.**  
 18 Q. You have allowed yourself to be used as a mouthpiece in  
 19 your witness statement by lawyers, presumably, in order  
 20 to argue the case of Connells or Zoopla in this  
 21 litigation, haven't you?  
 22 **A. I'm no one's mouthpiece.**  
 23 Q. Now, is this witness statement, these witness  
 24 statements, are they in your own words?  
 25 **A. Largely, yes.**

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<p>1 Q. Largely.</p> <p>2 <b>A. Well you'll see there are quite large elements of them</b></p> <p>3 <b>are taken verbatim from other people's emails.</b></p> <p>4 Q. So when you are not quoting from somebody, we can take</p> <p>5 it it is your own words, can we?</p> <p>6 <b>A. Mmm.</b></p> <p>7 Q. Right. Now, you are the group chief executive of</p> <p>8 Connells, are you?</p> <p>9 <b>A. I am.</b></p> <p>10 Q. And you have been in post since 2008?</p> <p>11 <b>A. As chief executive. I have been with the company for</b></p> <p>12 <b>27 years.</b></p> <p>13 Q. You have been a director since 1995?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Continuously a director since 1995?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. And Connells became the majority shareholder in</p> <p>18 Gascoigne Halman, I think in late 2015; is that right?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. And you became a director of Gascoigne Halman when that</p> <p>21 takeover was completed?</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. And you remain a director of Gascoigne Halman today?</p> <p>24 <b>A. I do.</b></p> <p>25 Q. Who are the other directors of Gascoigne Halman today?</p> <p style="text-align: center;">Page 66</p>	<p>1 this litigation, isn't it?</p> <p>2 <b>A. It is.</b></p> <p>3 Q. And is Connells, in turn, the subject of any funding or</p> <p>4 indemnity arrangement with Zoopla in this litigation?</p> <p>5 <b>A. Do I have to answer these questions?</b></p> <p>6 Q. Yes?</p> <p>7 <b>A. No confidentiality rules apply?</b></p> <p>8 Q. No.</p> <p>9 <b>A. Zoopla did offer to meet a small proportion of our legal</b></p> <p>10 <b>costs at the early stage of the proceedings.</b></p> <p>11 Q. What small proportion?</p> <p>12 <b>A. A very small -- a fraction.</b></p> <p>13 Q. What fraction, Mr Livesey?</p> <p>14 <b>A. Up to £250,000.</b></p> <p>15 Q. So it wasn't a fraction. It was a set amount?</p> <p>16 <b>A. It will be a fraction of our total costs.</b></p> <p>17 Q. I know it will but it was a set amount, not a fraction?</p> <p>18 <b>A. Up to but not a set amount.</b></p> <p>19 Q. So you took that offer?</p> <p>20 <b>A. We accepted that offer.</b></p> <p>21 Q. So they have in fact funded a quarter of a million</p> <p>22 pounds of what is, legally, Gascoigne Halman's defence</p> <p>23 of these proceedings but is, in fact, Connells' defence</p> <p>24 of these proceedings, in reality. Is that right?</p> <p>25 <b>A. Connells Group will pick up the legal costs for the</b></p> <p style="text-align: center;">Page 68</p>
<p>1 <b>A. Stephen Shipperley, who's the group chairman;</b></p> <p>2 <b>David Plumtree, who's the group chief executive for</b></p> <p>3 <b>estate agency, who reports to me; John Halman and</b></p> <p>4 <b>Martin Forrest.</b></p> <p>5 Q. So the last two, the last two gentlemen, Mr Forrest and</p> <p>6 Mr Halman, came from the Gascoigne Halman side of things</p> <p>7 and the other three, I think it was, including yourself,</p> <p>8 came from the Connells side, is that right?</p> <p>9 <b>A. That's right.</b></p> <p>10 Q. And what's the voting on the vote? Is it one man, one</p> <p>11 vote?</p> <p>12 <b>A. No, Connells own 75 per cent shares in the business.</b></p> <p>13 Q. So Connells has a completely controlling stake in</p> <p>14 Gascoigne Halman?</p> <p>15 <b>A. We do.</b></p> <p>16 Q. Does the same apply to Rook Matthews Sayers, one of the</p> <p>17 other businesses that Connells acquired?</p> <p>18 <b>A. It does.</b></p> <p>19 Q. And completely controlled by Connells as well?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Gascoigne Halman isn't funding its defence of these</p> <p>22 proceedings, is it?</p> <p>23 <b>A. Connells Group is funding the defence.</b></p> <p>24 Q. So Gascoigne Halman Limited is, as Mr Halman puts it in</p> <p>25 one of the emails, completely insulated from the cost of</p> <p style="text-align: center;">Page 67</p>	<p>1 <b>defence. Zoopla will pick up to £250,000 worth of those</b></p> <p>2 <b>costs.</b></p> <p>3 Q. And why do you think, maybe you don't know, Zoopla</p> <p>4 offered you a quarter of a million quid to help fight</p> <p>5 this case?</p> <p>6 <b>A. You'd need to ask Zoopla.</b></p> <p>7 Q. You have got no idea?</p> <p>8 <b>A. I have got ideas but I'm not here to speculate.</b></p> <p>9 Q. Give me your best idea?</p> <p>10 <b>A. I'm not here to speculate.</b></p> <p>11 Q. Now, take bundle H14, please, Mr Livesey and turn to</p> <p>12 page 7876. In fact, let's just start the story at 7877.</p> <p>13 This is an email from Mr Halman to Mr Plumtree, who you</p> <p>14 have just told us that Mr Plumtree, I think you said,</p> <p>15 was the head of the estate agency at Connells and he</p> <p>16 reports to you and he is one of the board members of</p> <p>17 Gascoigne Halman, along with you, Mr Halman, Mr Forrest</p> <p>18 and the chairman?</p> <p>19 <b>A. Shipperley, yes.</b></p> <p>20 Q. This is an email of 3 February last year, from Mr Halman</p> <p>21 to Mr Plumtree and:</p> <p>22 "Mr Halman had telephoned Ms Whiteley of my client.</p> <p>23 He advised her we are proposing to commence advertising</p> <p>24 on Zoopla. As such, we would have to withdraw from</p> <p>25 Agents' Mutual."</p> <p style="text-align: center;">Page 69</p>

<p>1 And then at the bottom of the page he says: 2 "This raises an interesting legal point as it is 3 their policy to only permit agents to advertise on one 4 of either Rightmove or Zoopla and therefore if we choose 5 to advertise on both with in addition Agents' Mutual 6 they would have to expel us." 7 He says: 8 "It is unclear, however, that in expelling us, 9 whether they would still be entitled to the 10 subscription. I have attached page 1 of the membership 11 agreement which was already revealed during the due 12 diligence." 13 That is a reference to the due diligence undertaken 14 by Connells, when it bought Gascoigne Halman; right? 15 <b>A. Yes.</b> 16 Q. So you knew all about this? 17 <b>A. Yes.</b> 18 Q. And then: 19 "Our position has always been one where we have no 20 particular allegiance to either Agents' Mutual or Zoopla 21 but it does seem to me that our defection could be in 22 danger of becoming a test case." 23 Then if you go back a page, Mr Plumtree drafted an 24 intended response to Mr Halman which he sent to 25 Mr Twigg; right, do you see that? And then I will come</p> <p style="text-align: center;">Page 70</p>	<p>1 fight, wasn't it? 2 <b>A. That was our assumption.</b> 3 Q. Yes. So Mr Plumtree says: 4 "So we need to push ahead with getting you relisted 5 on Zoopla and delisted from OTM. We (Connells Limited) 6 will take on the work and the cost associated with 7 defending any claim that AM bring against GH as a 8 consequence of you de-listing, equally, we will take the 9 reasonable costs associated with pursuing AM for the 10 interest payments due to GH. (I suspect they'll look to 11 withhold these.)" 12 And then Mr Twigg sends a reply back to Mr Plumtree, 13 saying, basically, he's happy with it: 14 "Save for, why don't we just get them listed on 15 Zoopla and see how AM reacts? The ball is in their 16 court then." 17 Then you join in at the top of the page. We can see 18 this is you, if we go to 7874. There we are, 5.34 in 19 the evening on 3 February. You say: 20 "I'm surprised that we have only just raised the 21 issue with OTM. We have owned GH for four months, known 22 this would be an issue all along." 23 So none of this is a surprise to you; right? You 24 specifically raised it with Mr Springett: 25 "I know there's an issue with interest. Secondly,</p> <p style="text-align: center;">Page 72</p>
<p>1 back to that in a minute and then at 7875, Mr Twigg 2 replied to Plumtree and copied in you. Do you see that? 3 <b>A. Yes.</b> 4 Q. Let's just look for the moment at 7876. I haven't been 5 able to find the final response that went to Mr Halman 6 but I assume it went in this or substantially this form? 7 <b>A. I don't know.</b> 8 Q. Let's look at what was said here. Mr Plumtree said: 9 "We are coming under significant pressure from 10 Zoopla to have GH listed on their side, as GH are part 11 of the Connells Group and our contract with Zoopla 12 requires us to have all Connells Group brands listed on 13 their site. We have no protection in this regard in 14 respect of the SPA." 15 SPA, I assume is sale and purchase agreement, is it? 16 <b>A. Yes.</b> 17 Q. So Connells hadn't sought any carve out or any indemnity 18 for itself in relation to Gascoigne Halman's obligations 19 contractually owed to OnTheMarket, at the time of the 20 deal; is that right? 21 <b>A. That's correct, we saw this as being an onerous contract 22 but one that we were prepared to take the commercial 23 risk for.</b> 24 Q. And we'll see in a minute what the calculation was. The 25 calculation was that Mr Springett wouldn't stand and</p> <p style="text-align: center;">Page 71</p>	<p>1 I agree with Richard we are best to separate the two 2 issues." 3 The money and the listing. Those are the two 4 issues; is that right? When you nod, it doesn't go on 5 to the transcript. 6 <b>A. The two issues I am referring to there are listing with 7 Zoopla and dealing with OnTheMarket.</b> 8 Q. "Listing with Zoopla without further delay is the most 9 important, then let's see what OTM do. Now, of all 10 times, I would expect Springett to adopt a conciliatory 11 approach." 12 So you thought that Mr Springett no doubt would not 13 be happy about it but would, in effect, let Gascoigne 14 Halman list on Zoopla, come to some sort of arrangement 15 with you or what did you expect? 16 <b>A. What I'm referring to by expecting him to have 17 a conciliatory approach is because he had recently 18 approached me with a view to asking Connells to join 19 OnTheMarket.</b> 20 Q. That is a reference back to the four way meeting, is it? 21 <b>A. Yes, the September meeting, when he came to 22 Leighton Buzzard just to meet Connells and then, 23 subsequently, the four way meeting in January.</b> 24 Q. What you didn't expect was my client to hold Gascoigne 25 Halman to its contractual bargain, thereby triggering</p> <p style="text-align: center;">Page 73</p>

<p>1 this litigation?</p> <p>2 <b>A. I didn't expect any of this litigation, no.</b></p> <p>3 Q. But you understand, don't you, that the protection of</p> <p>4 the terms of OnTheMarket is critical to the future of</p> <p>5 the OTM board, isn't it? This is rather important</p> <p>6 litigation for my client, is what I am talking about?</p> <p>7 <b>A. It is absolutely not critical to their business but they</b></p> <p>8 <b>obviously perceive it that way.</b></p> <p>9 Q. Now, you say in this email that you are rapidly -- the</p> <p>10 third point is that you are rapidly losing patience with</p> <p>11 John Halman. Do you see that?</p> <p>12 <b>A. Mmm.</b></p> <p>13 Q. And then you give a rather vivid description as to the</p> <p>14 contortion that Mr Halman needs to desist from; do you</p> <p>15 see that?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. Why were you rapidly losing patience with Mr Halman?</p> <p>18 <b>A. It wasn't in relation to this issue. This was just one</b></p> <p>19 <b>of a number of issues where I wanted him to, in my</b></p> <p>20 <b>phraseology, get jiggy with it and move things along</b></p> <p>21 <b>with a pace. We had just acquired his business and</b></p> <p>22 <b>I think Mr Halman was going through a process where he</b></p> <p>23 <b>was adjusting to corporate ownership. And we were not</b></p> <p>24 <b>particularly corporate corporate but there are checks</b></p> <p>25 <b>and balances and there are processes that we expect all</b></p> <p style="text-align: center;">Page 74</p>	<p>1 <b>A. I think Mr Halman would probably still agree with the</b></p> <p>2 <b>principles of Agents' Mutual, as in fact, do I. I am</b></p> <p>3 <b>not so sure his view today would be that he would be</b></p> <p>4 <b>quite as happy with the proposition as he was when he</b></p> <p>5 <b>first signed up for it.</b></p> <p>6 Q. And the other thing that is clear about Mr Halman, from</p> <p>7 every time he was given a free go at Zoopla, is that he</p> <p>8 never thought it amounted to very much, did he? In the</p> <p>9 same way as he was enthusiastic about OTM, he was to say</p> <p>10 the least, lukewarm, not to say underwhelmed, by Zoopla,</p> <p>11 wasn't he?</p> <p>12 <b>A. He was.</b></p> <p>13 Q. Connells has around, you say in your first statement,</p> <p>14 paragraph 5 -- you don't need to turn it up because you</p> <p>15 and I both know this -- about 590 branches; right?</p> <p>16 <b>A. That's right.</b></p> <p>17 Q. And it is one of the big three?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And they are called the corporates, as Mr Springett</p> <p>20 refers to it?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Connells, Countrywide and LSL?</p> <p>23 <b>A. That's correct.</b></p> <p>24 Q. And LSL stands for what?</p> <p>25 <b>A. Lending Solutions Limited but it is -- LSL Plc is the --</b></p> <p style="text-align: center;">Page 76</p>
<p>1 <b>subsidiaries to adopt and he was being slow and a little</b></p> <p>2 <b>bit resistant in adopting some of those.</b></p> <p>3 Q. In other words, he was a bit slow to learn the new</p> <p>4 corporate hymn sheet or he was a bit slow to learn the</p> <p>5 new corporate ways, under Connells?</p> <p>6 <b>A. You may call it a hymn sheet but things like the</b></p> <p>7 <b>compliance process for our mortgage consultants, who are</b></p> <p>8 <b>regulated by the FCA. We have a cookie cutter approach</b></p> <p>9 <b>which says: it has to be done this way across the group.</b></p> <p>10 <b>Previously, Gascoigne Halman had operated a very</b></p> <p>11 <b>different model and he and the lady that runs that part</b></p> <p>12 <b>of the business forum were struggling to get to grips</b></p> <p>13 <b>with it and putting up a little bit of resistance. So</b></p> <p>14 <b>it is not a corporate hymn sheet, it is certain</b></p> <p>15 <b>processes that we insist all subsidiaries coming into</b></p> <p>16 <b>the business will adopt.</b></p> <p>17 Q. There are two aspects of Mr Halman attitude that -- we</p> <p>18 can look at the detail later, and we will look at the</p> <p>19 detail later, but would you agree that he was an early</p> <p>20 and fairly enthusiastic supporter of Agents' Mutual?</p> <p>21 <b>A. I would agree with that.</b></p> <p>22 Q. And would you agree that he remained very sympathetic to</p> <p>23 Agents' Mutual to the end because, of course, Gascoigne</p> <p>24 Halman came off Agents' Mutual, purely because it had</p> <p>25 been bought over by Connells?</p> <p style="text-align: center;">Page 75</p>	<p>1 <b>it is a quoted Plc now.</b></p> <p>2 Q. And Countrywide is also a Plc?</p> <p>3 <b>A. It is.</b></p> <p>4 Q. But Connells is owned, ultimately, by the Skipton</p> <p>5 Building Society?</p> <p>6 <b>A. That's correct, which is a mutual.</b></p> <p>7 Q. Wholly owned by Skipton Building Society which is</p> <p>8 a mutual?</p> <p>9 <b>A. Which is a mutual.</b></p> <p>10 Q. Ironically enough.</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And Gascoigne Halman had 18 branches when Connells</p> <p>13 acquired in November 2015.</p> <p>14 <b>A. 18 branches in the North West of England.</b></p> <p>15 Q. Did it have somewhere else?</p> <p>16 <b>A. 18 branches in the North West of England. I'm just</b></p> <p>17 <b>giving you its location.</b></p> <p>18 Q. Yes, okay, alright, you are giving me some detail. I</p> <p>19 understand. Now, Connells was involved in the creation</p> <p>20 of Rightmove, wasn't it, back in 2000?</p> <p>21 <b>A. That's right.</b></p> <p>22 Q. Along with a bunch of other major corporate estate</p> <p>23 agents, some of which have subsequently exited the</p> <p>24 market, I think Royal &amp; Sun Alliance, Halifax and some</p> <p>25 haven't, like Connells and Countrywide. Is that right?</p> <p style="text-align: center;">Page 77</p>

<p>1 <b>A. That's right.</b></p> <p>2 Q. And Rightmove listed on the Stock Exchange in 2006. And</p> <p>3 you became a non-executive director of Zoopla in 2010;</p> <p>4 right?</p> <p>5 <b>A. That's right.</b></p> <p>6 Q. And you were a non-executive director of Zoopla between</p> <p>7 2010 and 2012?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. The circumstances in which you became a non-executive</p> <p>10 director of Zoopla in 2010 were that the three</p> <p>11 corporates, Countrywide, LSL and Connells, had entered</p> <p>12 into something called the strategic partnership with</p> <p>13 Zoopla in 2010; is that right?</p> <p>14 <b>A. That's right.</b></p> <p>15 Q. And one of the facets of the strategic partnership was</p> <p>16 that each of the corporates agreed to advertise all of</p> <p>17 their properties on Zoopla?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. And in return for that, presumably, they got a discount</p> <p>20 on Zoopla's rates, didn't they?</p> <p>21 <b>A. Zoopla have a charging structure which applies</b></p> <p>22 <b>a discount for volume, so any agent of a larger size</b></p> <p>23 <b>than another agent would expect to have -- pay a lower</b></p> <p>24 <b>per branch fee, although outright, they would be paying</b></p> <p>25 <b>more.</b></p> <p style="text-align: center;">Page 78</p>	<p>1 <b>be higher, so I suppose, yes, the smaller the agent, the</b></p> <p>2 <b>higher the level of concern over that cost.</b></p> <p>3 Q. As a percentage of their total turnover, they would be</p> <p>4 paying more in percentage terms to these portals than</p> <p>5 Connells would be?</p> <p>6 <b>A. I can't comment on the financial dynamics of their</b></p> <p>7 <b>business. They may be -- have much higher fee levels</b></p> <p>8 <b>than we do.</b></p> <p>9 Q. That's unlikely?</p> <p>10 <b>A. No, not at all.</b></p> <p>11 Q. So the effect of the partnership was to strengthen the</p> <p>12 position of Countrywide, LSL and Connells on the one</p> <p>13 hand, vis a vis the independent estate agents on the</p> <p>14 other, wasn't it?</p> <p>15 <b>A. No, not at all. But that wasn't the objective.</b></p> <p>16 Q. I didn't say it was the object but that was the effect,</p> <p>17 wasn't it?</p> <p>18 <b>A. The effect was to --</b></p> <p>19 Q. I am not suggesting it was the object. I am not</p> <p>20 suggesting there was some dastardly plot to do in the</p> <p>21 independent estate agents. That kind of suggestion I</p> <p>22 think comes from the other side of the court. I am</p> <p>23 simply suggesting the effect of the partnership between</p> <p>24 Countrywide, LSL and Connells with Zoopla, was to</p> <p>25 strengthen their position, relative to the independent</p> <p style="text-align: center;">Page 80</p>
<p>1 Q. So give us an idea then. If Gascoigne Halman, with its</p> <p>2 18 branches, had gone along to Zoopla the day after the</p> <p>3 strategic partnership between Countrywide, LSL and</p> <p>4 Connells had been agreed, and Connells of course,</p> <p>5 doesn't own Gascoigne Halman, what's the order of</p> <p>6 magnitude of Gascoigne Halman's higher fee to Zoopla,</p> <p>7 compared to that which Connells was able to extract as</p> <p>8 part of the strategic partnership?</p> <p>9 <b>A. I don't know what the relative fees would have been in</b></p> <p>10 <b>2010. Ours would have been significantly lower</b></p> <p>11 <b>because -- as would Countrywide's, LSL's, as would</b></p> <p>12 <b>Spicerhaart's. Any one of scale would have had a lower</b></p> <p>13 <b>per branch charge applied to them by Zoopla than</b></p> <p>14 <b>Gascoigne Halman, who had only 18 branches.</b></p> <p>15 Q. So to the extent that estate agents, no doubt like all</p> <p>16 businesses, would rather pay less than more for the</p> <p>17 services they received, accepting that as a starting</p> <p>18 point of the analysis, to the extent that there was</p> <p>19 dissatisfaction with the fees that were being charged by</p> <p>20 Rightmove and Zoopla to estate agents in 2010, there</p> <p>21 would be good reason for that dissatisfaction to be</p> <p>22 particularly acute among the smaller independents,</p> <p>23 rather than the three big corporates who were able to</p> <p>24 extract this discount; is that right?</p> <p>25 <b>A. Well, the per branch charge for the smaller agent would</b></p> <p style="text-align: center;">Page 79</p>	<p>1 estate agents?</p> <p>2 <b>A. I don't think it strengthened our position at all. It</b></p> <p>3 <b>helped Zoopla achieve critical mass to make it a more</b></p> <p>4 <b>credible competitor to Rightmove which I think is to</b></p> <p>5 <b>everybody's benefit.</b></p> <p>6 Q. Countrywide, LSL and Connells all obtained</p> <p>7 a shareholding in Zoopla as a part of this strategic</p> <p>8 partnership, didn't they?</p> <p>9 <b>A. We did.</b></p> <p>10 Q. What percentage shareholding did Connells obtain in</p> <p>11 Zoopla in 2010?</p> <p>12 <b>A. I can't give you the exact figure but I think it was in</b></p> <p>13 <b>the order of 8 per cent, there or thereabouts. Which</b></p> <p>14 <b>was subsequently diluted by 55 per cent.</b></p> <p>15 Q. I will come to that. Let us take it in stages,</p> <p>16 Mr Livesey. I think we'll probably cover the same</p> <p>17 ground. Take it in stages. So 8 per cent or</p> <p>18 thereabouts. And presumably Countrywide and LSL got</p> <p>19 a similar equity stake in Zoopla as well, did they?</p> <p>20 <b>A. My recollection is that Countrywide had a higher stake</b></p> <p>21 <b>because they were a larger firm. They were about twice</b></p> <p>22 <b>our size. I don't think they had twice the</b></p> <p>23 <b>shareholding. I don't know what their exact</b></p> <p>24 <b>shareholding was but theirs was larger than ours and</b></p> <p>25 <b>I think LSL's was about the same because they were about</b></p> <p style="text-align: center;">Page 81</p>

<p>1 <b>the same size.</b></p> <p>2 Q. So Countrywide and LSL, they are your major competitors?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. They are your two single biggest competitors in the</p> <p>5 estate agent market?</p> <p>6 <b>A. They are the two biggest. They are not our main</b></p> <p>7 <b>competitors. Our main competitor is the local estate</b></p> <p>8 <b>agent on the high street, who quite often is an</b></p> <p>9 <b>independent.</b></p> <p>10 Q. I see. So this 8 per cent shareholding in Zoopla, what</p> <p>11 did Connells pay for that shareholding?</p> <p>12 <b>A. I don't recall.</b></p> <p>13 Q. Did it pay cash?</p> <p>14 <b>A. I believe so.</b></p> <p>15 Q. Presumably, you would be able to furnish Mr Harris with</p> <p>16 that figure and he would be able to furnish it to me?</p> <p>17 <b>A. We would be able to find out. I don't know how much</b></p> <p>18 <b>money we put into Zoopla at the time.</b></p> <p>19 Q. Per share, what I would be interested in is what was</p> <p>20 paid per share. You began to tell me, when I no doubt</p> <p>21 rudely cut you off, that at some stage that shareholding</p> <p>22 was diluted and I think you said 55 per cent of the</p> <p>23 shareholding was sold?</p> <p>24 <b>A. No, diluted.</b></p> <p>25 Q. Diluted?</p> <p style="text-align: center;">Page 82</p>	<p>1 you remember the selling price?</p> <p>2 <b>A. I don't know the share price but I can tell you that</b></p> <p>3 <b>when Zoopla IPO'd, we booked a profit of about</b></p> <p>4 <b>10 million as a one-off and when we sold the subsequent</b></p> <p>5 <b>quarter of our shareholding about six months ago, we</b></p> <p>6 <b>booked a one-off profit of about 16 million.</b></p> <p>7 Q. So originally you had 8 per cent which then got diluted.</p> <p>8 You then sold some at the IPO but you kept the maximum,</p> <p>9 skins in the game, if I can put it like that, for</p> <p>10 Zoopla, so as we stand here today, the shareholding of</p> <p>11 Connells in Zoopla is worth what, in round terms?</p> <p>12 <b>A. It's 3 per cent and the business is capitalised at about</b></p> <p>13 <b>1 and a half billion.</b></p> <p>14 Q. When you were appointed to the board, and take</p> <p>15 bundle H1, please, Mr Livesey. You can put 14 away</p> <p>16 pro tem, as the lawyers say. And take H1. If you turn</p> <p>17 to page 33, please, Mr Livesey. This is a press release</p> <p>18 from Zoopla of 8 July 2010. Do you see that?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And it is announcing the deal, the strategic</p> <p>21 partnership. It refers to you about four or five</p> <p>22 paragraphs down, do you see and then:</p> <p>23 "Mr Turner of Countrywide and Mr Embley of LSL, each</p> <p>24 appointed to the Zoopla.co.uk board as non-executive</p> <p>25 directors with immediate effect."</p> <p style="text-align: center;">Page 84</p>
<p>1 <b>A. Yes, there was a merger between Zoopla and the Digital</b></p> <p>2 <b>Property Group which came in from the Daily Mail and</b></p> <p>3 <b>General Trust, where we took a 55 per cent dilution for</b></p> <p>4 <b>that merger.</b></p> <p>5 Q. I understand. So you still held the same number of</p> <p>6 shares but they were now --</p> <p>7 <b>A. We ended up with 6 per cent.</b></p> <p>8 Q. Right. And then have you sold any of the shareholding</p> <p>9 that you, Connells, that you acquired in 2010?</p> <p>10 <b>A. Yes, we sold a quarter of our shareholding when the</b></p> <p>11 <b>business was floated, when the IPO took place.</b></p> <p>12 Q. And that was in 2014?</p> <p>13 <b>A. 2014, yes.</b></p> <p>14 Q. In June 2014, the IPO price was announced, announced on</p> <p>15 6 June 2014?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And commented on by the BNP Paribas?</p> <p>18 <b>A. So the advice was that the minimum shareholding that all</b></p> <p>19 <b>the shareholders should sell for a successful IPO was</b></p> <p>20 <b>25 per cent. We chose to sell the minimum that we</b></p> <p>21 <b>needed to at the time, which was 25 per cent. Some of</b></p> <p>22 <b>the other shareholders sold a lot more than 25 per cent.</b></p> <p>23 <b>That was their decision and then we sold another</b></p> <p>24 <b>25 per cent about six months ago.</b></p> <p>25 Q. Right. And you can't remember the buying price. Can</p> <p style="text-align: center;">Page 83</p>	<p>1 So who were the executive directors of Zoopla?</p> <p>2 <b>A. At the time the executive directors were</b></p> <p>3 <b>Alex Chesterman.</b></p> <p>4 Q. He was the CEO?</p> <p>5 <b>A. He was the CEO. Finance director, at the time I can't</b></p> <p>6 <b>remember his name.</b></p> <p>7 Q. How many people were on the board, a small board?</p> <p>8 <b>A. Well, it was small in the sense of executive directors.</b></p> <p>9 Q. That is what I am trying to get at.</p> <p>10 <b>A. There were a large number of non-executive directors.</b></p> <p>11 Q. I am trying to get at who were the driving forces, on an</p> <p>12 executive basis. We know about Mr Chesterman.</p> <p>13 Mr Notley wasn't there at this stage?</p> <p>14 <b>A. He wasn't there at the time, no.</b></p> <p>15 Q. He has stepped away.</p> <p>16 <b>A. There was a chap called Nick Leeming who would sit in</b></p> <p>17 <b>the board meetings. I don't think he was a statutory</b></p> <p>18 <b>director but he was heading the sales function for</b></p> <p>19 <b>Zoopla.</b></p> <p>20 Q. But would it be fair from one's reading of these 10,000</p> <p>21 documents that one gets the impression that</p> <p>22 Mr Chesterman was very much the public face of Zoopla at</p> <p>23 this time?</p> <p>24 <b>A. Very much.</b></p> <p>25 Q. And he was very much the driving force and leading light</p> <p style="text-align: center;">Page 85</p>

<p>1 in an executive sense on the board. Would that be fair?</p> <p>2 <b>A. He was, yes.</b></p> <p>3 Q. When he chose to be -- this is not a criticism, simply</p> <p>4 an observation -- he was quite hands on, we have seen</p> <p>5 reference to he had meetings in his garden and his house</p> <p>6 in Highgate or Hampstead or whatever. He would do</p> <p>7 business informally but on a face-to-face basis?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Is that fair?</p> <p>10 <b>A. That's fair.</b></p> <p>11 Q. Now, Zoopla has always been keen to stress, not</p> <p>12 surprisingly, that it has a unique audience for its</p> <p>13 portal; is that right?</p> <p>14 <b>A. It does.</b></p> <p>15 Q. If you take bundle H1, it should be the one we're in, if</p> <p>16 you turn to page 35. We have just seen that you were</p> <p>17 appointed to the board. That press release we just saw</p> <p>18 was 8 July and you were appointed with immediate effect</p> <p>19 to the board, July 2010?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. If you then go on to page 35, this is August 2010, so</p> <p>22 you are now for good or ill a Zoopla man by August 2010?</p> <p>23 <b>A. I'm a non-exec director on the board of Zoopla, yes.</b></p> <p>24 Q. I just want to look at this presentation. So this is</p> <p>25 a slide presentation and it just says "Your advantage in</p> <p style="text-align: center;">Page 86</p>	<p>1 about. But it is right, isn't it, that Zoopla,</p> <p>2 FindaProperty and Primelocation all end up after the</p> <p>3 merger in the ZPG Group?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. And so numbers 2, 3 and 4, and indeed some of the others</p> <p>6 further down, that I am not going to waste time on, end</p> <p>7 up in ZPG. What this presentation is saying is that</p> <p>8 no one portal covers the entire property audience. Do</p> <p>9 you see that, bottom left-hand corner; yes?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And in the next line it makes it clear for even the most</p> <p>12 myopic member of the audience because it is now in</p> <p>13 bigger type:</p> <p>14 "We have a unique audience, we offer you an audience</p> <p>15 you can't reach on other portals."</p> <p>16 And then there is some data. So 51 per cent of</p> <p>17 people who visited the Zoopla website in March 2010</p> <p>18 didn't go to Rightmove. 61 per cent of them didn't go</p> <p>19 to FindaProperty and 76 per cent of them didn't go to</p> <p>20 Primelocation.</p> <p>21 So the reason why that's being trumpeted, quite</p> <p>22 rightly, is because it goes to the point -- were you in</p> <p>23 court this morning, did you hear the evidence of</p> <p>24 Miss Frew?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 88</p>
<p>1 property". It is not fabulously clear, to me at least,</p> <p>2 to whom this presentation is directed. Can you help me?</p> <p>3 <b>A. No, sorry, I can't.</b></p> <p>4 Q. So if we go over the page then, 36, the snapshot. Do</p> <p>5 you see that? 2.7 million unique visitors per month.</p> <p>6 That means 2.7 million different people visit the portal</p> <p>7 a month?</p> <p>8 <b>A. I'll take your word for that. I've not been involved in</b></p> <p>9 <b>the production of these slides.</b></p> <p>10 Q. You see there is a difference, I think, I think there is</p> <p>11 a difference, between the unique audience point we are</p> <p>12 coming to and unique business. But anyway, my</p> <p>13 understanding is that means 2.7 million different people</p> <p>14 visit the portal every month because, obviously, if the</p> <p>15 same person visits 2.7 million times, that is not much</p> <p>16 of a business; right?</p> <p>17 <b>A. I'll take your explanation.</b></p> <p>18 Q. Okay, good. That's very helpful. So then we have got</p> <p>19 wider exposure at page 37. Then if you go to page 38,</p> <p>20 the point is, page 38 -- so here is the league table.</p> <p>21 As an Arsenal fan, I am not keen to look at league</p> <p>22 tables this week, I might add, but if we look at this</p> <p>23 league table, Rightmove, 38 per cent; Zoopla, 19;</p> <p>24 FindaProperty, 18; Primelocation, 15. Then there are</p> <p>25 some other smaller players, some of which we have heard</p> <p style="text-align: center;">Page 87</p>	<p>1 Q. You heard no doubt my daft example of the portal with</p> <p>2 the 100 people visiting it and I was suggesting to her</p> <p>3 that if Mr Holmes had a portal with 100 people visiting</p> <p>4 and I turned up with a new portal idea and was able to</p> <p>5 show that the same 100 people would visit my portal as</p> <p>6 visited his portal, that that would be a less attractive</p> <p>7 business proposition than if I was able to turn up and</p> <p>8 show that a different 100 people were able to visit</p> <p>9 mine. She, I am not quite sure agreed with that but</p> <p>10 you, I assume, would agree that that is obviously</p> <p>11 correct, isn't it?</p> <p>12 <b>A. So what's the specific question?</b></p> <p>13 Q. The specific question is, that if you can show that your</p> <p>14 portal has a unique audience, there are people who only</p> <p>15 visit your portal, that makes your portal much more</p> <p>16 valuable than if the people who visit your portal also</p> <p>17 visit all the other portals and, in particular, if the</p> <p>18 people who visit your portal, also visit the number one</p> <p>19 portal. That is why we've got this emphasising of the</p> <p>20 unique audience, obviously?</p> <p>21 <b>A. That my understanding would come from an estate agency</b></p> <p>22 <b>perspective, which would be if a portal comes along that</b></p> <p>23 <b>has people using it that would generate leads and those</b></p> <p>24 <b>people adopt this as any of the other portals, that has</b></p> <p>25 <b>value.</b></p> <p style="text-align: center;">Page 89</p>

<p>1 Q. Exactly. And that is all this is saying, it is common 2 sense: yes?</p> <p>3 THE CHAIRMAN: Mr Maclean, it may not be for this witness 4 but how do they know?</p> <p>5 MR MACLEAN: About the unique audience?</p> <p>6 THE CHAIRMAN: Yes? I see it says "Source Comscore." 7 MR MACLEAN: Comscore tell them.</p> <p>8 THE CHAIRMAN: Right. It may be not now but at a later 9 point, we'd like a little bit more understanding of how 10 these figures are generated.</p> <p>11 MR MACLEAN: I am sure that can be achieved. 12 So here is a snapshot of the position in August 2010 13 and if we just look at page 39, where we were, we know 14 that in a couple of years time, in 2012, FindaProperty 15 and Primelocation are going to be within the ZPG tent, 16 if I can put it like that, right, so the merger meant 17 that the portal market consolidated to two key players, 18 didn't it?</p> <p>19 <b>A. That is a fair point.</b></p> <p>20 Q. And so when the merger took place, taking this snapshot 21 as the starting point in 2010, at a stroke, Zoopla's or 22 ZPG's, as it now was, unique audience vis à vis 23 Rightmove, was much larger than Zoopla's unique audience 24 was in 2010; right?</p> <p>25 <b>A. Correct. I don't think you can just add these numbers</b></p> <p style="text-align: center;">Page 90</p>	<p>1 isn't it?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. "Fully integrated single entity platform team since 4 2012."</p> <p>5 That is also correct and you, of course, would have 6 had -- you were a non-executive director on the Zoopla 7 side as this merger was being done?</p> <p>8 <b>A. Up to the point of the merger.</b></p> <p>9 Q. And then you step aside and go back to Connells: 10 "Experienced team led by founder and CEO Alex, 11 Chesterman. Entrepreneurial and agile digital 12 advertising and data business." 13 And their mission is: 14 "to be the most useful online resource for UK 15 property consumers and most effective online marketing 16 partner for UK property professionals". 17 Then we can cut over to the next page, please, and 18 go to 691: 19 "Our market-growing digital spend." 20 Just pause there for a moment. Taking a step back 21 from all of this, what has been going on over the last 22 10 or 15 years is that where estate agents spend their 23 money to advertise their clients' properties has changed 24 fundamentally, away from print journalism and into 25 online arrangements of one sort or another. Is that</p> <p style="text-align: center;">Page 92</p>
<p>1 <b>together but it was definitely larger.</b></p> <p>2 Q. No, no, I'm not suggesting it was as simple as that but 3 it was obviously much larger. You can put bundle H1 4 away and take H2, Mr Livesey and turn to page 688. 5 I appreciate, Mr Livesey, that we are now looking at 6 a document from 2013 and I appreciate, let me make it 7 clear, that by this time, you had left your position as 8 a non-executive director of Zoopla, I think, because you 9 left when the merger happened?</p> <p>10 <b>A. That's right.</b></p> <p>11 Q. But you were still on the board of Connells and you were 12 still the chief executive of Connells?</p> <p>13 <b>A. But at this point we hold a shareholding in Zoopla, 14 a very small minority shareholding in Zoopla. We have 15 no board directorships, so it is an inert relationship.</b></p> <p>16 Q. I accept that you are not on the board any more but 17 Connells have a (inaudible). I accept that your personal 18 position has changed when we get to this presentation, 19 compared to the one that we have just looked at.</p> <p>20 <b>A. Both me and Connells. The shareholders' agreement that 21 we used to have has gone.</b></p> <p>22 Q. Having looked at that, let's look at Mr Chesterman's 23 presentation. This is 26 March 2013 and if you look at 24 page 689, here we are, "ZPG created from merger of 25 Zoopla/DPG at the end of May 2012." That is correct,</p> <p style="text-align: center;">Page 91</p>	<p>1 fair?</p> <p>2 <b>A. To a large extent. Not completely but to a large 3 extent.</b></p> <p>4 Q. And what the portals -- I was going to say pray on but 5 what they play on, is a better way of putting it, is 6 that they say to estate agents "Look how the internet 7 has exploded, look how important online is to you. You 8 ought to be spending more money with us and it is okay, 9 you can easily cope with that because print advertising, 10 that's all gone, essentially." And some of the 11 projections show that estate agents will be spending 12 next to nothing on print advertising by 2020. You must 13 have seen those projections?</p> <p>14 <b>A. Yes, I am not sure I agree with the projections but 15 certainly print advertising is much smaller than it was 16 historically, in favour of digital advertising. I don't 17 think it will go completely.</b></p> <p>18 Q. So the big losers are the local newspapers, who used to 19 rely on estate agents filling up their weekly 20 publications with photographs of rather grainy black and 21 white photographs of houses for sale?</p> <p>22 <b>A. Yes, but actually, we are not following the portals 23 because the consumer behaviour now is that they'll go 24 and look on the internet first, rather than opening the 25 back section of the property section of the local</b></p> <p style="text-align: center;">Page 93</p>



<p>1 <b>newspaper, to look for houses.</b></p> <p>2 Q. Yes or go out in the rain to look in the estate agent's</p> <p>3 window, when you can pick up your iPad, just stay at</p> <p>4 home, obviously. So let's look at what Mr Chesterman is</p> <p>5 telling us then, in March 2013. So the growing digital</p> <p>6 spend, portals have transformed consumer search</p> <p>7 behaviour, that is a point that you have just made,</p> <p>8 print to digital marketing shift continues, with less</p> <p>9 than 50 per cent online. Digital greater than</p> <p>10 40 per cent growth and consolidated to two key players.</p> <p>11 Then you see there's a change between print and</p> <p>12 digital. And then if you turn on, please, to page 693,</p> <p>13 so unlike the previous table we looked at in 2010, what</p> <p>14 we have now got is the position in what is essentially</p> <p>15 a two player market. What Mr Chesterman was told is the</p> <p>16 two key players. So in January 2013, Zoopla had</p> <p>17 30 million visits, 2.5 million leads, 1 million</p> <p>18 listings, 18,000 members and 29 per cent of Zoopla's</p> <p>19 audience, according to UKOM MediaTel, did not visit</p> <p>20 Rightmove and 37 per cent of Rightmove's audience didn't</p> <p>21 visit Zoopla and there is 34 per cent that visited; do</p> <p>22 you see that?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. So it is not quite one third, one third, one third but</p> <p>25 it is not so very far away from there being a third of</p> <p style="text-align: center;">Page 94</p>	<p>1 <b>Rightmove and Zoopla, I help to achieve that objective,</b></p> <p>2 <b>I'm exposing it through the biggest possible shop</b></p> <p>3 <b>windows.</b></p> <p>4 Q. You are not simply repeating over again, getting to the</p> <p>5 same people with the second portal, the two of them</p> <p>6 complement each other?</p> <p>7 <b>A. Yes, if one of them had all the unique viewings, we</b></p> <p>8 <b>wouldn't pay-to-list on the other.</b></p> <p>9 Q. Exactly. If we look at page 695, "Market share, the key</p> <p>10 measures", so a different way of looking at market</p> <p>11 share, obviously. One is revenue, so we see on</p> <p>12 a revenue basis, at this time anyway, it is 2 to 1;</p> <p>13 right? Rightmove is twice as big in revenue terms as</p> <p>14 Zoopla. Audience is nearly 2 to 1 but not quite. But</p> <p>15 then percentage of leads is 50/50. Do you see that?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Now that looks a little odd, doesn't it, what</p> <p>18 Lord Justice Sedley would say, calls for an explanation?</p> <p>19 So do you agree with me that it is, at first blush</p> <p>20 anyway, it is a bit odd that the ratio of leads is 1 to</p> <p>21 1, whereas the ratio of revenue and audiences is 2 to 1?</p> <p>22 <b>A. I can't speak for the stats that Zoopla are using.</b></p> <p>23 <b>Certainly from our perspective, the numbers are</b></p> <p>24 <b>different to that. So, for example, Rightmove generates</b></p> <p>25 <b>328 leads per month, per branch on average. 328.</b></p> <p style="text-align: center;">Page 96</p>
<p>1 the audience that uses both, a bit more than a third</p> <p>2 that uses the number one player and a bit less than a</p> <p>3 third that uses the number two; yes? What that means is</p> <p>4 that if you are an estate agent, you are not in</p> <p>5 a position of Zoopla, simply getting into reaching the</p> <p>6 same people as Rightmove is already reaching, because 29</p> <p>7 per cent of the people who visit Zoopla, don't go to</p> <p>8 Rightmove at all. That's what this is telling us?</p> <p>9 <b>A. Sorry, I'm not following your question.</b></p> <p>10 Q. What this is telling us is that Zoopla and Rightmove</p> <p>11 are, to a very significant extent, reaching different</p> <p>12 audiences?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Which gives a powerful reason why an estate agent --</p> <p>15 obviously they'd consider price and so on -- but in</p> <p>16 principle, gives a powerful reason why Rightmove and</p> <p>17 Zoopla complement each other, from the estate agent's</p> <p>18 point of view?</p> <p>19 <b>A. Yes, so as an estate agent, my key obligation is</b></p> <p>20 <b>actually to the vendor, who's technically my client,</b></p> <p>21 <b>contractually, and my obligation to the vendor is to try</b></p> <p>22 <b>and achieve the best price that I can for him for his</b></p> <p>23 <b>property, in the quickest possible time. And the way</b></p> <p>24 <b>that I do that is through promoting it, advertising it</b></p> <p>25 <b>as widely as possible. So by advertising it on both</b></p> <p style="text-align: center;">Page 95</p>	<p>1 <b>Zoopla delivers 180.</b></p> <p>2 Q. Right.</p> <p>3 <b>A. So it doesn't follow those proportions but in context,</b></p> <p>4 <b>in Gascoigne Halman the average per branch from</b></p> <p>5 <b>OnTheMarket is 26. So to give you that context, it is</b></p> <p>6 <b>328 leads per month, per branch from Rightmove; 280 from</b></p> <p>7 <b>Zoopla and 26 from OnTheMarket.</b></p> <p>8 Q. Okay. Just to finish off this document. If you go over</p> <p>9 the page to 696. Mr Chesterman identifies in his</p> <p>10 statement, a clear strategy for growth. Was that your</p> <p>11 experience when you were on the board of Zoopla, that Mr</p> <p>12 Chesterman had a clear strategy for growth?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And the opportunity he identifies at page 697 in the</p> <p>15 fourth bullet point was that it was to be gunning for</p> <p>16 number 1; do you see that?</p> <p>17 <b>A. I see it, yes.</b></p> <p>18 Q. And does that accord with your experience on the Zoopla</p> <p>19 board, that Zoopla was gunning to be number 1?</p> <p>20 <b>A. Zoopla's objective has always been to try and become the</b></p> <p>21 <b>market leader.</b></p> <p>22 Q. Which is a politer way of saying it is gunning for</p> <p>23 number 1 and just at 696, key revenue streams for Zoopla</p> <p>24 include not just estate agents. We see developers,</p> <p>25 advertising and business services. So it is not just</p> <p style="text-align: center;">Page 97</p>

<p>1 estate agents who are contributing to the revenue of 2 Zoopla; right? 3 <b>A. Yes, it is trying to broaden its revenue streams, as 4 opposed to Rightmove, which focuses largely on agents.</b> 5 Q. So developers, that's people who build new houses? 6 <b>A. House builders.</b> 7 Q. So, obviously, people who build new houses are trying to 8 sell new houses. Advertising is -- so that is third 9 parties who might advertise -- one of the examples, 10 I think, in the papers is Iceland, the frozen food shop, 11 for example, pays Zoopla to advertise on the Zoopla 12 board. So that when I'm surfing through idly, wondering 13 which houses I can't afford to buy, I can be reminded of 14 the existence of Iceland and that is another source of 15 revenue stream for Zoopla; right? 16 <b>A. They take advertising revenues from a number of sources.</b> 17 Q. And in business services -- that is a reference to the 18 various add-ons that are offered to estate agents? 19 <b>A. Yes, probably the best example is their more recent 20 acquisition of Property Services Group, who supply the 21 software that sits on the desktop of the estate agents, 22 so it is additional services to estate agents.</b> 23 Q. So other things that estate agents might or might not 24 want to buy to help to run their business? 25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 98</p>	<p>1 <b>agents in Bolton or a selected number, so I'm guessing 2 that's what they mean by one to all, as opposed to 3 a single email or a message to a single estate agent.</b> 4 Q. Yes. Would you take bundle X if you can find it. 5 <b>A. Keep H2?</b> 6 Q. Yes, please, if it causes you -- I know it is a terrible 7 clutter but if it's okay. Turn to tab 3, please. You 8 should be looking at tab 3 at page 78 at the front page 9 of a document which says "Exane BNP Paribas." Do you 10 see that? And do you see the date, 6 June 2014, on the 11 left-hand side? 12 <b>A. Yes.</b> 13 Q. What is happening is, this is the Zoopla IPO; right? 14 You see: 15 "We publish a primer for investors ahead of the 16 Zoopla IPO pricing later in June." 17 Do you see that? 18 <b>A. Yes.</b> 19 Q. And I don't want to ask you about the pricing at the 20 moment, Mr Livesey. I want you to look at page 4 of 21 this document, page 81. There is a figure at the top of 22 the page, "Market share, size of Rightmove market." 23 Sorry, let me read that again. "Size of Rightmove 24 market lead, focus of debate." 25 Then we have in the left-hand side, "Page view." Do</p> <p style="text-align: center;">Page 100</p>
<p>1 Q. And all of that leads into the Revenue of Zoopla and to 2 that extent it is a slightly different model than 3 Rightmove which focuses, as you have said, rather more 4 closely on estate agency but I think also includes quite 5 a lot of developers; is that right? 6 <b>A. It does but Rightmove's general approach has been a much 7 more focused, clean, simple property search portal, 8 that's pretty much all it does.</b> 9 Q. And one of my client's objectives, it may or may not 10 have been a good business proposition, but one of the 11 ideas they had was to keep their portal, as you put it, 12 clean and simple, in particular, not to clutter it up 13 with additional services or advertising; right? 14 <b>A. Which is very similar to Rightmove's proposition.</b> 15 Q. Yes. And that's just -- as I say, it may or may not 16 work, it may or may not be a good idea but there is 17 nothing, in principle, wrong, with having that clean and 18 simple presentation, is there? 19 <b>A. No, not in principle.</b> 20 Q. Now, what's a one to all lead, Mr Livesey? 21 <b>A. I think this is a reference to if you're a consumer and 22 you're on Rightmove, one of the portals, there's an 23 option given you to send a contact sheet to a number of 24 agents at the same time. You may say "I'm interested in 25 properties in Bolton", and it will go to all the estate</b></p> <p style="text-align: center;">Page 99</p>	<p>1 you see that? "Comscore page views. Comscore time", 2 which I assume is the amount of time one spends on the 3 portal which is obviously one way of measuring how 4 interested they are in it. "Comscore visits", and then 5 "Hitwise page impressions." This is all electronically 6 gathered data and then on the other side, "Leads market 7 share data, reported share of enquiries." Which is 8 roughly 65/35 in Rightmove's favour; do you see that? 9 <b>A. Yes.</b> 10 Q. But third party survey of purchaser leads is 80/20. So 11 there is quite a difference. Right. Then in the 12 paragraph below, next but one paragraph: 13 "We note from industry contacts that there are 14 differing views regarding the relative quality of the 15 leads generated. Some argue they are roughly equivalent 16 in quality, others claim, with some support from third 17 party surveys and anecdotal evidence, more data is 18 available on request, that Rightmove's lead advantage is 19 greater, closer to 80 per cent of properties that are 20 actually purchased. Contrast 60 to 70 per cent share of 21 client enquiries. We suspect the differential between 22 reported lead metrics and the surveys of purchasers is 23 founded upon two key factors, explored in more detail 24 within the report. One, the greater prevalence of one 25 to all emails at Zoopla boosting their lead count and</p> <p style="text-align: center;">Page 101</p>

<p>1 two, question marks over whether larger search areas are 2 generated from the Zoopla website. We outline this 3 debate in more detail on pages 12 to 13." 4 So with bated breath, can we then turn to page 89, 5 page 12 internally and the same, essentially the same 6 text is set out above the table and then would you look 7 at the bottom of the page then, Mr Livesey: 8 "Our contact suggests." You see: 9 "A number of differences could account for the 10 difference in lead quality. Per the analysis below, the 11 Zoopla website search function may, in some instances, 12 select a larger area for a geographic search than 13 Rightmove. This could lead to individual property 14 searches calling or emailing on properties that appear 15 attractive but are not located within their geographical 16 requirements." 17 In other words, you get too scatter gun a response: 18 "Note that most property searches use search terms 19 rather than post codes. We tested this anecdotally 20 rather than in a significant manner and although we 21 found some instances for a larger geographic region, we 22 did not find large differences on a regular basis". 23 Let me come to the second factor: 24 "A second factor outlined in the graph below is the 25 importance of the one to all emails."</p> <p style="text-align: center;">Page 102</p>	<p>1 more regularly than Rightmove. We see from the Bromley 2 example below, an individual could instantly generate 34 3 leads for Zoopla, while Rightmove do not offer one to 4 all emails for such a wide search criteria." 5 So this explanation, this difference rather, between 6 Rightmove and Zoopla and the one to all emails, is one 7 which you recognise, is that right? 8 <b>A. I couldn't be as scientific as this: this is an 9 analyst's report, who is relying on other sources for 10 his information. I can only measure internally what we 11 see from the different portals and what I would say is 12 that there are lots of different kinds of lead coming 13 from each portal. So they are coming from different 14 types of consumer. Someone who's looking to rent, 15 someone who is looking to rent out a property. Someone 16 who's looking to buy, someone who's looking to sell. 17 Someone who is just browsing. And there are lots of 18 different kinds of consumer coming into each of the 19 portals and the different leads and the different 20 volumes of those leads which come from them, vary. So 21 I can give you -- if I was to mush it all up and say: 22 Rightmove leads are better quality than Zoopla leads or 23 Zoopla's are better quality than somebody else's, would 24 be really difficult because they're different. How many 25 of the leads are for people who are looking to put their</b></p> <p style="text-align: center;">Page 104</p>
<p>1 What I want to ask you, Mr Livesey, is whether this 2 accords with your understanding of these portals and 3 Connells' experience: 4 "If an individual conducts a property search in a 5 given job, both websites [at the bottom of the page] may 6 offer the opportunity to send a one to all email." 7 Is that right? 8 <b>A. Yes.</b> 9 Q. "This email allows the individual to request contact 10 from all the agents in a given area." 11 That is what it means; yes?: 12 "Our testing suggested two key differences between 13 the sides which potentially could inflate Zoopla's lead 14 count. Firstly, Zoopla typically preselected a number 15 of agents, in the case of Exeter, 16. Rightmove never 16 preselected enquiries for the use." 17 Pausing there, what that means is, if I have done 18 this search on both websites at the same time and I do 19 not myself select an additional estate agent on 20 Rightmove, that my Zoopla search will generate 16 leads, 21 whereas my Rightmove search will generate 1. Is that 22 right? 23 <b>A. I think that's what they're saying.</b> 24 Q. And then secondly: 25 "Zoopla typically offered the one to all offering</p> <p style="text-align: center;">Page 103</p>	<p>1 <b>house on the market. And you may say that is really 2 valuable to the estate agent because it is an 3 opportunity to win an instruction and that is true, but 4 that doesn't reduce the value of someone who is house 5 hunting, who comes to us through that portal because we 6 get the chance to sell them a house or rent a house to 7 them.</b> 8 Q. I understand, but if one was only looking at number of 9 leads, if that was all one was concerned about, the 10 absolute number of leads, then the explanation that we 11 have just been looking at would explain why, for the 12 same number of search experiences by the human being who 13 wants to sell or rent or whatever it is, the property, 14 because of the differences in the set up of the portals, 15 Zoopla is going to end up with, on that analysis, many 16 more leads per search experience than Rightmove? 17 <b>A. I can't comment on that because it's third hand 18 information. All I can tell you is what I just said 19 which is that the volume and value of the leads that we 20 get from Zoopla, we get more than twice that number -- 21 sorry, less than twice that number from Rightmove, just 22 more than half that number from Zoopla and they're all 23 very valuable to us. But that's why we pay more to 24 Rightmove every year than we do to Zoopla.</b> 25 THE CHAIRMAN: Mr Livesey, I think you said a moment ago</p> <p style="text-align: center;">Page 105</p>

<p>1 someone who is simply browsing can generate a lead. How 2 does that work?</p> <p>3 <b>A. On the same basis, because when you talk about buyers, 4 you have got lots of different kinds of buyers, some who 5 are oven ready, hot to trot and they are looking for 23 6 Acacia Avenue and they want to hear about 23 Acacia 7 Avenue and they want to buy it, right through to someone 8 who is thinking of maybe moving next year, if the right 9 thing comes along. So they may register with a portal 10 but they are not a here and now active buyer.</b></p> <p>11 THE CHAIRMAN: I see. They may register but simply, if one 12 is just looking to see what, in a given geographic area, 13 there is for sale because next year you might be buying, 14 that will simply generate a recorded visit on the stats 15 for the site. It wouldn't generate what you would call 16 a lead?</p> <p>17 <b>A. Correct, and if you look at the volume of hits that 18 these websites are getting -- Rightmove is a good 19 example -- 120 million hits in a month. It is only 20 a population of 64 million in the UK, so in one month, 21 that one portal is receiving 120 million hits. A lot of 22 those are repeat hits and people looking at how much 23 their neighbour paid for their house and how much they 24 think their house is worth because they have just built 25 an extension. Lots of reasons to go and look at it</b></p> <p style="text-align: center;">Page 106</p>	<p>1 MR MACLEAN: I am conscious of the time, may I finish this 2 point?</p> <p>3 THE CHAIRMAN: Yes, of course.</p> <p>4 MR MACLEAN: So if one was sitting at home saying to oneself 5 "I have had enough of this barristering game, I think I 6 want to retire to Cornwall", if one went on to the 7 website, the Zoopla website with the prechecked estate 8 agents, if you went as far as not simply looking at the 9 website but actually pressing the button to make 10 a connection, the one to all email might conceivably 11 email every estate agent in Cornwall, each of which 12 would record that as a separate lead, wouldn't they?</p> <p>13 <b>A. And each of them would make contact with that customer.</b></p> <p>14 Q. They might follow it up or they might not. But each of 15 them would get a lead, whereas on the Rightmove website, 16 unless I went in and identified the estate agent to whom 17 I wanted to send my communication, there would only be 18 one lead generated?</p> <p>19 <b>A. In theory, but the feedback from within the business, 20 our analysts, is not that there is massive duplication 21 of leads within Zoopla. Ie, the quality is fairly 22 consistent.</b></p> <p>23 Q. And that's a point. Sir, I was going to move on to 24 whatever's next on this piece of paper but that is 25 a convenient moment?</p> <p style="text-align: center;">Page 108</p>
<p>1 <b>other than because you are an active buyer or seller.</b></p> <p>2 THE CHAIRMAN: I understand, the more active or interested 3 you are in actually acquiring a property, it is at that 4 point that you will be making contact with agents --</p> <p>5 <b>A. Yes, and filling in the form.</b></p> <p>6 THE CHAIRMAN: And creating a lead?</p> <p>7 <b>A. Correct.</b></p> <p>8 THE CHAIRMAN: And one last question, if I may, before 9 Mr Maclean resumes. To what extent -- we have heard in 10 some of the witness statements that possible purchasers 11 who are looking to buy will use multiple sites and 12 they'll use Rightmove and Zoopla, for example. Does 13 that extend to leads, in the sense that the same 14 interested person might actually generate a lead through 15 Zoopla and through Rightmove, to take an example, in 16 respect of the same property?</p> <p>17 <b>A. Yes, they may but it may not be in respect of a specific 18 property. I think, typically, their behaviour would be 19 if they have looked at 23 Acacia Avenue that is 20 advertised by Connells and it is on Zoopla, they'll send 21 a one-to-one contact sheet to Connells which we would 22 respond to. If they were just looking generally in the 23 BB3 postcode, they may then, on both sites, send 24 a contact sheet, just to make sure they've covered all 25 the properties in that area.</b></p> <p style="text-align: center;">Page 107</p>	<p>1 THE CHAIRMAN: Yes, Mr Maclean.</p> <p>2 MR HARRIS: Sir, can I just mention that I think Mr Maclean 3 invited me to liaise with Mr Livesey about a particular 4 matter. I think it was to do with the share price.</p> <p>5 THE CHAIRMAN: It was the share price that Zoopla was 6 acquired for.</p> <p>7 MR HARRIS: I am in your hands and I am happy to do that but 8 I want it to be clear that I am doing that.</p> <p>9 MR MACLEAN: Mr Harris can gather that information either 10 now or --</p> <p>11 THE CHAIRMAN: First of all, Mr Livesey, just to explain 12 what we are talking about. The rule is that you 13 shouldn't talk to anyone about your evidence and I am 14 sure you wouldn't want to. What we are debating is 15 whether there should be a carve-out of that and I am 16 wondering, Mr Harris, whether there isn't another source 17 that you might use to obtain that information.</p> <p>18 MR HARRIS: Shall we do this which is -- we shall try to 19 find another source. If we haven't done that over the 20 short adjournment, I will report back at 2 o'clock.</p> <p>21 THE CHAIRMAN: That is very helpful and then we can deal 22 with that during the short break.</p> <p>23 MR MACLEAN: We do have a Zoopla witness tomorrow, who will 24 have the same answer from the other side of the deal, so 25 it probably isn't the end of the world if Mr Livesey</p> <p style="text-align: center;">Page 109</p>

<p>1 doesn't come up with the number.</p> <p>2 THE CHAIRMAN: Yes, I am sure. I would rather you didn't</p> <p>3 speak to the witness. There was one other point</p> <p>4 which -- if I could add to the shopping list. It is the</p> <p>5 contribution, if I can call it that, that Zoopla are</p> <p>6 making to the costs. I don't know if there are any</p> <p>7 terms on which that contribution has been made but if</p> <p>8 there are, I think we'd like to know about them.</p> <p>9 MR HARRIS: Yes, sir, I don't know. I'll find out.</p> <p>10 THE CHAIRMAN: I am grateful. That is something we could</p> <p>11 raise with Mr Livesey and if you don't get any joy with</p> <p>12 your enquiries, we will later on.</p> <p>13 MR HARRIS: So in the first instance, try to find out</p> <p>14 independently of Mr Livesey?</p> <p>15 THE CHAIRMAN: Exactly so.</p> <p>16 MR HARRIS: By all means.</p> <p>17 THE CHAIRMAN: Thank you very much. Would it assist,</p> <p>18 Mr Maclean, if we returned earlier than 2 o'clock?</p> <p>19 MR MACLEAN: Yes. It would assist me. If we could resume</p> <p>20 at 1.50.</p> <p>21 THE CHAIRMAN: That means less of a break for you,</p> <p>22 Mr Livesey. 1.50.</p> <p>23 (1.05 pm)</p> <p>24 (Luncheon Adjournment)</p> <p>25 (1.50 pm)</p> <p style="text-align: center;">Page 110</p>	<p>1 <b>A. No, that's incorrect. The deal that Connells had with</b></p> <p>2 <b>Zoopla was a group wide listings agreement which says</b></p> <p>3 <b>all of our branches will list their properties with</b></p> <p>4 <b>Zoopla but we pay a charge per branch. So we add 18</b></p> <p>5 <b>branches on, we pay 18 times that charge. In addition.</b></p> <p>6 <b>So there is a direct additional cost for GHl listing</b></p> <p>7 <b>with Zoopla.</b></p> <p>8 Q. I see. Based on the group wide corporate rate charged</p> <p>9 by Zoopla to Connells?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Now, let's have a look at the next paragraph, 16. You</p> <p>12 say, third line:</p> <p>13 "Rightmove and Zoopla both entered the market and</p> <p>14 established themselves without seeking to restrict the</p> <p>15 choice of estate agent, about how and where they market</p> <p>16 their properties."</p> <p>17 Now, what you don't deal with in this statement but</p> <p>18 you do deal with in your second statement, is the fact</p> <p>19 that the founders of Rightmove had a de facto</p> <p>20 exclusivity arrangement, didn't they?</p> <p>21 <b>A. The four founding shareholders agreed between themselves</b></p> <p>22 <b>that they would only list their properties with</b></p> <p>23 <b>Rightmove. This is 17, 18 years ago, but they didn't</b></p> <p>24 <b>try to impose any restrictions on other agents, which is</b></p> <p>25 <b>the point that I'm making here. So that there were no</b></p> <p style="text-align: center;">Page 112</p>
<p>1 MR HARRIS: Sir, we have been unable to get the answers so</p> <p>2 far and can I let you know when we close for the day?</p> <p>3 THE CHAIRMAN: Yes.</p> <p>4 MR MACLEAN: Mr Livesey, would you turn to your first</p> <p>5 witness statement, please, which is in bundle D, tab 3,</p> <p>6 page 25, paragraph 15. Look at the third line, if you</p> <p>7 would, please. The sentence beginning:</p> <p>8 "I also believe".</p> <p>9 Do you see that:</p> <p>10 "I also believe that Zoopla would provide a better</p> <p>11 source of leads than OnTheMarket."</p> <p>12 Just read those words in square brackets to yourself</p> <p>13 "And."</p> <p>14 <b>A. "And at a better investment cost"?</b></p> <p>15 Q. Yes. The marginal cost to Gascoigne Halman or rather,</p> <p>16 I think, to Connells, of Gascoigne Halman listing on</p> <p>17 Zoopla after the acquisition by Connells of Gascoigne</p> <p>18 Halman, was zero?</p> <p>19 <b>A. The marginal cost?</b></p> <p>20 Q. The marginal cost to Gascoigne Halman, to Connells, of</p> <p>21 Gascoigne Halman listing its properties on Zoopla, was</p> <p>22 zero?</p> <p>23 <b>A. No, no, absolutely not.</b></p> <p>24 Q. Because it was already covered by the deal that Connells</p> <p>25 had with Zoopla?</p> <p style="text-align: center;">Page 111</p>	<p>1 <b>exclusivity arrangements other than initially between</b></p> <p>2 <b>the four founder shareholders and even then, that was</b></p> <p>3 <b>just a loose agreement to make sure we're all</b></p> <p>4 <b>concentrating our efforts on that one endeavour of</b></p> <p>5 <b>creating a portal for the marketplace.</b></p> <p>6 Q. Well --</p> <p>7 <b>A. Indeed, it wasn't a formal exclusivity in any event, in</b></p> <p>8 <b>that one of the shareholders wanted to list their</b></p> <p>9 <b>properties elsewhere at the time and we allowed them to.</b></p> <p>10 Q. Why did you only deal with that point in your second</p> <p>11 statement? Why not deal with it in your first</p> <p>12 statement?</p> <p>13 <b>A. I didn't think it was particularly relevant, actually.</b></p> <p>14 Q. Let us look at what you say in your second statement</p> <p>15 then, which is in tab 7, paragraph 9, page 103:</p> <p>16 "Mr Springett has also sought to draw support for</p> <p>17 the need for the OOP rule by reference to an apparent</p> <p>18 exclusivity agreement between the large corporate estate</p> <p>19 agencies (Countrywide, Connells, Halifax and Royal &amp; Sun</p> <p>20 Alliance)that were involved in the establishment of</p> <p>21 Rightmove in 2000. What is stated at paragraph 6.9 of</p> <p>22 Mr Springett's fifth witness statement is not accurate.</p> <p>23 There was no complete exclusivity arrangement between</p> <p>24 the four joint venture partners, but rather an</p> <p>25 understanding that in order to support the development</p> <p style="text-align: center;">Page 113</p>

<p>1 of Rightmove we would seek to list on Rightmove only.  2 Nevertheless, we each did have the ability to list  3 elsewhere, if that was commercially necessary."  4 Then you give an example of John D Wood in London,  5 right.  6 But you are not taking issue with the fundamental  7 proposition that Rightmove got going in 2000 because its  8 founder members agreed, not a contractual arrangement  9 but a de facto agreed understanding that they would  10 exclusively list their properties on Rightmove, right?  11 <b>A. The four founding shareholders. But what I said in my  12 original statement is correct, that we didn't seek to  13 impose that on any of the other members.</b>  14 Q. But they chose to restrict themselves in order to get  15 the portal off the ground?  16 <b>A. Correct.</b>  17 Q. And that lasted for how long, that arrangement,  18 understanding, however you want to call it?  19 <b>A. I'm guessing the first couple of years.</b>  20 Q. You have seen or at least heard perhaps of the email --  21 I will give you the reference. It is bundle H1,  22 page 403, the draft business plan which I think I have  23 referred to on Friday, I think Mr Harris referred to  24 a later version of the same document. It starts at 403.  25 It is the newco's business plan. If you go to 416,</p> <p style="text-align: center;">Page 114</p>	<p>1 sky?  2 <b>A. I don't understand the question.</b>  3 Q. Well, the idea that OnTheMarket could ever have  4 successfully entered the portal market on the basis of  5 requiring its members to commit to exclusivity was  6 always a nonstarter?  7 <b>A. Are you saying that OnTheMarket couldn't have launched  8 without the One Other Portal rule?</b>  9 Q. It couldn't have launched without the exclusivity rule,  10 a slightly different point.  11 <b>A. It could have launched with either.</b>  12 Q. It was never a practical possibility given where the  13 market was in 2015. That is the point that's being made  14 at page 416. We would love to be an exclusivity  15 arrangement. We would love if that would work. It  16 worked for Rightmove, it worked for Primelocation but  17 given where the market is, it is just not on. That is  18 what is being said and that is not right, isn't it?  19 <b>A. Sorry, are you drawing an analogy between what the four  20 founding shareholders of Rightmove did and what  21 OnTheMarket have done?</b>  22 Q. Yes.  23 <b>A. They are two completely different scenarios.</b>  24 Q. I am asking you to look at 416 which is saying in  25 essence, the new portal would ideally require its</p> <p style="text-align: center;">Page 116</p>
<p>1 please. Do you see the paragraph beginning "Given the  2 powerful established..." It is at the bottom of the  3 page:  4 "The new portal would ideally require its members to  5 list their properties exclusively. This was part of the  6 market entry strategy adopted by Rightmove and also  7 subsequently by Primelocation. However, as indicated  8 above, it would take time for the new portal to become  9 fully effective and agents are now heavily reliant on  10 the leads they receive from the portals. Accordingly,  11 the requirement would be that members listed on the new  12 portal website and on one other website only. This  13 requirement will be implemented after the new portal  14 launches. Whilst not as impactful as full exclusivity  15 it will create [one and two]."  16 You agree presumably that the OOP rule is not, as  17 this rather inelegantly says, not as impactful as full  18 exclusivity, right?  19 <b>A. Yes, of course.</b>  20 Q. Of course. But you also agree, I think of course, that  21 by 2015 the market was completely different from the  22 market that Rightmove had entered 15 years before?  23 <b>A. I would agree.</b>  24 Q. The idea that OnTheMarket could ever have entered  25 successfully with an exclusively model is pie in the</p> <p style="text-align: center;">Page 115</p>	<p>1 members to list their properties exclusively. That is  2 what Rightmove did, at least with the founder members.  3 That is what Primelocation did, but that's not going to  4 work, given where the market is and OOP is not as  5 impactful but will cause some disruption. I am  6 suggesting to you that is obviously a reflection of the  7 commercial reality. Exclusivity wasn't an option?  8 <b>A. Well, all things were an option at the start of a new  9 business. I would have said it was very unlikely to  10 have been successful without full exclusivity. I think  11 it has been far less successful than it could have been  12 with this partial exclusivity. Two thirds of agents  13 have chosen not to join it.</b>  14 Q. You don't believe any agent would have joined  15 Agents' Mutual with complete exclusivity?  16 <b>A. We wouldn't. I can't answer for other agents. I think  17 the value of the leads that we get from Zoopla and  18 Rightmove are such that we wouldn't have done that.</b>  19 Q. Do you believe that any agent would have joined  20 Agents' Mutual with complete exclusivity?  21 <b>A. I would be surprised.</b>  22 Q. You see, in your first witness statement at page 32,  23 paragraph 29 you say exactly that --  24 <b>A. Sorry, where are we?</b>  25 Q. Tab 3, bundle D, tab 3, page 32, paragraph 29. In the</p> <p style="text-align: center;">Page 117</p>

<p>1 sentence at the beginning of the end of the second line                  2 "it has not done". You say in the next line:                  3 "I do not believe any agent would have joined                  4 Agents' Mutual with complete exclusivity." Is that                  5 still your evidence?                  6 <b>A. I would be surprised if they did.</b>                  7 Q. The reason you don't believe that they would have joined                  8 is that it would have been contrary to common sense to                  9 do so?                  10 <b>A. Contrary to common sense and to their obligations to</b>                  11 <b>their vendor clients to expose the properties to the</b>                  12 <b>market fully.</b>                  13 Q. Look at paragraph 16, please, of your first witness                  14 statement. You refer later on in this paragraph -- do                  15 you see the sentence "in contrast"?                  16 "In contrast, agents Agents' Mutual has adopted                  17 a business model based on taking inventory from other                  18 portals."                  19 Just pausing there, surely any entrant in 2015 would                  20 have had to take inventory from other portals, wouldn't                  21 it?                  22 <b>A. No. Why would it need to remove inventory from the</b>                  23 <b>other portals to win inventory of its own?</b>                  24 Q. Because otherwise it wouldn't be disrupting the market                  25 that was completely covered by Rightmove and Zoopla in</p> <p style="text-align: center;">Page 118</p>	<p>1 promises to which you refer, can you?                  2 <b>A. It wasn't an assurance or a promise made to me, but it</b>                  3 <b>was very loudly broadcast at the launch of OnTheMarket</b>                  4 <b>that that is what would happen.</b>                  5 Q. You don't identify any promise made to anybody, do you?                  6 <b>A. There is no document in the packing.</b>                  7 Q. That is because there was no promise, right? There were                  8 statements of ambition. Just like Mr Chesterman was                  9 gunning to be number 1, OTM was ambitious to make                  10 headway quickly, but where was the promise you made?                  11 <b>A. If you are challenging the use of the word "promise" --</b>                  12 Q. I am?                  13 <b>A. -- as opposed to "reassurance" or "strong commitment to"</b>                  14 <b>but I think the market generally accepted that that was</b>                  15 <b>what OnTheMarket was all about, was becoming number 2</b>                  16 <b>within the first year.</b>                  17 Q. Look at your second statement, Mr Livesey at tab 7,                  18 paragraph 8, page 103. Second sentence, "the reality                  19 is"; do you see that?                  20 <b>A. Sorry, which paragraph?</b>                  21 Q. Paragraph 8, page 103, second sentence beginning "the                  22 reality is". Same question. You chose the same verb,                  23 "promises", but there is no reference. Which promises,                  24 made when, Mr Livesey?                  25 <b>A. Again, it is the same comments that were made at the</b></p> <p style="text-align: center;">Page 120</p>
<p>1 terms of inventory?                  2 <b>A. I don't think that's correct. Zoopla entered a market</b>                  3 <b>that was dominated by Rightmove without using any kind</b>                  4 <b>of exclusivity --</b>                  5 Q. That was in 2008?                  6 <b>A. Mmm.</b>                  7 Q. Let's look at the next bit. You say:                  8 "As opposed to winning that inventory by developing                  9 a better commercial offering on making unrealistic                  10 promises about its ability to take over from Zoopla as                  11 the number 2 portal within 12 months."                  12 To whom were those promises made, Mr Livesey and                  13 where?                  14 <b>A. They were broadcast very widely at the launch of</b>                  15 <b>OnTheMarket that it would become the number 2 player</b>                  16 <b>within its first year.</b>                  17 Q. When was that promise made to anybody about an ability                  18 to take over from Zoopla? You don't identify any                  19 document here do you?                  20 <b>A. No, but there were plenty of press statements from</b>                  21 <b>Mr Springett and others along those lines.</b>                  22 Q. I think we established earlier that this witness                  23 statement when it is not quoting from somebody else is                  24 using your words, right, so you chose the verb "promise"                  25 in this sentence, but you can't identify the promise or</p> <p style="text-align: center;">Page 119</p>	<p>1 <b>start, at the launch in all the presentations that we've</b>                  2 <b>seen from OnTheMarket some of which --</b>                  3 Q. Do you -- sorry, carry on.                  4 <b>A. All of the presentations and the press statements talked</b>                  5 <b>about the volume and the quality of the leads that it</b>                  6 <b>would generate for its members and we see from Gascoigne</b>                  7 <b>Halman that it's currently two years after launch</b>                  8 <b>delivering 26 leads per branch per month.</b>                  9 Q. Do you adhere to the rather serious suggestion in these                  10 witness statements that OTM has broken promises made to                  11 agents or not?                  12 <b>A. That is the way I would see it. I think if I was one of</b>                  13 <b>those agents and had those reassurances made to me</b>                  14 <b>I would feel pretty disgruntled now. Was it a breach of</b>                  15 <b>contract? Probably not. That's not our case at all.</b>                  16 Q. No, the party that's in breach of contracts is Gascoigne                  17 Halman. That's my ....                  18 Look in your first witness statement at paragraph 20                  19 if you would, tab 3:                  20 "There have historically been many examples of                  21 agents that have multi-listed on more than two property                  22 portals. Information provided to me by Zoopla shows                  23 that in 2011 ..."                  24 When was the information provided to you by Zoopla,                  25 Mr Livesey?</p> <p style="text-align: center;">Page 121</p>

<p>1 <b>A. I went to them with a request because we obviously know</b>  2 <b>of some agents that listed on more than two portals back</b>  3 <b>in the day. Difficult to find contemporaneous records</b>  4 <b>internally and so I approached Zoopla and asked them if</b>  5 <b>they'd got records of firms that they knew that they</b>  6 <b>could have recorded at the time that were listing more</b>  7 <b>than two portals.</b>  8 Q. When, was my question, when?  9 <b>A. Some-time during the process of this litigation.</b>  10 Q. By whom at Zoopla was the information provided to you?  11 <b>A. I couldn't tell you who gave us the information.</b>  12 Q. Was it given to you personally?  13 <b>A. Yes.</b>  14 Q. Was it handed over by another human being?  15 <b>A. In the sense of a piece of paper?</b>  16 Q. Piece of paper, pieces of paper.  17 <b>A. I can't recall how it came to me.</b>  18 Q. You can't recall.  19 <b>A. But it was based on a request from me.</b>  20 Q. The information that you refer to dates back to 2011 and  21 there has been a lot of water under the property  22 portals' bridge since 2011, hasn't there? Information  23 about what agents were doing in 2011 doesn't tell us  24 very much about OTM in 2015, not least because quite  25 a lot of the big players in 2011 were subsequently</p> <p style="text-align: center;">Page 122</p>	<p>1 Mr Livesey, that in paragraph 19 of your statement you  2 have been attacking a straw man when you refer to there  3 being an infinite predetermined number of portals  4 because, as you well know, that's not what my client was  5 stating. No one is suggesting there was some a priori  6 predetermined number of portals. The position is  7 simple: given how the market was in 2015, given the  8 position of Rightmove and Zoopla, there was simply on  9 the facts no one in the market was going to get into the  10 market without causing some disruption to the two  11 existing key players?  12 <b>A. But it could have done that without the use of this</b>  13 <b>rule.</b>  14 Q. Not without somehow causing some disruption to those two  15 key players. Once exclusivity isn't available for the  16 reasons we have just been discussing, then the OOP is,  17 I suggest, the obvious and indeed only realistic  18 alternative, isn't it?  19 <b>A. No, I disagree fundamentally. Certainly if you come</b>  20 <b>into a new market as a competitor, it will have</b>  21 <b>implications for the existing players in that market but</b>  22 <b>OnTheMarket could quite easily have entered this market</b>  23 <b>without this restrictive clause.</b>  24 Q. I don't agree with that but let's move on.  25 In paragraph 22 you quote extensively from an open</p> <p style="text-align: center;">Page 124</p>
<p>1 brought within the ZPG tent, right?  2 <b>A. Is there a question now?</b>  3 Q. Yes. What I am saying to you is that information  4 provided to you by Zoopla about what happened in 2011  5 doesn't shed much light on the position for  6 Agents' Mutual attempting to enter the market in 2015  7 not least because, as we saw earlier, a number of the  8 players in the market in 2011 were swallowed up by ZPG  9 because in 2012 the market consolidated into what  10 Mr Chesterman calls the two key players; do you  11 remember?  12 <b>A. I do. This is a very relevant point because it deals</b>  13 <b>with the assertion that's made by OnTheMarket that even</b>  14 <b>if there were more than two portals available for an</b>  15 <b>agent to list on, they would never list on more than</b>  16 <b>two. They wouldn't pay to list on more than two and,</b>  17 <b>therefore, the One Other Portal was pretty academic</b>  18 <b>because they're only going to list on two anyway. By</b>  19 <b>inference if they join OnTheMarket they are going to</b>  20 <b>drop one of the others. What I am saying is given the</b>  21 <b>free choice, if there are more than two portals, agents</b>  22 <b>will choose to list on more if the value for money is</b>  23 <b>right.</b>  24 Q. I am not going to argue with you about what  25 Agents' Mutual was trying to do but I do suggest to you,</p> <p style="text-align: center;">Page 123</p>	<p>1 letter from somebody called Chancellors. Now, you have  2 my observation that this is all a completely  3 inappropriate exercise for your witness statement but  4 I am going to indulge you, Mr Livesey. So let's just  5 look at this note from Chancellors. Now, Chancellors  6 are one of Zoopla's most important customers; is that  7 right?  8 <b>A. No, I wouldn't say they are one of their most important</b>  9 <b>ones. It depends how you define it but they are</b>  10 <b>a reasonable sized, medium sized firm. Not one of the</b>  11 <b>bigger ones.</b>  12 Q. At the bottom of this page you are -- this is not your  13 document. It is nothing to do with Connells, that is  14 right. Nothing to do with you. Nothing to do with  15 Gascoigne Halman, but nonetheless you are treating us to  16 the quotation from it. You quote at the bottom:  17 "However, if that is a where a significant  18 proportion of prospective buyers and tenants are  19 initially looking for property, then that's where we  20 will advertise -- and as such we have held elite tier  21 memberships with both portals for some time."  22 Do you know what the content of "elite tier"  23 memberships are?  24 <b>A. I'm assuming that he means the different bands of</b>  25 <b>membership that you can buy, silver and gold, for</b></p> <p style="text-align: center;">Page 125</p>



<p>1 <b>example, from Zoopla which includes certain add-ons. I'm</b></p> <p>2 <b>assuming that's what he means.</b></p> <p>3 Q. So what would be an elite tier membership of Zoopla?</p> <p>4 What would that bring if I was an estate agent?</p> <p>5 <b>A. It would bring you different level of promotion within</b></p> <p>6 <b>the website for the properties for your customers, so</b></p> <p>7 <b>you'd pay extra for these enhanced services.</b></p> <p>8 Q. If I get up, I get punted up the list a bit?</p> <p>9 <b>A. Punted up the list? Which list?</b></p> <p>10 Q. On the search, I can be the preferred partner or my name</p> <p>11 is shiny in lights or how does it work?</p> <p>12 <b>A. You can pay to have your brand enhanced. You can pay</b></p> <p>13 <b>for your clients' properties to receive more attention.</b></p> <p>14 <b>In Rightmove it is called premium display where the</b></p> <p>15 <b>property and the search is in a slightly different</b></p> <p>16 <b>colour and a red flash on the property of price reduced</b></p> <p>17 <b>for example.</b></p> <p>18 Q. You have read this article, have you, by Chancellors</p> <p>19 that you quote from?</p> <p>20 <b>A. I have.</b></p> <p>21 Q. Do you know what a collective action problem is,</p> <p>22 Mr Livesey? I don't think Miss Frew did. Do you know</p> <p>23 what a collective action problem is?</p> <p>24 <b>A. I don't.</b></p> <p>25 Q. It is where people can see that something is a good idea</p> <p style="text-align: center;">Page 126</p>	<p>1 you, if I may say so, play with words, Mr Livesey.</p> <p>2 <b>A. Sorry, paragraph?</b></p> <p>3 Q. Paragraph 27 of your first witness statement. You quote</p> <p>4 from the information memoranda of my clients:</p> <p>5 "The company's new portal will have a unique</p> <p>6 collection [and that is the important word] ie consumers</p> <p>7 will not be able to find all of them on any other</p> <p>8 portal."</p> <p>9 You say:</p> <p>10 "This statement seems to me to have been very</p> <p>11 carefully drafted to give an impression which is in fact</p> <p>12 misleading."</p> <p>13 I suggest to you it is perfectly simple: that the</p> <p>14 effect of the OOP rule, taking some inventory from</p> <p>15 Rightmove, taking some inventory from Zoopla would</p> <p>16 inevitably mean that the company's new portal would have</p> <p>17 a unique collection of properties and consumers would</p> <p>18 not be able to find all of them on any other portal. It</p> <p>19 is simply a statement of the necessary and inevitable</p> <p>20 effect of the OOP rule enacted, isn't it?</p> <p>21 <b>A. My point here is that I think actually OnTheMarket were</b></p> <p>22 <b>playing with words. If you put yourself in the shoes of</b></p> <p>23 <b>the consumer, the man on the high street, when you read</b></p> <p>24 <b>that phrase it gives you the impression that the</b></p> <p>25 <b>properties you will see when you go to this portal you</b></p> <p style="text-align: center;">Page 128</p>
<p>1 in theory if only enough people were to sign up to it</p> <p>2 but because too many of them stick with what they have,</p> <p>3 the critical mass is never developed and a good idea</p> <p>4 can't take off, right. A collective action problem.</p> <p>5 <b>A. It is not a phrase that I've encountered before.</b></p> <p>6 Q. I suggest to you that this note from Chancellors is</p> <p>7 really an illustration of the collective action problem</p> <p>8 that a new entrant such as OnTheMarket faces because it</p> <p>9 is a good idea in theory, as I think you accepted a good</p> <p>10 idea in principle, leaving the OOP to one side. People</p> <p>11 would be willing to join it if it could be proved to</p> <p>12 work. Meanwhile they want to stick with what they have</p> <p>13 because they're frightened that they don't want to stay</p> <p>14 apart from the crowd, and if too many people think like</p> <p>15 that the good idea never takes off, right?</p> <p>16 <b>A. This is a self-inflicted wound and what Chancellors are</b></p> <p>17 <b>saying here is we might have joined if it wasn't for</b></p> <p>18 <b>this One Other Portal rule that would block us from</b></p> <p>19 <b>listing our customers' properties with Zoopla and</b></p> <p>20 <b>Rightmove.</b></p> <p>21 Q. But that ignores the fact that in order to get into the</p> <p>22 market you have to have created some disruption to the</p> <p>23 two key players?</p> <p>24 <b>A. But you don't have to act in an anti-competitive way.</b></p> <p>25 Q. Now, in paragraph 27 of your first witness statement</p> <p style="text-align: center;">Page 127</p>	<p>1 <b>will only see there and in fact every single one of</b></p> <p>2 <b>those properties you can find elsewhere.</b></p> <p>3 Q. I don't agree with that, but --</p> <p>4 <b>A. That's my point in that paragraph.</b></p> <p>5 Q. We'll have to agree to differ. In the next paragraph,</p> <p>6 the very next paragraph, 28, you say:</p> <p>7 "It is true that if some of Agents' Mutual's agents</p> <p>8 choose Rightmove as their other portal, then the OOP</p> <p>9 rule would mean that consumers could not find all OTM's</p> <p>10 properties on a single other portal."</p> <p>11 There is the rationale for the OOP rule. So it is</p> <p>12 not incomprehensible to you. It is perfectly</p> <p>13 comprehensible and that's it, isn't it?</p> <p>14 <b>A. Are you are saying that is rationale for the One Other</b></p> <p>15 <b>Portal rule?</b></p> <p>16 Q. Yes, because it causes a disruption, it takes inventory</p> <p>17 from the two key players and means that there is</p> <p>18 a unique collection of properties which can't all be</p> <p>19 found on any other portal. Thereby giving a reason for</p> <p>20 the consumer to go there?</p> <p>21 <b>A. My contention here is the way that this is worded is</b></p> <p>22 <b>deliberately to lead the consumer to believe that if</b></p> <p>23 <b>they visit OnTheMarket they'll find unique properties</b></p> <p>24 <b>that they'll not find anywhere else to attract the</b></p> <p>25 <b>eyeballs.</b></p> <p style="text-align: center;">Page 129</p>

<p>1 Q. But the information memoranda which is what you are 2 quoting wasn't made available to members of the public. 3 The information memorandum was made available to 4 prospective members of OTM to get them to join up? 5 <b>A. It has been part of their broadcast proposition from the 6 start.</b> 7 Q. Look at the next paragraph, 29, Mr Livesey, if you 8 would. You say in the second sentence: 9 "It has not done that because Rightmove is used by 10 agents as the must have portal. In essence, 11 Agents' Mutual's business model is founded on forcing 12 agent members to come off and hence to damage Zoopla." 13 Gascoigne Halman wasn't forced to do anything, was 14 it, Mr Livesey, by OnTheMarket? 15 <b>A. As part of signing the contract, the listing agreement, 16 it was forced to delist from one of the other two 17 portals.</b> 18 Q. Only because it chose of its own free will to sign up to 19 the proposition which it found attractive? 20 <b>A. My inference isn't that any of the firms that join, any 21 of the members were coerced into something.</b> 22 Q. Why use the word "forced"? 23 <b>A. Because as part of signing that contract they were 24 forced into adopting this anti-competitive practice of 25 the One Other Portal rule.</b></p> <p style="text-align: center;">Page 130</p>	<p>1 <b>A. Don't think so.</b> 2 Q. Are any of them Agents' Mutual people? 3 <b>A. No.</b> 4 Q. Are any of them Zoopla people? 5 <b>A. No.</b> 6 Q. This email wasn't sent by anyone at Agents' Mutual, was 7 it? Mr Underwood, nothing to do with Agents' Mutual? 8 <b>A. I don't think so.</b> 9 Q. It wasn't sent to anyone at Agents' Mutual or copied to 10 anyone at Agents' Mutual, right? 11 <b>A. Not that I'm aware of.</b> 12 Q. And you don't suggest in your paragraph 29 that it came 13 to the attention of anyone at Agents' Mutual at any 14 stage, do you? 15 <b>A. That's not what I'm inferring, no.</b> 16 Q. You are not making that suggestion? 17 <b>A. No.</b> 18 Q. It would be entirely false if you were but you are not 19 making that suggestion, are you? 20 <b>A. No.</b> 21 Q. You say you exhibit this email. How did you obtain this 22 email, Mr Livesey? 23 <b>A. I don't know how this email came to me.</b> 24 Q. You don't know how it came to you? 25 <b>A. No.</b></p> <p style="text-align: center;">Page 132</p>
<p>1 Q. They voluntarily signed up to contractual terms on 2 a proposition which they found commercially attractive, 3 right? 4 <b>A. Commercially attractive?</b> 5 Q. Well, we know Mr Halman found it commercially 6 attractive. We've got these emails. You know them as 7 well as I do. 8 <b>A. They found the overall contract attractive but as part 9 of the contract, that is the reason they signed it, and 10 as part of that contract they signed up to this rule and 11 that rules forces them to delist from one of the other 12 portals.</b> 13 Q. In this paragraph 29 you say about eight lines down -- 14 do you see the sentence beginning "I exhibit"? 15 "I exhibit an email at DCL1/23." 16 Just take H8/4140. It is an email from somebody 17 called Kevin Underwood. Did you know Mr Underwood, 18 Mr Livesey? 19 <b>A. I don't.</b> 20 Q. Who do you know in the "from to or cc"? Cast your eye 21 over those names. Who do you know? 22 <b>A. I don't personally know any of those.</b> 23 Q. Are any of those Connells people? 24 <b>A. I don't think so.</b> 25 Q. Are any of them Gascoigne Halman people?</p> <p style="text-align: center;">Page 131</p>	<p>1 Q. Well, when did you first become aware of its existence? 2 <b>A. I couldn't tell you. It was part of this litigation but 3 I couldn't tell you where and from what source.</b> 4 Q. Where were you when you first saw it? 5 <b>A. In my office.</b> 6 Q. You see, in the same statement at paragraph 39 in this 7 statement in your own words you say in: "I have been 8 shown an email that is exhibit ..." But in paragraph 29 9 you just say: "I exhibit an email." So can you account 10 for how this email came into the possession of Gascoigne 11 Halman or Connells? It wasn't brought by the tooth 12 fairy. How did it come into Connells' or Gascoigne 13 Halman's possession, 4140? 14 <b>A. As I just said, I can't tell you. I don't know. 15 I genuinely don't know. There are over 10,000 pieces of 16 paper and this particular email has come into my 17 possession during the course of this litigation but 18 I couldn't tell you where it came from or who.</b> 19 Q. You see, it doesn't have a number at the top, either an 20 E number showing it came from Eversheds or a QE number 21 from Quinn Emanuel because it is exhibited to your 22 witness statement. You must have been trying to make 23 some point or other by referring to it in your 24 paragraph 29, were you? 25 <b>A. Yes, absolutely but in terms of how it came to me,</b></p> <p style="text-align: center;">Page 133</p>

1 **I couldn't tell you. We paid an absolute fortune for an**  
 2 **independent firm to come in and look at all our data and**  
 3 **source information. It could have been part of that**  
 4 **exercise. I just don't know.**  
 5 Q. But you accept that it has nothing to do with my clients  
 6 in terms of it wasn't sent to them, sent by them, copied  
 7 to them and there's no indication it ever came to the  
 8 attention of anybody at my client. You accept all of  
 9 that?  
 10 **A. Absolutely.**  
 11 Q. Then look at the other email that you referred to:  
 12 "I also exhibit at DCL1/24 an email dated 3 February  
 13 from Mr Springett to Mr Abrahamson.  
 14 **A. Sorry where are we now?**  
 15 Q. Back to paragraph 29. Do you see the last four and  
 16 a half lines: "I also exhibit ... Do you see that?"  
 17 **A. Yes.**  
 18 Q. Just read that to yourself to the end of the paragraph.  
 19 (Pause)  
 20 You can put this rather mysterious 4140 away, the  
 21 plot not having thinned any about how that appeared. Go  
 22 to H9/4977. Before we come to the email just look at  
 23 the witness statement. Just look at the witness  
 24 statement before we come to the email. You say:  
 25 "I also exhibit [blah blah] an email dated 3

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1 February which refers to..."  
 2 And then you quote from the email. Do you see that,  
 3 beginning "discussions"?  
 4 **A. Yes.**  
 5 Q. Are you suggesting that the quotation which you give  
 6 there is a fair summary of the gist of the exchange  
 7 between Mr Springett and Mr Abrahamsohn?  
 8 **A. I am not trying to summarise their correspondence.**  
 9 **I have just taken an element of that that I thought was**  
 10 **useful for the point that I was making.**  
 11 Q. So you have, as one might say, cherrypicked a little bit  
 12 of the email exchange, have you?  
 13 **A. No, I've not cherrypicked or paraphrased.**  
 14 Q. You have picked out a bit?  
 15 **A. I have selected from that email to support a particular**  
 16 **point.**  
 17 Q. To support a particular point, to help to build the  
 18 argument?  
 19 **A. To make this particular point, to illustrate the point.**  
 20 Q. Did you do this picking? Did you make this selection?  
 21 **A. Yes.**  
 22 Q. You remember that what you are supposed to be doing is  
 23 giving evidence which is the truth and the whole truth.  
 24 Do you remember that?  
 25 **A. That's right.**

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1 Q. So don't you agree that if you are going to make a point  
 2 from an email exchange that if you are going to quote  
 3 from it you should at least try and quote something  
 4 which fairly summarises the gist of the exchange?  
 5 **A. No.**  
 6 Q. No?  
 7 **A. Well, in the same way that when Mr Springett produces**  
 8 **a file note of a meeting that he had with me and others**  
 9 **it's not a full verbatim recording of that meeting.**  
 10 **There were plenty of things talked about in an hour and**  
 11 **a half that weren't in there. There are redactions in**  
 12 **there. My point being, in this situation if I am trying**  
 13 **to make a point and I have got an email that supports**  
 14 **that point, I am going to take the piece from the email**  
 15 **that supports that point rather than try and paraphrase**  
 16 **the whole email.**  
 17 Q. And you think that helps this Tribunal to get a fair  
 18 picture of your involvement in the events do you, that  
 19 exercise?  
 20 **A. Otherwise 10,000 would be 20,000 pages.**  
 21 Q. You tell me what's the point then that led you to pick,  
 22 select, leave out the cherries, these words that you  
 23 have quoted in 29. What's the point, Mr Livesey?  
 24 What's the argument you're trying to build? Tell this  
 25 Tribunal. Here they are. Here's your chance. What's

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1 the point?  
 2 **A. I'm quoting from one of the founder members of**  
 3 **OnTheMarket with the managing director of that business,**  
 4 **a very important quote from the email.**  
 5 Q. Did you look at the whole email chain before you did  
 6 your picking or your selection of the bit to put in your  
 7 statement?  
 8 **A. Yes.**  
 9 Q. You did. So let's go to 4977. "Dear Trevor", 15.50 on  
 10 3 February. Do you see that?  
 11 **A. Yes.**  
 12 Q. And what's happened is that Mr Abrahamsohn sent  
 13 Mr Springett an email. Mr Springett is replying and  
 14 then at the end he says:  
 15 "These numbers bear out the discussions we had  
 16 during last year to the effect that the most efficient  
 17 way to get swiftly to the number 2 position would be if  
 18 members dropped Zoopla."  
 19 That is a statement of fact, isn't it, Mr Livesey, a  
 20 straightforward statement of the factual position?  
 21 **A. I'm not sure whether dropping Rightmove would have had**  
 22 **the same effect.**  
 23 Q. Can you think of a more efficient way to get swiftly to  
 24 the number 2 position, Mr Livesey?  
 25 **A. Getting customers to drop the number 1 portal.**

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<p>1 Q. Really? For every person you pick up who joins 2 OnTheMarket that is one to your side but if they've left 3 Rightmove rather than Zoopla it is going to take longer 4 rather than a shorter period of time to get to the 5 number 2 position, isn't it? It stands to reason. Just 6 a statement of fact? 7 <b>A. If you depose the number 1, does that not automatically 8 get you to number 2?</b> 9 Q. You see, my point, is Mr Livesey, that the passage you 10 have picked does not support the argument that you want 11 to advance. That is the first point. But the second 12 point, if you go to 4975 and 4976, there is an email 13 back from Mr Abrahamsohn at 5.25 the same day and then at 14 9.59 that very night at 4974. Just have a look at 4974, 15 would you, Mr Livesey and just read to yourself to the 16 third paragraph stopping at the word "some reasons". Do 17 you see that? Just read from "thanks for this" to "some 18 reasons" please. Just read that to yourself. (Pause) 19 Have you read that? 20 <b>A. Yes.</b> 21 Q. What Mr Springett was doing, he was doing various 22 things. First of all, he is emphasising for the nth 23 time that "these decisions are decisions for members to 24 take and not me". Do you see that? Decisions as to 25 which portal to drop?</p> <p style="text-align: center;">Page 138</p>	<p>1 <b>simply competing fairly to overtake it.</b> 2 Q. So replacing X -- number 3 replacing number 2 as number 3 2 involves necessarily killing him off, does it? 4 <b>A. He uses the word "replacing" not "overtaking".</b> 5 Q. Presumably that applies -- I hope, to pick up on 6 Friday's analogy, that doesn't apply to tennis otherwise 7 Mr Djokovic had better look out. But you suggest that 8 this is all some great plot to kill off Zoopla, do you? 9 <b>A. Absolutely, and when I've met Mr Springett on a couple 10 of occasions that has been the very clear message all 11 the way. This is not about competing fairly, trying to 12 overtake the number 2 and then trying to become the 13 number 1, it has been about killing the opposition in 14 the --</b> 15 Q. What is the difference between replacing Zoopla as 16 number 2 from OTM's perspective and Mr Chesterman 17 gunning for number 1 from his perspective; what's the 18 difference? 19 <b>A. It's a huge difference. Gunning for number 1 is an 20 objective of we want to be the best, the biggest, number 21 1. That is what Andy Murray wanted to be and replacing 22 the number 2 means removing the number 2.</b> 23 Q. Come on, Mr Livesey. 24 <b>A. It is a fairly straightforward word.</b> 25 Q. In paragraph 36 of your witness statement -- actually,</p> <p style="text-align: center;">Page 140</p>
<p>1 <b>A. Yes.</b> 2 Q. Then he's going on to offer some advice as to how 3 Mr Abrahamsohn might, as he puts it, "leverage a better 4 deal out of Zoopla". So far from dropping Zoopla he's 5 going on to offer what he says at the end of his email 6 "our views from a distance" which he hopes maybe found 7 some help "if only as devil's advocacy" to help 8 Mr Abrahamsohn to get a better deal for Zoopla. Not to 9 drop Zoopla but to carry on with Zoopla on better terms. 10 My suggestion to you, Mr Livesey, is that any 11 witness attempting to present a fair summary of what was 12 going on in this email exchange could not but have 13 referred to page 4974 rather than pick or select that 14 single sentence which you choose to read in some 15 pernicious or spooky way and that what this email 16 exchange shows is the obverse of the position you are 17 contending for. What it shows is that Mr Springett was 18 fastidious about emphasising that the choice of the 19 other portal was not a matter for him but a matter for 20 each individual member, right? 21 <b>A. No, completely wrong. What he says is replacing Zoopla 22 as number 2 has been board strategy since last February. 23 His use of the word "replacing" not "overtaking" and 24 that has been their board strategy, and there is 25 a constant theme that this is about killing Zoopla not</b></p> <p style="text-align: center;">Page 139</p>	<p>1 it rather chimes in, if we are discussing what words 2 mean. In paragraph 36 of your first witness statement, 3 you say: 4 "As for the group procurement obligation in the 5 Agents' Mutual membership contracts, this cause was 6 something Connells considered in the course of our due 7 diligence as part of the GHJL acquisition." 8 Do you see that? 9 <b>A. Yes.</b> 10 Q. Did you obtain any insurance in relation to the 11 potential exposure of Gascoigne Halman under that 12 clause? 13 <b>A. What kind of insurance?</b> 14 Q. Insurance which protects you from economic or legal 15 liability? 16 <b>A. I'm not aware of an insurance that would cover that 17 eventuality. We looked at the contract. As I say, we 18 deemed it to be an onerous contract that we were 19 inheriting as part of the acquisition. We looked at the 20 particular clause but didn't believe it was sustainable 21 or that it even intended or envisaged the situation of 22 a corporate acquiring one of the gold members and 23 certainly we'd never heard of it being exercised in the 24 market previously. So we acquired the business and we 25 did not believe that the procurement rule was relevant.</b></p> <p style="text-align: center;">Page 141</p>

<p>1 Q. So you acquired the business and took your chances?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Believing that it wouldn't come back to bite you for</p> <p>4 some reason or other. When you say in paragraph -- in</p> <p>5 the third line "our understanding was", who's "our"?</p> <p>6 <b>A. Connells. We use a large due diligence team when we</b></p> <p>7 <b>make acquisitions. Various people involved from all</b></p> <p>8 <b>different disciplines of the business. External</b></p> <p>9 <b>advisers, so that group who are involved in the</b></p> <p>10 <b>acquisition.</b></p> <p>11 Q. "Our understanding was". What is your understanding</p> <p>12 now, Mr Livesey?</p> <p>13 <b>A. It is still the same. I don't believe that the OOP rule</b></p> <p>14 <b>was ever envisaged to cover this scenario.</b></p> <p>15 Q. In paragraph 35, previous paragraph, you say, third</p> <p>16 line:</p> <p>17 "One way in which Agents' Mutual could have sought</p> <p>18 to get agents to list their properties in OTM rather</p> <p>19 than force them to list through the OOP rule, would have</p> <p>20 been to offer a free trial or very low initial</p> <p>21 membership fees from the outset and prior to its</p> <p>22 launch."</p> <p>23 Do you see that?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. But just hold that thought and then in your</p> <p style="text-align: center;">Page 142</p>	<p>1 <b>All I'm saying is that in this prop tech space, there</b></p> <p>2 <b>are plenty of ways of raising money without being solely</b></p> <p>3 <b>reliant on the listing fees, in the early stages.</b></p> <p>4 Q. But only if you can cause a disruption to the position</p> <p>5 of the two key players. Otherwise it is all in vain?</p> <p>6 <b>A. And my contention is that you can cause plenty of</b></p> <p>7 <b>disruption without overtly trying to damage your</b></p> <p>8 <b>competitors.</b></p> <p>9 Q. Let us turn to the Leighton Buzzard meeting. There was</p> <p>10 a meeting in Leighton Buzzard between you and, I think,</p> <p>11 a couple of your colleagues on the one hand and</p> <p>12 Mr Springett on the other?</p> <p>13 <b>A. Mr Springett and Miss Whiteley.</b></p> <p>14 Q. On 28 September 2015; right?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Let us turn to bundle H11. You can keep your witness</p> <p>17 statement bundle with you but any H bundles you have,</p> <p>18 you can clear away. H11/6226. Mr Springett gave</p> <p>19 a presentation to Connells and these are his slides,</p> <p>20 aren't they?</p> <p>21 <b>A. Are these the largely redacted ones?</b></p> <p>22 Q. No, they are not largely redacted.</p> <p>23 MR HARRIS: Try D1. He plainly needs to see the</p> <p>24 confidential ones of these.</p> <p>25 MR MACLEAN: Yes.</p> <p style="text-align: center;">Page 144</p>
<p>1 paragraph 31, just a little bit earlier, at the foot of</p> <p>2 page 32, you were questioning -- the question then is,</p> <p>3 what Agents' Mutual has done to attract an audience:</p> <p>4 "I do not believe that it has done anything</p> <p>5 effective or noteworthy and this omission is a large</p> <p>6 part of the reason for its current failure as</p> <p>7 a commercial entity."</p> <p>8 Then you talk about sponsoring West Bromwich Albion.</p> <p>9 So isn't there a tension there, Mr Livesey, between</p> <p>10 on the one hand, castigating my client for not spending</p> <p>11 enough on the marketing of their portals on the one</p> <p>12 hand, and then saying what they should have been done</p> <p>13 was running around offering free trials of very low</p> <p>14 membership fees from the outset, on the other? Don't</p> <p>15 those two rather rub against each other?</p> <p>16 <b>A. No, not at all. There is plenty of ways of raising</b></p> <p>17 <b>finance for a new prop tech business like this that</b></p> <p>18 <b>doesn't involve the subscription fees from members in</b></p> <p>19 <b>the early days.</b></p> <p>20 Q. Some seed capital from a venture capitalist or</p> <p>21 something?</p> <p>22 <b>A. Potentially. Purple Bricks is a good example. It is</b></p> <p>23 <b>property technology. It is here and now, launched</b></p> <p>24 <b>around the same time. Currently capitalised at half</b></p> <p>25 <b>a billion. Raised just under 50 million in finance.</b></p> <p style="text-align: center;">Page 143</p>	<p>1 <b>A. These are virtually exclusive.</b></p> <p>2 MR MACLEAN: Don't worry, we'll give you the -- 6226,</p> <p>3 please. These are the slides that Mr Springett</p> <p>4 presented; right? Who else was there; Mr Plumtree?</p> <p>5 <b>A. Mr Plumtree and Mr Twigg, who was the group finance</b></p> <p>6 <b>director.</b></p> <p>7 Q. Yes. So in that email that we looked at right at the</p> <p>8 beginning, the one about what was going to be said to</p> <p>9 Mr Halman and Mr Halman's contortion, you remember,</p> <p>10 that was you and Mr Twigg and Mr Plumtree, the three</p> <p>11 senior executives; right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So this was the presentation that Mr Springett made.</p> <p>14 And if you look at page 6229, there's the growth of</p> <p>15 Rightmove, 6230, that is the margin and profit of Zoopla</p> <p>16 and Rightmove in 2014. Then 6233, reference to internet</p> <p>17 only firms looking to float next year. Now, there is no</p> <p>18 doubt, Mr Livesey, that internet only firms pose</p> <p>19 a commercial threat to the traditional Bricks and Mortar</p> <p>20 estate agent, don't they?</p> <p>21 <b>A. No, I wouldn't agree.</b></p> <p>22 Q. No, why not?</p> <p>23 <b>A. There are virtually no internet only estate agent firms.</b></p> <p>24 Q. At the moment there might not be very many but if one</p> <p>25 was a Bricks and Mortar estate agent, might one not</p> <p style="text-align: center;">Page 145</p>

<p>1 legitimately feel that that was a commercial threat to 2 my shortish or medium or long-term existence? 3 <b>A. No, well there are two issues. First of all, there are</b> 4 <b>virtually no internet only estate agents. And the</b> 5 <b>second is, would I want to blockade them from</b> 6 <b>advertising their properties in the same way that</b> 7 <b>I could?</b> 8 Q. Let us just focus on the first of those. Here's Mr 9 Dunstone, who has been in the news this week, since 10 Baroness Harding sold TalkTalk and, for example, Mr 11 Dunstone backing online estate agent HouseSimple. Quite 12 a neat little name, you might think. So you say that a 13 Bricks and Mortar estate agent should be sanguine about 14 the development of internet only firms because they 15 haven't really taken off yet? 16 <b>A. Well not just because they haven't taken off, it's</b> 17 <b>because they don't act as pure internet only estate</b> 18 <b>agents, as you are inferring. So if you take Purple</b> 19 <b>Bricks which is the most dominant player in that market</b> 20 <b>and all the others, HouseSimple and so on, are very</b> 21 <b>similar. They have an internet advertising programme,</b> 22 <b>TV advertising, but they have things called local</b> 23 <b>property experts. Purple Bricks have got 300 of them</b> 24 <b>and they are people employed around the country, whose</b> 25 <b>job is to act as an estate agent, to go into the lounge</b></p> <p style="text-align: center;">Page 146</p>	<p>1 <b>blocked from advertising their properties.</b> 2 Q. I see. So let's just go back to Mr Springett's 3 presentation. So he sets out all sorts of data and at 4 page 6247, the strategy is to get to be the number 2 5 portal. Do you see that? 6 <b>A. Yes.</b> 7 Q. And if you keep a finger there and you go back to 6237, 8 we see the same point made there: 9 "Become the number 2 portal, then build to be the 10 alternative to the number 1." 11 Do you see? 12 <b>A. Yes.</b> 13 Q. And at 6251, Mr Springett in the heading "Funding", he 14 deals with funding. It is quite hard to read this but 15 do you see that what he's doing there is referring to 16 something called ARPA; do you see? Now ARPA is average 17 revenue per advertiser, isn't it? 18 <b>A. It is.</b> 19 Q. And so we can see that he's showing the increase in ARPA 20 and ARPA is the common metric used in the estate agent 21 business as a proxy for price, in effect? 22 <b>A. It is a term used in the portal business. The estate</b> 23 <b>agent wouldn't recognise it.</b> 24 Q. So it is a metric used in the portal business, 25 essentially it is the proxy for the price it's charged?</p> <p style="text-align: center;">Page 148</p>
<p>1 <b>of the vendor, convince them that's the best way to sell</b> 2 <b>their house.</b> 3 Q. But without having the traditional high street premises? 4 <b>A. They don't have an office on the high street, no.</b> 5 Q. So they have a peripatetic person or persons who can go 6 round to do the valuing or let somebody in to show them 7 round? 8 <b>A. In Leighton Buzzard we have 15 agents. One of those</b> 9 <b>agents doesn't have a branch and he has been there for</b> 10 <b>five or six years without a branch.</b> 11 Q. Why doesn't that business model pose a threat to the 12 traditional Bricks and Mortar estate agent? 13 <b>A. Only in the same way that any new competitor coming into</b> 14 <b>your space, poses a threat.</b> 15 Q. So it does pose a threat? 16 <b>A. Any new competitor does.</b> 17 Q. So they do pose a threat? 18 <b>A. Any new competitor does. I'm saying the online agent is</b> 19 <b>a bit of a fiction because they're not purely online.</b> 20 Q. I see. 21 <b>A. They are just a different model, they're different</b> 22 <b>charging structure. They'll charge the customer a fee</b> 23 <b>upfront rather than we will charge them a fee only if</b> 24 <b>we're successful selling it. I don't see them as a big</b> 25 <b>threat and I certainly wouldn't see them needing to be</b></p> <p style="text-align: center;">Page 147</p>	<p>1 <b>A. Yes, so if you are Zoopla or Rightmove, you are taking</b> 2 <b>all of the fees that the agents are paying to you and</b> 3 <b>dividing it by the number of agents and that gives you</b> 4 <b>your average revenue per advertiser.</b> 5 Q. Yes, the average price you're charging per customer, in 6 effect? 7 <b>A. Well, it is a bit more than that because it is not just</b> 8 <b>your fixed listings fees.</b> 9 Q. It is the other add-ons? 10 <b>A. It is all of the add-ons and other things all mushed</b> 11 <b>together, divided by the number of agents.</b> 12 Q. You are quite right. So depending on -- if you are 13 a portal and I'm a portal and we have different add-ons, 14 different business services or different advertising, 15 then our ARPAs would be directly comparable, one with 16 the other, in terms of telling us what we are doing in 17 terms of the listing fee, which is only a part of the 18 overall ARPA? 19 <b>A. Yes, so it is not telling you what the listing fee</b> 20 <b>progress is or is not. It is saying that you will be</b> 21 <b>more or less successful in charging revenue to your</b> 22 <b>agents, however that revenue is comprised.</b> 23 Q. Yes. I want you to look at 6032. I haven't finished 24 with this document yet but the same bundle, just back 25 a bit to 6032 to 6033. You may or may not have seen</p> <p style="text-align: center;">Page 149</p>

<p>1 this email in the run-up to this litigation, this case.  2 Perhaps you haven't ever seen it before. I don't know.  3 It is an email to somebody called Craig Whiley from  4 Helen Whiteley. Do you see at the bottom of the page?  5 <b>A. Yes.</b>  6 Q. Have you seen this email before?  7 <b>A. I have.</b>  8 Q. As part of your homework for the case?  9 <b>A. I have.</b>  10 Q. You are a diligent student, Mr Livesey, to have got to  11 page 6032:  12 "Hi Craig, we have managed to get a meeting with  13 Connells on 28th September [so this is looking forward  14 to the Leighton Buzzard meetings] - it would be good to  15 be able to understand the following information:  16 "Our market share in general ...  17 "How it alters with Connells added.  18 "How it alters with Countrywide and Connells.  19 "How it alters with LSL plus Countrywide and  20 Connells."  21 "In the end, we wouldn't want them to see all our  22 data - but it might be useful to show how many areas we  23 become number 2 or number 1 or within 20 per cent of  24 number 2 in if ...  25 " (a) they drop Zoopla.</p> <p style="text-align: center;">Page 150</p>	<p>1 share gains. It doesn't say anything about which portal  2 or portals?  3 <b>A. It does. "Switch from Zoopla".</b>  4 Q. "And crystallise share gains"?  5 <b>A. Yes, "Switch from Zoopla".</b>  6 Q. Disinvest in Zoopla and become a member of this mutual  7 organisation --  8 <b>A. That is not what it says.</b>  9 Q. -- OnTheMarket?  10 <b>A. And that's not what he said in the meeting and there</b>  11 <b>were two or three occasions in the meeting -- if you</b>  12 <b>read two or three of these slides together, you will see</b>  13 <b>that they are, slide after slide, being critical of</b>  14 <b>Zoopla and there was a couple of times in the meeting</b>  15 <b>which Mr Springett and Mrs Whiteley will recall, when</b>  16 <b>I said "When I'm playing golf, Ian, I can't worry about</b>  17 <b>how the other guy plays. There's nothing I can do about</b>  18 <b>that. All I can do is concentrate on playing my best</b>  19 <b>game, so can you stop, please, talking about your</b>  20 <b>competitor in this round of golf and talk about what you</b>  21 <b>can do. What is it that makes OnTheMarket attractive,</b>  22 <b>useful, enhanced, different, what is it that you can</b>  23 <b>sell to me? Give me your best game and stop talking</b>  24 <b>about your competitor." It is all in the presentation.</b>  25 <b>It was about: kill Zoopla, join us, sell your shares in</b></p> <p style="text-align: center;">Page 152</p>
<p>1 " (b) they drop Rightmove.  2 "If at all possible, it would be good if we could  3 have the information by 16 September. Is that  4 possible?"  5 <b>A. This is an email from Helen Whiteley in Agents' Mutual</b>  6 <b>to Craig Whiley in Agents' Mutual, who I believe is an</b>  7 <b>ex-employee of one of the other two portals and he is</b>  8 <b>being asked to give confidential information from his</b>  9 <b>previous employer.</b>  10 Q. You may or may not be right about that, Mr Livesey, but  11 I don't care. What I am interested in is that  12 Ms Whiteley is asking for information about what the  13 position might be with X added or X and Y or X and Y and  14 Z, if they drop Zoopla or if they drop Rightmove. So  15 that is not consistent, is it, not consistent with the  16 Leighton Buzzard pitch being that Zoopla need to be  17 dropped, is it?  18 <b>A. Well, I'll take you to the presentation, if I can take</b>  19 <b>you back to page 6256 which is his final slide. Which</b>  20 <b>really does say it all.</b>  21 Q. Really?  22 <b>A. "Switch from Zoopla and crystallise Zoopla share gains</b>  23 <b>now."</b>  24 Q. That is just pointing out that if Connells were to  25 disinvest in Zoopla, it would be able to crystallise its</p> <p style="text-align: center;">Page 151</p>	<p>1 <b>Zoopla. We'll find an equitable way of making right any</b>  2 <b>damage.</b>  3 Q. There is nothing in the presentation about killing  4 Zoopla. There is nothing in the presentation about  5 choosing Rightmove as the other portal or choosing  6 Zoopla as the other portal. It is simply setting out a  7 commercial strategy whereby OnTheMarket can grow to  8 become, first of all, the number 2 portal and then set  9 its sights on the number 1 portal. That is all it's  10 doing?  11 <b>A. I don't agree and that certainly was not the impression</b>  12 <b>that was given at the meeting.</b>  13 Q. Now, what you say in your witness statement about it at  14 your paragraph 41 of your first statement, page 36, you  15 refer to the PowerPoint slides. Those are the ones we  16 have just been looking at; right?:  17 "He sought to persuade us of the benefits of  18 Connells becoming a member of Agents' Mutual and how it  19 would overtake Zoopla as the number 2 portal."  20 Pausing there, that is dead right, I suggest,  21 Mr Livesey, it's exactly what he did:  22 "I understood this to mean that the Agents' Mutual  23 pitch to agents was that in complying with the OOP rule,  24 they should leave Zoopla."  25 But that understanding was wrong, Mr Livesey. This</p> <p style="text-align: center;">Page 153</p>

<p>1 has got nothing to do with Agents' Mutual's pitch to 2 agents, this is a specific pitch to Connells which winds 3 up with the suggestion that Connells might want to think 4 about disinvesting in Zoopla, crystallising its share 5 views, which as you explained earlier, were very 6 considerable and joining OnTheMarket.</p> <p>7 <b>A. No, the conversation at the presentation was all just 8 focused on Zoopla and I am trying to find the slide 9 where he shows how much of a dent they had taken out of 10 Zoopla at the time.</b></p> <p>11 Q. Let me move on, Mr Livesey.</p> <p>12 <b>A. Well --</b></p> <p>13 MR HARRIS: Excuse me, the witness is trying to find a slide 14 to make his point. He ought to be allowed to have that 15 opportunity, please.</p> <p>16 MR MACLEAN: Mr Harris has the opportunity to re-examine.</p> <p>17 THE CHAIRMAN: I think I agree. Mr Maclean, let's give him a 18 moment. If he has something in mind, dig it out -- not 19 too long. I'm aware the re-examination should also --</p> <p>20 <b>A. It is on page 6249.</b></p> <p>21 MR MACLEAN: I am sorry, Mr Livesey.</p> <p>22 <b>A. Page 6249. One of the slides. This is the one that 23 stuck in my mind where, again, it's all about: how do we 24 beat Zoopla? How do we make Zoopla virtually disappear? 25 And he was talking to us about how successful</b></p> <p style="text-align: center;">Page 154</p>	<p>1 <b>did say that if we were to leave Zoopla, sign a listing 2 agreement with OnTheMarket, join as members, they would 3 put together an equity proposition that would compensate 4 us and then some, for the damage to the Zoopla shares 5 that we owned at that time.</b></p> <p>6 Q. Where is that in the presentation?</p> <p>7 <b>A. It is not in the presentation.</b></p> <p>8 Q. It is not in the presentation?</p> <p>9 <b>A. I'm telling you that is what he said to us in the 10 meeting, with this presentation in the background.</b></p> <p>11 Q. I don't agree with that. I do agree there was some 12 discussion about that topic at the four way meeting but 13 I don't agree there was a discussion about that here?</p> <p>14 <b>A. You don't?</b></p> <p>15 Q. No.</p> <p>16 <b>A. In which case, in the four way meeting you'll see that 17 Mr Springett --</b></p> <p>18 Q. I am coming to the -- let me stop you there. I am 19 coming to the four way meeting and the reason I don't 20 want to go to the four way meeting is that the four way 21 meeting, as you'll appreciate, was a meeting involving 22 four different entities, two of which are not here, 23 which was treated by all the parties as a confidential 24 meeting and it would be inappropriate for the four way 25 meeting to be explored in open session, in my</p> <p style="text-align: center;">Page 156</p>
<p>1 <b>OnTheMarket had been at winning agents away from Zoopla. 2 Nine out of ten of the agents who joined them had all 3 left Zoopla. He wanted us to leave Zoopla.</b></p> <p>4 Q. Mr Livesey, first of all, this page 6249 seems to refer 5 to a five year strategy. Do you see that?</p> <p>6 <b>A. Mmm.</b></p> <p>7 Q. How is this slide consistent with the suggestion that 8 OnTheMarket had promised or threatened to kill off 9 Zoopla within one year of launch?</p> <p>10 <b>A. That is a very different proposition.</b></p> <p>11 Q. The answer is, it is not consistent, isn't it?</p> <p>12 <b>A. This was what he was presenting to us well after the 13 launch.</b></p> <p>14 Q. This is a five year strategy which shows Zoopla still in 15 the market, doesn't it? Nothing to do with killing them 16 off, nothing to do with replacing being killing, is it?</p> <p>17 <b>A. They are just there.</b></p> <p>18 Q. There are a lot more there than OnTheMarket were when 19 they started off?</p> <p>20 <b>A. Of the 6,000 or whatever the number is, agents that 21 joined on the market, 90 per cent of them were coming 22 from Zoopla and were not allowed to list with Zoopla. 23 By inference, the more successful OnTheMarket would 24 become, the more badly damaged Zoopla would become. Can 25 I also add, please, in this presentation, Mr Springett</b></p> <p style="text-align: center;">Page 155</p>	<p>1 submission. Not least in fairness to the two 2 representatives who aren't here. So that is why I don't 3 want Mr Livesey to go too far down the road of the four 4 way meeting now and you will have seen that the note of 5 the four way meeting is quite appropriately treated in 6 the bundle as being a confidential document?</p> <p>7 THE CHAIRMAN: Yes, I see Mr Harris has risen.</p> <p>8 MR HARRIS: Thank you. We don't accept that. This will be 9 an issue when we turn to the notes and, of course, what 10 Mr Livesey was trying to do in his answer was tell him 11 about Mr Livesey's perception of the four way meeting 12 which is plainly not confidential. In any event, when 13 we get to those notes, there will have to be a decision 14 by the Tribunal as to whether or not they are 15 confidential. We don't accept it at all.</p> <p>16 THE CHAIRMAN: Right. For present purposes, Mr Maclean, 17 I suggest you proceed in stages.</p> <p>18 MR MACLEAN: I want to come to the four way meeting.</p> <p>19 THE CHAIRMAN: Come to the four way meeting after we have 20 had argument about what is and what is not confidential 21 and what should and shouldn't be dealt with in open 22 court.</p> <p>23 MR MACLEAN: If you don't mind, Mr Livesey, can we park the 24 four way meeting.</p> <p>25 THE CHAIRMAN: Mr Livesey, let us be clear. We don't want</p> <p style="text-align: center;">Page 157</p>



<p>1 to shut out any questions. It is simply that counsel is 2 taking his questions in order and we'll get to it.</p> <p>3 <b>A. Thank you, sir.</b></p> <p>4 MR MACLEAN: I promise we'll get to it.</p> <p>5 Let's go then to your paragraph 44, bundle D3/44.</p> <p>6 So we have had the meeting on 28 September and 7 Mr Springett sent an email following that meeting to 8 Mr Milsom. So again, nothing to do with you, you 9 comment on it. H11/6125. You see that, paragraph 43?</p> <p>10 <b>A. Where are we, sir?</b></p> <p>11 Q. Paragraph 43 and 44 of your first statement, bundle D3, 12 page 37. You refer to an email sent by Mr Springett to 13 Mr Milsom, after the Leighton Buzzard meeting and you 14 say:</p> <p>15 "This email accurately records the fact that Mr 16 Springett raised the idea of each of Connells, LSL and 17 Countrywide all joining Agents' Mutual, in response to 18 which I stated that Connells would be happy to attend 19 any joint meeting that Mr Springett could organise."</p> <p>20 Now, I just want to have a look at some of these 21 emails. Would you take bundle H12. Every time 22 confidential for Mr Livesey. If you turn to 6489. I am 23 sure you have seen this in your homework, Mr Livesey. 24 Look at the email at the bottom of the page, 25 Mr Springett to you, on 15 September. Do you see that?</p> <p style="text-align: center;">Page 158</p>	<p>1 <b>which I think is quite important.</b></p> <p>2 Q. I can see that. That is a different point. You had 3 spoken to Mr Embley of LSL about having a joint meeting, 4 hadn't you?</p> <p>5 <b>A. No, I had no conversation with Simon Embley.</b></p> <p>6 Q. You see, if you go to page 6486, Mr Springett on the 7 same day, 21-minutes after the email we have just looked 8 at, to Mr Smith at Spicerhaart, he says:</p> <p>9 "I think anything which encourages Simon to think we 10 are going to get to the tipping point and knock Z over 11 would be helpful - might just be in conversation if you 12 are in his company at any point. I would think he is 13 hedging his bets ...</p> <p>14 "Looking forward to catching up next Tuesday."</p> <p>15 Do you see that?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And then you exchanged emails. It went a bit quiet for 18 a bit, didn't it, and you exchanged emails with 19 Mr Springett on 16 February. We need to go to the next 20 bundle, H 13. At 7370. On 16 December there is that 21 same email we have just looked at, at the bottom of the 22 page, about Monica having the diary, do you see that, 23 and need to chat about Gascoigne Halman?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And at the top of the page:</p> <p style="text-align: center;">Page 160</p>
<p>1 <b>A. I do.</b></p> <p>2 Q. "It was very good to meet you, David and Richard 3 recently [that is you and Mr Plumtree and Mr Twigg]. 4 Helen and I were grateful for the frank discussion we 5 had about the portals market and potential opportunities 6 for us to work with and for you to develop it.</p> <p>7 "We have now met with Countrywide and LSL ..."</p> <p>8 In fact, you met separately with Countrywide and LSL 9 but that doesn't matter; all right? He had met with 10 each of them and with you at about the same time?</p> <p>11 <b>A. Yes, it does become very relevant that he met with each 12 of us individually, before the joint meeting.</b></p> <p>13 Q. He had met with each of you individually:</p> <p>14 "... and believe there would be value in further 15 discussions. We would certainly like the opportunity to 16 put a concrete financial proposal to those interested in 17 supporting us now.</p> <p>18 "When you are ready, please let me know and we can 19 fix a time to meet up again."</p> <p>20 You reply:</p> <p>21 "Depending on who you would like at the meeting from 22 each of the 3, I can be alone or with David Plumtree 23 and/or Richard Twigg.</p> <p>24 And you had spoken to Mr Embley about --</p> <p>25 <b>A. Sorry, you missed out the last sentence of that email</b></p> <p style="text-align: center;">Page 159</p>	<p>1 "Ed Mead mentioned that he chatted with you earlier 2 this week and prompted me to get in touch."</p> <p>3 Mr Mead was a director of Agents' Mutual, wasn't he?</p> <p>4 <b>A. He was.</b></p> <p>5 Q. And you and he had met, I think at a shoot, hadn't you?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And you had had a discussion about the fact that you 8 were keen to have a meeting involving LSL and 9 Countrywide and Connells and Mr Springett?</p> <p>10 <b>A. No, no conversation at all.</b></p> <p>11 Q. And that's what prompted Mr Springett to send this email 12 because he says:</p> <p>13 "Following our last contact, I am afraid I got no 14 response from Ian Crabb at LSL to the suggestion of 15 a meeting with yourselves and Countrywide. I remain 16 keen to pursue discussions, as I am sure there's 17 considerable common purpose and that we could construct 18 terms which would be attractive to you."</p> <p>19 And then you then replied:</p> <p>20 "Happy to meet one-to-one initially Ian, and I am 21 sure that CW [that is Countrywide] would be quick and 22 responsive if you wanted a one to two.</p> <p>23 "If you want LSL at the party, I will be able to 24 make this happen quickly too."</p> <p>25 He replies:</p> <p style="text-align: center;">Page 161</p>

<p>1 "I think your original preference 1 to 3 and that 2 would make complete sense. Should I write to Alison 3 [that is Alison Platt] and Ian [that's Ian Crabb] to 4 propose it, saying we have spoken?" 5 And you reply: 6 "Yes, good way forward." 7 So the key catalyst for the four way meeting was 8 you, Mr Livesey? 9 <b>A. That's completely incorrect.</b> 10 Q. But it is completely clear from these emails? 11 <b>A. Well it's not. I say I'm prepared to meet one-to-one, 12 one to two, one to three.</b> 13 Q. But Mr Springett says your original preference was one 14 to three. That would make complete sense. And you 15 agree, you don't -- 16 <b>A. It wasn't my original preference. So going back to the 17 meeting at Leighton Buzzard, when I objected to the One 18 Other Portal rule and I made it completely clear that we 19 supported the overall objective of OnThe Market and we 20 would be happy to support it but not with the One Other 21 Portal rule and I made that so clear. He then said the 22 only way we could consider dropping the One Other Portal 23 rule is if all three corporates joined. He says that 24 elsewhere, in some internal communications as well. He 25 says something along the lines of, that's because I told</b></p> <p style="text-align: center;">Page 162</p>	<p>1 you say: 2 "Suggest you email both Adrian Gill and Ian Crabb, 3 and if they want a chat with me first to give me 4 a shout." 5 And you proposed that there be a private discussion 6 between you, Mr Crabb and Miss Platt, before 7 Mr Springett joined the four way meeting, didn't you? 8 <b>A. Yes, I did. I thought it would be quite useful for the 9 three of us to talk about where we had got to so far, 10 before he joined us up until now. It didn't happen that 11 way.</b> 12 Q. So you and your two major competitors, Countrywide and 13 LSL, were sitting down to have a private chat. That was 14 the plan before this four way meeting in January with 15 Mr Springett? 16 <b>A. Each having had individual discussions with him and so 17 him having approached each of the three of us 18 independently and then wanting to get all three of us 19 together.</b> 20 Q. I'm just at the four way meeting. We obviously need to 21 tackle the point Mr Harris raised but my final question 22 for the afternoon, Mr Livesey, is this, that whatever 23 happened or didn't happen at the four way meeting, one 24 thing I think everyone is agreed about is that no 25 consensus or agreement was reached at the four way</p> <p style="text-align: center;">Page 164</p>
<p>1 <b>him that the only way we could drop the One Other Portal 2 rule was if all three corporates joined. So I took him 3 at his word and when he talked about next steps and 4 whether it should be one-to-one meetings which he was 5 already in the process of setting up, or a three way 6 meeting, I said I would be quite relaxed about either. 7 Was I involved in actually chivvying some of the people 8 along to get them to that meeting? Yes, I was. It was 9 his original suggestion though.</b> 10 Q. Just finally, I see the time, sir, bundle 13 at 7536. 11 We know that the four way meeting was -- whoever 12 organised it, I suggest you were the catalyst for the 13 four way meeting. You disagree with that but that's my 14 suggestion to you. But we know that the four way 15 meeting was arranged and did take place in January 2016? 16 <b>A. Correct.</b> 17 Q. Just before we get to the meeting, on 17 December, you 18 suggested at 7369 -- Alison Platt, there was no reply. 19 7368, one page back from where we were. Yes: 20 "No reply from Alison Platt as yet. Not sure how to 21 proceed - any thoughts?" 22 7368: 23 "I am sure Alison will be happy to meet. Did you 24 get anywhere with LSL? 25 Mr Springett is waiting to hear from Alison and then</p> <p style="text-align: center;">Page 163</p>	<p>1 meeting, was it, between you on the one hand and 2 Mr Springett on the other? 3 <b>A. There was a complete disagreement.</b> 4 Q. Yes. 5 MR MACLEAN: On that happy note, sir, is that a convenient 6 moment? 7 THE CHAIRMAN: On that note of agreement. Mr Maclean, 8 remind me where I find the confidential notes for the 9 four way meeting? 10 MR MACLEAN: Yes, you will find the note of the four way 11 meeting -- 12 MR HARRIS: It is bundle 14/7734. 13 MR MACLEAN: I should know that. Mine has already fallen 14 out of the bundle. 15 MR HARRIS: Bundle 14/7734 and 7735. 16 MR MACLEAN: And the document you will see, sir, from 7734, 17 it is common ground that it is Mr Springett's note of 18 the meeting and you can see that it is obviously written 19 up after the meeting because it is all in the past tense 20 and the document at 7736 is the document which 21 Mr Springett, on his evidence -- I am not sure whether 22 this has been tested, I don't think so. This is 23 a document which he had presented or had with him at the 24 meeting and 7737, Mr Springett explains is his own 25 aide-memoire or some sort of agenda for himself.</p> <p style="text-align: center;">Page 165</p>

<p>1 THE CHAIRMAN: Just to be clear, your issue about the 2 confidence here is less that it is Mr Springett's 3 confidence but it is third party confidence? 4 MR MACLEAN: It is both. It is Mr Springett's confidence 5 when there are some questions discussed of the strategic 6 direction that OnTheMarket may or may not take which is 7 not publicly available, which is sensitive and 8 confidential. The whole thing is treated as a sensitive 9 and confidential meeting by all parties and therefore my 10 second concern is the position of Miss Platt and 11 Mr Crabb and their respective instance. And the final 12 point is, of course, is that it is common ground, 13 Mr Livesey accepts, that this note is a fair reflection 14 of the meeting. For my part, I don't think it is going 15 to be necessary to explore in great detail, questions 16 that go beyond those two pages of text, but those two 17 pages of text and the contents of them are sensitive and 18 confidential. 19 THE CHAIRMAN: Right. 20 MR HARRIS: Just so we set this up, perhaps, for first thing 21 in this morning, our position is it is not confidential. 22 It has never been confidential, it was never expressed 23 to be confidential and we would be wishing for this to 24 be available on a non-confidential basis. Whilst I am 25 at it, can you see that on the first of the two pages,</p> <p style="text-align: center;">Page 166</p>	<p>1 day, but I don't think we're in trouble. 2 THE CHAIRMAN: I am grateful. I should be clear, no 3 criticism was intended of you. It is entirely down to 4 the Tribunal. So we'll see how we go tomorrow but 10.30 5 start. We'll shave time off where necessary. 6 MR MACLEAN: I am very grateful, sir. 7 (3.05 pm) 8 (The court adjourned until the following day at 10.30 am) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 168</p>
<p>1 there is a bizarre redaction for supposed irrelevance, 2 even from Mr Livesey, who was in the meeting. So we 3 would like that to be revealed, so if a copy of that 4 information could be provided in the morning as well. 5 MR MACLEAN: I am sure we'll address that second point -- 6 the first point. 7 THE CHAIRMAN: The battle lines are drawn. I see, and it is 8 entirely the Tribunal's fault, that you are a little bit 9 behind, Mr Maclean. Would it assist if we started early 10 tomorrow or are you happy with 10.30? 11 MR MACLEAN: You said we were behind. 12 THE CHAIRMAN: Only because of -- 13 MR MACLEAN: I am not behind. It is just that we are 14 finishing early, that's all. 15 THE CHAIRMAN: Yes, that is why I said it was our fault, 16 Mr Maclean. I am simply raising with you what you 17 raised with us, whether an early start for tomorrow. 18 MR MACLEAN: I am very grateful. 19 MR FREEMAN: Perhaps you could give us your alternative 20 facts. 21 MR MACLEAN: We think we are okay. With the Tribunal's 22 indulgence, if that turns out not to be right, never 23 trust counsel's time estimate, we can perhaps shave 24 15 minutes in the middle of the day. Perhaps, if 25 I crave the indulgence, if necessary, at the end of the</p> <p style="text-align: center;">Page 167</p>	<p>1 INDEX 2 MISS GLYNIS FREW (sworn) .....1 3 Examination-in-chief by MR HARRIS .....1 4 Cross-examination by MR MACLEAN .....2 5 Re-examination by MR HARRIS .....52 6 MR DAVID CHRISTOPHER LIVESSEY .....59 (affirmed) 7 Examination-in-chief by MR HARRIS .....59 8 Cross-examination by MR MACLEAN .....61 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 169</p>

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