

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

Competition Appeal Tribunal
Victoria House
Bloomsbury Place
London
WC1A 2EB

Before:

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

Between:

AGENTS' MUTUAL LIMITED
Claimant

and

GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)
Defendant

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

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

<p>1 Wednesday, 8 February 2017 2 (10.30 am) 3 Housekeeping 4 MR HARRIS: Good morning, sir. Sir, I am going to hand up 5 for use in the documents in the trial file, the body of 6 which, if you don't already have, can be made available 7 to you as well, two documents I shall be using in 8 cross-examination that are just, I think, helpful 9 aide-memoires for the Tribunal. One of them is 10 a dramatis personae of people at Agents' Mutual and we 11 have done that, you will get that in just a moment. We 12 have done that because there are a large number of names 13 that are going to come out in all of these documents and 14 I thought you might find it of assistance to see some of 15 them in bold type, to see who they are and where they 16 fit in. 17 THE CHAIRMAN: Is this supposed to go in a file? Right, we 18 have it here. 19 MR HARRIS: And the other one is simply a list. You will 20 appreciate that the One Other Portal rule is you can't 21 list on competing portals and this is simply a list 22 where we have extracted from the disclosure, the long 23 list of what is said to be competing portals, but we 24 have also extracted a long list of what are said in the 25 disclosure not to be competing portals, so again, it is</p> <p style="text-align: center;">Page 2</p>	<p>1 It looks like you have quite a lot of it but the most 2 important thing is if you turn over to paragraph 40, so 3 this is the Moginie James's defence, right at the outset 4 of the Moginie James action and you can see that right 5 at the outset at paragraph 40, they squarely allege that 6 the OOP rule breaches the Competition Act. 7 THE CHAIRMAN: Yes, as I recall, it is a subset of the 8 allegations that you are advancing on behalf of your 9 clients. 10 MR HARRIS: Yes. 11 MR MACLEAN: Mr Harris didn't re-examine that witness and he 12 could have taken that point in re-examination. The 13 questions, of course, were not directed to the CLEA but 14 to the correspondence which led to the litigation. We 15 can do a similar exercise and give you, frankly, a not 16 very illuminating list of the correspondence in bundle 17 X, where you will see that Gordon Dadds, in exchanges 18 with Eversheds, at least twice raised only points of 19 misrepresentation and the question of the competition 20 allegations which were pleaded, I accept pleaded lightly 21 in the defence, came much later. So my learned friend 22 is, with respect, entirely wrong to suggest that the 23 questions and answers given by Mr James were somehow 24 wrong. The questions were directed to the position 25 before litigation and Mr James's answers were correct</p> <p style="text-align: center;">Page 4</p>
<p>1 just an aide-memoire. 2 And the third one is just to clarify a matter that 3 was raised yesterday by my learned friend. It is an 4 extract from the transcript of yesterday. So the third 5 one looks like this. It begins with a four page extract 6 from the transcript in -- 7 THE CHAIRMAN: Beginning on page 177. 8 MR HARRIS: Yes, if you were to pick it up at the bottom of 9 180, so bottom right-hand side of that first page, you 10 will see that Mr Maclean put the question to Mr James: 11 "But your complaint last year and what led to the 12 litigation ..." 13 THE CHAIRMAN: Sorry, I don't have it yet. Page 180? 14 MR HARRIS: Yes, and I am picking up, in particular, at 15 line 17, where he says: 16 "Your complaint was about misrepresentation. Your 17 complaint wasn't about the One Other Portal rule or any 18 competitions or concerns, was it?" 19 Just so that the Tribunal knows because these 20 documents were taken out of the bundle when the Moginie 21 James case settled. If you now turn over, that is in 22 fact, not right. Mr James didn't address it but as 23 a matter of fact, it is not right and we have extracted 24 the defence and counterclaim of Moginie James. You have 25 the front page, just so you know what the document is.</p> <p style="text-align: center;">Page 3</p>	<p>1 and if Mr Harris had wanted to deal with that, he could 2 have done it in re-examination, not gone away overnight 3 and handed up some bits of paper. But if the Tribunal 4 is helped by these pieces of paper, we can do the same. 5 I apprehend the Tribunal will not be helped and if 6 matters are to be put to a witness like that, it should 7 be done in re-examination, which is the traditional and 8 reasonable way of doing so. 9 THE CHAIRMAN: Mr Maclean, you are quite right, I don't 10 really want a list. 11 MR MACLEAN: I am sure you don't. 12 THE CHAIRMAN: I was aware of the scope of the pleadings in 13 the action, simply because I was reading in before the 14 matter was disposed of and the answers that we have on 15 the transcript are the answers that we have on the 16 transcript and -- 17 MR HARRIS: I couldn't go to it in re-examination because 18 that document had been taken out of the trial bundles. 19 There is one other matter. We received a letter 20 last night from Mr Maclean's instructing solicitors, 21 making enquiries about the answer Mr Livesey gave 22 regarding any contribution to costs from Zoopla. This 23 is a matter we are looking in to today with Mr Livesey 24 and we will respond as soon as possible and hopefully 25 during the course of today and in writing.</p> <p style="text-align: center;">Page 5</p>

<p>1 Can I just make two matters clear. They are as 2 follows: the first I ever heard and the first my 3 instructing solicitors ever heard about the contribution 4 was during the course of Mr Livesey's evidence. 5 However, we have ascertained that Mr Livesey did tell 6 his previous lawyers. You won't be aware of this but we 7 are a changed team. There were previously different 8 solicitors. In fact we will be seeing that a little bit 9 later. 10 MR FREEMAN: You have a fresh look about you. 11 MR HARRIS: Thank you ever so much, sir, I don't think 12 anyone has paid me that compliment before. 13 MR FREEMAN: They won't again either. 14 MR HARRIS: We didn't know but Mr Livesey had told his 15 lawyers, it is just he told previous lawyers and we 16 didn't find out from him and it's not as though there is 17 a document that sets out this, so we didn't get 18 a document, so I just wanted, lest there be -- 19 THE CHAIRMAN: That is helpful to know, Mr Harris. 20 MR MACLEAN: Can I raise one other point of what I think 21 Mr Harris called housekeeping, which is that having had 22 the opportunity, overnight, to review the redaction for 23 irrelevance in the middle of the discussion of the four 24 way meeting at the board meeting which Mr Harris raised 25 yesterday, Mr Holmes and I, independently, and in</p> <p style="text-align: center;">Page 6</p>	<p>1 THE CHAIRMAN: I understand. As you know, Mr Maclean, we 2 exercised a self denying ordinance regarding that 3 evidence. We are very happy to read Mr Bronfentrinker's 4 witness statement. We will do so. 5 MR MACLEAN: I am grateful. 6 THE CHAIRMAN: But we'll abstain for the moment, the 7 pleasure of reading the transcripts. 8 MR MACLEAN: Yes, I would be very grateful. We can raise it 9 at some suitable time. 10 MR HARRIS: Just on that note, we will provide you with 11 a list of some suggested passages in the transcripts to 12 read. Of course, it is a matter entirely for you 13 whether you read them before or after but it sounds as 14 though there is going to be a dispute about the 15 application to adduce this evidence and we will, of 16 course, be suggesting that in order to make up your 17 mind, one of the things you will have to have regard to 18 is certain passages in those transcripts, even if that 19 turns out to be de bene esse. So those are the 20 preliminary matters from me. 21 MR MACLEAN: It would also be very helpful in this morass of 22 transcript that you haven't seen, if Mr Harris, at the 23 same time as he furnishes the Tribunal with the list of 24 alleged points of relevance, could do the same to us. 25 THE CHAIRMAN: I think that is taken as read. Anything we</p> <p style="text-align: center;">Page 8</p>
<p>1 combination, looked at that redaction and we are both 2 satisfied that the matters covered up for irrelevance do 3 not fall within the CPR 31.6 and, therefore, are 4 properly redacted. 5 THE CHAIRMAN: I am very grateful, Mr Maclean, and 6 thank you. 7 MR MACLEAN: The second matter, sir, is this: having had 8 also in my spare time, the opportunity to review 9 Mr Bronfentrinker's witness statement, that witness 10 statement raises a number of questions, raises many more 11 questions, actually, than it answers. What I am going 12 to invite the Tribunal to do at some suitable stage 13 today, it is only a four or five page statement, is to 14 read Mr Bronfentrinker's witness statement but not at 15 this stage, the transcripts themselves because I suspect 16 I will be inviting the Tribunal to consider 17 Mr Bronfentrinker's witness statement and the questions 18 that it raises, as to the problems of the documents but 19 I can't explain that to the Tribunal, unless and until 20 you have read Mr Bronfentrinker's statement. Obviously, 21 it is not for me to, as it were, stop the Tribunal going 22 into the transcripts if you want to, but for my 23 purposes, it will be necessary for the Tribunal to have 24 read Mr Bronfentrinker's statement but not the 25 transcripts themselves.</p> <p style="text-align: center;">Page 7</p>	<p>1 get, you get. 2 MR MACLEAN: So that, I think, is the housekeeping and the 3 next witness is Mr Symons. 4 MR PETER SYMONS (affirmed) 5 Examination-in-chief by MR MACLEAN 6 MR MACLEAN: Mr Symons, good morning. Could you be handed 7 bundle C, please. And would you turn in it to tab 8 number 6. 9 A. Yes. 10 Q. Is that the first page of your witness statement that 11 you made in these proceedings? 12 A. Yes. 13 Q. Would you turn, Mr Symons, to page 98, using the 14 numbering at the bottom right-hand corner and do you see 15 a signature on that page. Could you identify that 16 signature? 17 A. Yes, it's mine. 18 Q. Is that the statement that you have made in these 19 proceedings? 20 A. Yes. 21 Q. Have you read that statement through recently, before 22 coming to court? 23 A. Yes. 24 Q. And having done so, is there anything in that statement 25 that you want to add to or subtract or change in any</p> <p style="text-align: center;">Page 9</p>

1 other way?
 2 **A. There is a small typo but --**
 3 Q. A small typo?
 4 **A. Yes.**
 5 Q. Tell me about the small typo?
 6 **A. Just one G in Stags.**
 7 Q. All right, so if we read Staggs with two Gs as being
 8 Stags with one G, apart from that, are you content for
 9 this to be part of your evidence in this case?
 10 **A. Yes.**
 11 MR MACLEAN: Thank you very much, Mr Symons. Mr Harris may
 12 have some questions for you.
 13 Cross-examination by MR HARRIS
 14 MR HARRIS: Good morning. Mr Symons, could I please draw
 15 your attention to your witness statement at tab 6 at
 16 paragraph 8.4. Do you see in the first couple of lines,
 17 you are talking there about "2010 becoming increasingly
 18 concerned about steadily increasing prices that Stags
 19 was paying"?
 20 **A. Yes.**
 21 Q. Can you show me the document in which you did an
 22 analysis at this time, of the cost per lead of
 23 the prices that you were getting from those portals?
 24 **A. No.**
 25 Q. Is that because you didn't do one?

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1 **A. Yes.**
 2 Q. But it is right, isn't it, that at the same time as the
 3 steadily increasing prices, there were also steadily
 4 increasing portal audiences; yes?
 5 **A. Yes.**
 6 Q. It is also right, isn't it, that at the same time as
 7 these increasing prices, there was an increased number
 8 and type of services that were being provided to estate
 9 agents by those portals, isn't it?
 10 **A. Sorry, please repeat?**
 11 Q. Yes, at the same time as the prices of the portals were
 12 going up, the portals were providing new and different
 13 and additional services to estate agents, weren't they?
 14 **A. There were some -- sorry, I don't recall exactly but as
 15 far as I'm concerned, there were some that were charged
 16 for if you wanted them.**
 17 Q. Yes, thank you.
 18 **A. If I could clarify, it is the base price I'm referring
 19 to, in terms of its increasing.**
 20 Q. Yes. Thank you. But you accept that over time, this
 21 paragraph is talking about 2010, but since then, more
 22 and more people have taken their property searches
 23 online, haven't they?
 24 **A. Yes.**
 25 Q. And there is less and less spend by estate agents, isn't

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1 there, on print media?
 2 **A. As far as Stags is concerned, that's only happened this
 3 year.**
 4 Q. But that is the trend, right, away from print media and
 5 into online advertising expenditure?
 6 **A. A little.**
 7 Q. Can we turn over the page now, to paragraph 8.6. You
 8 talk about reliance on property portals and then in the
 9 final sentence you say that:
 10 "No agent would want to be the first to delist as
 11 they would risk giving the other agents who were
 12 continuing to list on the portals, a competitive
 13 advantage."
 14 Do you see that?
 15 **A. Yes, I do.**
 16 Q. And so you accept, don't you, that an important
 17 parameter of competition between agents is the number
 18 and the identity of the portals on which they list?
 19 **A. I accept that our clients, our potential vendor clients,
 20 required or felt they wished that their properties were
 21 listed online.**
 22 Q. Right, but looking at your final sentence, Mr Symons,
 23 "a competitive advantage"; that is your phrase, isn't
 24 it?
 25 **A. Yes.**

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1 Q. And that arises if you list on new and different
 2 portals, as compared with one of your competitor's
 3 right; that is what you are saying there?
 4 **A. Yes.**
 5 Q. So an element or feature of competition as between
 6 estate agents is the number and type of portals that
 7 they are on. I am not saying the only one but that
 8 includes that parameter, doesn't it?
 9 **A. And not the number. We had many opportunities of lots
 10 and lots of portals over the years and many of them were
 11 insignificant, so would not have given us a competitive
 12 advantage.**
 13 Q. Are you sure, Mr Symons, because is it not the case that
 14 if in your local area you are on, say, one or two
 15 portals but one of your important local competitors is
 16 on an additional third or fourth portal, that is
 17 producing any kind of leads, that other competitor of
 18 yours could try to tempt away your clients by saying to
 19 your clients: well, you shouldn't use that, should you,
 20 because look, they are only on one or two portals,
 21 whereas I'm on three or four and these produce further
 22 leads?
 23 **A. Providing the client believed that the portal was
 24 significant.**
 25 Q. Right. That's right. So in those circumstances, the

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<p>1 number of portals is also grounds for competition as 2 between estate agents, isn't it? 3 A. Of significant portals, yes. 4 Q. Yes, thank you. And the OOP rule, you know what I mean 5 by that, don't you? The OOP rule restricts, doesn't it, 6 the number of portals that members of Agents' Mutual can 7 list on, doesn't it? 8 A. Yes. 9 Q. That is right. So members of Agents' Mutual are 10 therefore restricted, aren't they, as between that 11 parameter of competition; correct? 12 A. The OOP rule set out that we were -- could list with 13 OnTheMarket or one other portal. 14 Q. That's right, but only a maximum of two; right? 15 A. Yes. 16 Q. So therefore you can't list on three or four or five? 17 A. Correct. 18 Q. So you are therefore restricted in that parameter of 19 competition, aren't you? 20 A. If we wished to, yes. 21 Q. Thank you. In fact, one of the reasons why you, as an 22 agency, were content to be so restricted, is because you 23 knew that only advertising on two portals, as opposed to 24 three or four or five or however many, that would reduce 25 your costs, wouldn't it?</p> <p style="text-align: center;">Page 14</p>	<p>1 A. Yes. 2 Q. So that means at times, Mr Symons, Stags was on more 3 than two portals? 4 A. Yes. I mean to completely clarify, they were utterly 5 insignificant to us and we said: well let's give it 6 a go. It was free. 7 Q. That's right, but there are two points which emerge from 8 that, don't they, Mr Symons? The first is that from time 9 to time you were on more than two portals, weren't you? 10 A. Yes. 11 Q. And indeed, the more than two that you would typically 12 sign up from time to time, were the ones that offered 13 free listing? 14 A. Yes, I mean, I kept pretty clear of the free listings. 15 Q. I have no doubt, Mr Symons, but the point is that the 16 free listing tempted you in to signing up with another 17 portal, a third or a fourth portal from time to time, 18 didn't it? 19 A. Yes. 20 Q. Over the page in your paragraph 9.4, do you see you 21 start to talk about the OOP rule, lower down? 22 A. "He also explained to us that ..." 23 Q. I am looking a bit further down. Cast your eye over the 24 whole thing, 9.4, but I am sort of looking at the next 25 sentence down beyond that one:</p> <p style="text-align: center;">Page 16</p>
<p>1 A. Sorry, just do that again, please. 2 Q. Yes, sorry, it was a bit quick. 3 A. No, no. 4 Q. No, I mean my voice. Don't take that the wrong way. 5 I was reading it out too quickly. If you spend on three 6 or four or five portals, that is a greater cost than if 7 you only spend on a maximum of two; right? 8 A. Yes. 9 Q. So one of the attractions to you of the OOP rule was so 10 that you wouldn't have to spend as much on portals as if 11 there wasn't an OOP rule restricting you to two; right? 12 A. Sorry, to clarify, there really were only two portals. 13 The third and the fourth and the fifth, I don't think we 14 ever paid for at all. We had lots and lots of free 15 portals trying to give us space and they were trying to 16 build traction of their own, so there were only two we 17 were paying for. 18 Q. And in fact in 9.2, you refer to these other portals and 19 them being free to list. Do you see that in the middle 20 of paragraph 9.2? 21 A. Indeed, Stags. 22 Q. That is correct, thank you, Mr Symons: 23 "Stags had been approached by a number of these new 24 entrants and when they offered free listing, would 25 sometimes sign up to these portals"?</p> <p style="text-align: center;">Page 15</p>	<p>1 "The OOP rule made good business sense to me. I had 2 seen a number of portals ..." 3 A. Sorry, I still haven't caught it, sir. 4 Q. I beg your pardon, it is the final sentence. 5 A. Okay, "I discussed this in more detail"? 6 Q. And then the next sentence? 7 A. "I had seen a number of portals try and fail to enter 8 the market and for those reasons, I developed section 11 9 below". 10 Okay, yes. 11 Q. So you are talking about other portals having tried and 12 failed to enter the market; right? 13 A. Yes. 14 Q. But in fact, Zoopla had broken in to the market against 15 a dominant Rightmove and another incumbent at the time 16 of Zoopla's entry called Primelocation and it had broken 17 in, Zoopla, without using an OOP rule, hadn't it? 18 A. Yes, it had got involved in free advertising with the 19 local press, so we placed advertisements, forgive us 20 talking parochially, so the West Morning News, for 21 example, and we ended up with free listings going with 22 our newspaper advertising. 23 Q. That is right but the point is, I think you accepted 24 this, I just want to be clear, that Zoopla did break in 25 against both Rightmove and Primelocation and all the</p> <p style="text-align: center;">Page 17</p>

<p>1 other smaller portals, without using an OOP rule, didn't 2 it?</p> <p>3 A. I don't think we listed -- we paid Zoopla to list before 4 they bought Primelocation or before or after they were 5 throwing in their listing from the local -- from a local 6 press.</p> <p>7 Q. Thank you. And it is right as well, isn't it, that 8 Rightmove had entered into the market in about 2010 9 without an OOP rule; correct?</p> <p>10 A. Yes.</p> <p>11 Q. In fact, Rightmove had -- did you know this, it only had 12 preferred listing from four founder members? Did you 13 know that?</p> <p>14 A. Sorry, what do you mean by preferred?</p> <p>15 Q. It wasn't contractual complete exclusivity, the four 16 founder members were, if you like, non-contractually 17 bound, if and where commercially possible, to give 18 exclusive listings to Rightmove, but if commercially 19 necessary, they could put their listings somewhere else 20 as well?</p> <p>21 A. I wasn't aware of that. All I was aware of was the 22 discounted fees that those firms had.</p> <p>23 Q. That is fine. If you didn't know, that's no problem.</p> <p>24 A. Yes.</p> <p>25 Q. Then you say that you had seen a number of portals try</p> <p style="text-align: center;">Page 18</p>	<p>1 an OOP?</p> <p>2 A. No, but we looked and saw that they had made good 3 attempts, they had tried their best and there were some 4 fairly significant players that had failed.</p> <p>5 Q. The next paragraph, you refer in 9.5 to the letter of 6 intent. You know what I am referring to there, don't 7 you?</p> <p>8 A. I know what the letter of intent was, yes.</p> <p>9 Q. And it is right, isn't it, that you got comfort from the 10 letter of intent process because you knew that if you 11 signed one, you wouldn't actually have to sign the 12 contract of membership until a group of other agents had 13 also indicated a willingness to join Agents' Mutual?</p> <p>14 A. Yes, definitely. We were very, very concerned that this 15 was yet another failure and so we were not prepared to 16 sign up to something unless we thought it had wheels.</p> <p>17 Q. Yes, and when you say "not unless it had wheels", you 18 mean not unless there was a group of like minded agents 19 in your locality; correct?</p> <p>20 A. No, I mean by that, that there was a chance of the 21 portals succeeding.</p> <p>22 Q. Yes, let me just explore that with you, Mr Symons. It 23 is a chance of the portal succeeding because more than 24 one agent, a group of agents in your local region, would 25 sign up, if you like, en bloc?</p> <p style="text-align: center;">Page 20</p>
<p>1 and fail to enter the market but can you show me the 2 analysis that Mr Springett gave you of all of the other 3 potential methods of entering this market without an OOP 4 rule?</p> <p>5 A. Sorry, is there a document I haven't seen?</p> <p>6 Q. Well, I am asking you. Did he ever give you a document 7 showing you an analysis of all these other potential 8 entry methods?</p> <p>9 A. Did he give me an analysis --</p> <p>10 Q. Yes?</p> <p>11 A. -- of how, sorry? I want to get it absolutely right as 12 to what you are asking.</p> <p>13 Q. Quite right, Mr Symons. So what I am saying to you is 14 you give evidence that you thought that there were 15 a number of portals that tried and failed to enter 16 without using an OOP rule?</p> <p>17 A. Yes.</p> <p>18 Q. Did Mr Springett present you with analysis of other ways 19 to enter the market that didn't include an OOP rule?</p> <p>20 A. I don't think so but I used my own judgment of what 21 I was seeing going on.</p> <p>22 Q. A fair point. But you didn't conduct a systematic 23 analysis either, did you --</p> <p>24 A. No, sir.</p> <p>25 Q. -- of all other potential means of entry without using</p> <p style="text-align: center;">Page 19</p>	<p>1 A. It was a comfort that there was a sufficient momentum to 2 get this ball rolling.</p> <p>3 Q. And the momentum came from there being a group of 4 agents, ie not just you; you, together with some other 5 agents; right?</p> <p>6 A. I think the word "group" is inaccurate. What is 7 accurate is that there was sufficient.</p> <p>8 Q. Right, let's use a different word than group. It is 9 your agency and other agencies about the same time; 10 right?</p> <p>11 A. If we could see -- I think the number was 1800 12 offices -- were signing their letter of intent, then we 13 could see that the project had wheels.</p> <p>14 Q. Right.</p> <p>15 A. If that's ...</p> <p>16 Q. If we don't call it a group, a list of 1800?</p> <p>17 A. To be honest, we never saw a list, but we were comforted 18 that there were 1800.</p> <p>19 Q. Thank you. In 9.6 of your witness statement you talk 20 about -- I imagine this is possibly one of the banes of 21 your professional life, about having to persuade your 22 various partners into making unanimous decisions; yes?</p> <p>23 A. It is rather fun.</p> <p>24 Q. Good, I am pleased that's the case. Do you see in 9.6, 25 you identify four reasons that you use to persuade --</p> <p style="text-align: center;">Page 21</p>

6 (Pages 18 to 21)

1 I am quoting here from your 9.6, "to persuade those
 2 partners" and you put them in (i) to (iv). Do you see
 3 them?
 4 **A. Yes.**
 5 Q. Just cast your eye over, please, over those reasons and
 6 refresh your memory. (Pause)
 7 **A. Okay.**
 8 Q. Your list of reasons for persuading your partners to
 9 join Agents' Mutual doesn't include --
 10 **A. And myself.**
 11 Q. And yourself, thank you.
 12 **A. Yes.**
 13 Q. It doesn't include any reference to the OOP rule, does
 14 it?
 15 **A. No.**
 16 Q. So that wasn't a reason for you persuading your partners
 17 to sign up or yourself, was it?
 18 **A. We needed to be convinced that our investment and our**
 19 **commitment was going to succeed and we very much felt**
 20 **that the OOP rule was part of that.**
 21 Q. But what you say here, Mr Symons, in 9.6, is these are
 22 the reasons which persuaded you and your partners to
 23 sign up and it doesn't include the OOP rule, does it?
 24 **A. I think (iv) covers it.**
 25 Q. You say that --

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1 **A. Sorry, no, it doesn't.**
 2 Q. No, it doesn't, does it?
 3 **A. No, it doesn't.**
 4 Q. In fact you go on in the very next paragraph to --
 5 **A. Can I just make absolutely plain.**
 6 Q. Please?
 7 **A. So far as the OOP rule was concerned, it was very -- it**
 8 **was clear to us that that was a good strategy for having**
 9 **a chance for this minnow to succeed in this big pool.**
 10 Q. I understand that, Mr Symons. But my point is
 11 different.
 12 **A. I haven't listed in (i) to (iv) and now you ask me, it**
 13 **was very relevant.**
 14 Q. Actually that is not correct, is it, Mr Symons, on your
 15 own evidence, because you listed the four reasons for
 16 signing up and it doesn't include the OOP rule and in
 17 fact, you didn't even discuss whether the OOP rule was
 18 necessary or not for signing up, when you were
 19 persuading your partners, did you?
 20 **A. It was a fait accompli. That was the offering and for**
 21 **us, we felt that that gave Agents' Mutual, OnTheMarket,**
 22 **a chance, as one of the factors.**
 23 Q. You don't identify it here and if you turn over the page
 24 to 11.6, picking it up in the second line, your evidence
 25 is:

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1 "I do not recall there being any discussion between
 2 me and the other partners at Stags or between me and
 3 other agents as to whether the OOP rule was necessary
 4 for the portal to succeed."
 5 You weren't even discussing it at the time, were
 6 you?
 7 **A. And I understood and agreed with the need for the OOP**
 8 **rule from the time the concept was introduced to me.**
 9 Q. In your paragraph 9.7, so going back, you specifically
 10 state in the first line that:
 11 "The focus of the debate was on the amount Stags was
 12 going to have to invest and the likelihood of losing the
 13 investment if the portal fails and did not concern the
 14 OOP rule."
 15 **A. I take your point.**
 16 Q. Yes.
 17 **A. But for us, we were sat in -- a room of guys trying to**
 18 **work out what's best to do and clearly we needed to be**
 19 **convinced that this had a chance.**
 20 Q. That's right.
 21 **A. And the OOP rule gave us comfort. We didn't have to**
 22 **debate it. It wasn't a problem. It didn't concern us.**
 23 **What concerned us was that this was -- had a good chance**
 24 **of working.**
 25 Q. But the truth is, Mr Symons, is it not, is that you

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1 didn't discuss it, the debate did not concern it, it is
 2 not in your list of reasons, it wasn't a reason for you
 3 signing up to Agents' Mutual, was it, the OOP rule?
 4 **A. It definitely was giving us comfort that Agents' Mutual**
 5 **would succeed. I think -- I understand where you are**
 6 **coming from. It wasn't a contentious issue amongst the**
 7 **partners. It was offered to -- that was the offering.**
 8 **We felt that it was -- didn't need debate.**
 9 Q. And the point really is, Mr Symons, against that
 10 background of it not being part of a debate, not even
 11 being in the discussions --
 12 **A. Because it was -- that was the offering.**
 13 Q. Sorry, may I just finish the question?
 14 **A. Of course, sorry.**
 15 Q. Against that background, you would have signed up to
 16 Agents' Mutual, even if there hadn't been an OOP rule,
 17 wouldn't you?
 18 **A. No. I don't think it would have flown, sorry, I'm**
 19 **wheels and flying, aren't I, but I don't think it would**
 20 **have worked. You are talking about pretty small beast**
 21 **in a very, very difficult, competitive world.**
 22 THE CHAIRMAN: Mr Symons, obviously the OOP rule was both,
 23 as you have described, a justification or a tool whereby
 24 Agents' Mutual establishes its portal market and you
 25 have said that made business sense to you, but equally,

Page 25

<p>1 it is a constraint on the agent.</p> <p>2 A. Yes.</p> <p>3 THE CHAIRMAN: Are we to infer from what you say in</p> <p>4 paragraph 9.6 that the OOP rule wasn't seen as</p> <p>5 a constraint by Stags on its business?</p> <p>6 A. Definitely not. It wasn't a constraint on Stags'</p> <p>7 business.</p> <p>8 THE CHAIRMAN: Because you didn't see the value in having</p> <p>9 multiple portals?</p> <p>10 A. Yes, we had been -- the environment was that agents had</p> <p>11 moved to listing with two portals and we were quite</p> <p>12 happy for that to continue. We liked the AM project and</p> <p>13 we had no concerns about it restricting us at all, of</p> <p>14 Agents' Mutual being one and then making a choice a bit</p> <p>15 later on as to which of the two to go with.</p> <p>16 THE CHAIRMAN: Because if, say, in your partnership, you had</p> <p>17 half who were dead keen on Rightmove and half who were</p> <p>18 dead keen on Zoopla, you would have a problem?</p> <p>19 A. Yes, we would have done.</p> <p>20 THE CHAIRMAN: And it would have to have been discussed and</p> <p>21 resolved?</p> <p>22 A. And it was at a later stage. The letter of intent was</p> <p>23 well before the -- I mean like more than a year before</p> <p>24 the final decision, so -- and we hadn't got all the</p> <p>25 facts. You know, we didn't know. Forgive me, letter of</p> <p style="text-align: center;">Page 26</p>	<p>1 OFT and successfully excluding the non-agents."</p> <p>2 And by that, you were referring to the fact that AM</p> <p>3 proposed to exclude online only agencies from</p> <p>4 membership. Do you remember that email?</p> <p>5 A. Yes, well I have subsequently remembered it, but, yes.</p> <p>6 Q. And the truth is that as a group of prospective members,</p> <p>7 the Agents' Mutual membership wanted to exclude</p> <p>8 online -- what you call here online only agencies</p> <p>9 because they are a competitive threat to traditional</p> <p>10 agencies like your own; right?</p> <p>11 A. No, we do very different jobs. So the online agencies</p> <p>12 are listing only and -- or Stags anyway, is -- it sells.</p> <p>13 Q. With respect, Mr Symons, that is not right, is it?</p> <p>14 Online agencies do all the functions of your traditional</p> <p>15 estate agency, don't they?</p> <p>16 A. No.</p> <p>17 Q. So they list properties and they value properties, they</p> <p>18 put their pictures online, they arrange for the sales,</p> <p>19 don't they? They do all of those things?</p> <p>20 A. They do the things you mention but not the selling</p> <p>21 process.</p> <p>22 Q. I see, sorry. You are talking about, if you like, the</p> <p>23 contractual process at the end, after you have found</p> <p>24 a buyer?</p> <p>25 A. No.</p> <p style="text-align: center;">Page 28</p>
<p>1 intent was sort of, I think for us, mid to end of 13.</p> <p>2 We really had to make decisions about which other</p> <p>3 portal, end of 14.</p> <p>4 THE CHAIRMAN: True, but at the very least, it would have</p> <p>5 been apparent to you that there might be a potential</p> <p>6 problem?</p> <p>7 A. Yes.</p> <p>8 THE CHAIRMAN: Because you would have to choose --</p> <p>9 A. We would have to have debated it out.</p> <p>10 THE CHAIRMAN: Yes.</p> <p>11 A. But none of us knew the facts as to what the offerings</p> <p>12 would be in a year's time. We were quite happy at</p> <p>13 letter of intent time. We understood what it meant and</p> <p>14 we were then going to wait and see how the portal market</p> <p>15 changed over a 12 month period.</p> <p>16 THE CHAIRMAN: Thank you. Sorry, Mr Harris.</p> <p>17 MR HARRIS: No, thank you.</p> <p>18 Mr Symons, I am now on your next paragraph, 9.8 and</p> <p>19 you exhibit a document but, very helpfully, we don't</p> <p>20 need to turn it up because you have extracted the</p> <p>21 relevant bit. Do you see that you refer to a document</p> <p>22 and you say that:</p> <p>23 "In that document, in an email you sent to</p> <p>24 Mr Springett, you stated that:</p> <p>25 "It seems to me that the big drama is likely to be</p> <p style="text-align: center;">Page 27</p>	<p>1 Q. What are you talking about then?</p> <p>2 A. Finding buyers by -- I mean, I know we are talking about</p> <p>3 online here, but it is not the main thing in estate</p> <p>4 agency. The main thing in estate agency is getting on</p> <p>5 the telephones, selling property.</p> <p>6 Q. But that is not right, is it, Mr Symons? A minute ago</p> <p>7 you said, you agreed with me, that it is increasingly</p> <p>8 important to be on the online portals and the online</p> <p>9 agencies are on the online portals, advertising their</p> <p>10 clients' properties, aren't they?</p> <p>11 A. Those two things don't conflict.</p> <p>12 Q. The truth is, what you wanted as a prospective member,</p> <p>13 with the other fellow prospective members, is to exclude</p> <p>14 these non-agents because they offer, for example, lower</p> <p>15 fixed fees in selling houses, don't they?</p> <p>16 A. That wasn't what we were. What we were looking for was</p> <p>17 trying to get a model for a portal to work.</p> <p>18 Q. That is right, but in putting together that model you</p> <p>19 wanted to exclude one source of competition, didn't you,</p> <p>20 namely online estate agencies?</p> <p>21 A. That's certainly what was done in the Agents' Mutual</p> <p>22 agreement.</p> <p>23 Q. Yes.</p> <p>24 A. But it wasn't a big issue for us.</p> <p>25 Q. That is not quite --</p> <p style="text-align: center;">Page 29</p>

<p>1 A. I was concerned, I had raised in that email, how does 2 that -- how does that fit with the OFT. 3 Q. That is right. Exactly. You raise it with the OFT 4 because you realised that it was potentially 5 anti-competitive, didn't you, to exclude one source of 6 competition? 7 A. To be honest, my field of expertise isn't in what's in 8 this competition court. 9 Q. No, but with respect, Mr Symons, you are the one who 10 wrote the email, saying "it seems to me that the big 11 drama is likely to be OFT". 12 What does OFT stand for? 13 A. Office of Fair Trading. 14 Q. That's right. So they deal with competition concerns, 15 don't they? 16 A. Indeed. 17 Q. So you wrote the email and you recognised that it would 18 -- "it seems to me that the big drama with the 19 competition authority might be successfully excluding 20 the non-agents." 21 You saw it as potentially anti-competitive, didn't 22 you? 23 A. Indeed, and I raised it and had a satisfactory answer. 24 MR FREEMAN: Could I ask, Mr Symons, I mean, was there any 25 other reason why OFT, which no longer exists, but OFT</p> <p style="text-align: center;">Page 30</p>	<p>1 won't for a while trigger the market share threshold, 2 25 per cent below which the OFT are not interested." 3 It is right, isn't it, that nowhere in your 4 membership agreement that you signed with 5 Agents' Mutual, does it say that this restriction on 6 online agencies falls away, if and when Agents' Mutual 7 reaches the "market share threshold of 25 per cent", 8 does it? 9 A. I'm very sorry, I haven't got the agreement in my head. 10 Q. You can never recall it being said to you? 11 A. I certainly can't, no, but I truly don't know. 12 Q. Your counsel can no doubt find it if it is in there and 13 give you the opportunity to comment on it when he has 14 his re-examination. 15 Can I then take you over the page to -- 16 A. Sorry, am I still in H2? 17 Q. No, I beg your pardon. We are back in -- 18 A. Keep H2? 19 Q. No, you won't need H2 again. So that one can be 20 dispensed with, thank you. 21 Back in your witness statement, and now I am at 22 paragraph 10.2, under the heading "Choice of one other 23 portal". In your 10.2, you say: 24 "Whilst it is obviously true that Stags would have 25 liked to know which other portal agents in our area were</p> <p style="text-align: center;">Page 32</p>
<p>1 was in your mind at the time? 2 A. No, there are these guys trying to set up a portal, is 3 it going to work? And I questioned as to whether there 4 were any issues or dramas that might hit later on. So 5 I raised that issue. 6 MR FREEMAN: At some stage the OFT did a sector enquiry into 7 estate agents generally across the country. Are you 8 aware of that? 9 A. No, sir. 10 MR HARRIS: You then said you got a satisfactory answer. 11 Could we turn that up. Could you be given bundle 12 H2/816. You can see that at 817 is your phrase: 13 "It seems to me the big drama is likely to be the 14 OFT". 15 That is at the top of 817. 16 A. Yes. 17 Q. As is the way with emails, we work backwards through the 18 bundle and we see Mr Springett's answer starts on 815. 19 "Ian Springett to Peter Symons on 21 May 2013", and he 20 addresses this part of your email in his response at the 21 very top of page 816. 22 A. Yes. 23 Q. So he says, you can see for yourself: 24 "Not sure why there would be no OFT issue. Plenty 25 of other places for them to advertise. In any event, we</p> <p style="text-align: center;">Page 31</p>	<p>1 choosing to stay with, to avoid other agents choosing 2 a different portal and putting us at a competitive 3 disadvantage, and that we heard rumours about which 4 portals some agents were choosing to go with. We did 5 not agree with AM, Mr Springett or other agents as to 6 which portal we would list with." 7 Is that still your evidence, Mr Symons? 8 A. We did not in any way agree with other agents or 9 Agents' Mutual about which portal we were going to 10 choose. 11 Q. Are you sure you don't want to withdraw that? 12 A. I'm absolutely sure. 13 Q. Can I take you, please, into bundle 8. 14 A. Sorry, my 8? 15 Q. No, bundle number 8 and turn, please, to 4140. This, 16 Mr Symons, is an email from Mr Underwood at Webbers. 17 You know who he is, don't you? 18 A. I don't know Mr Underwood but I know Webbers. 19 Q. And they are an agency in your part of the world, aren't 20 they? 21 A. They are in north Devon, yes. 22 Q. Do you see that it is then copied to a whole series of 23 other agents at various different agencies; yes? 24 A. Yes, I do. 25 Q. Do you see that it is headed "OnTheMarket" -- umbrellas</p> <p style="text-align: center;">Page 33</p>

<p>1 et cetera"?</p> <p>2 A. I am afraid I don't actually -- yes, okay "Umbrellas and</p> <p>3 emails, signatures -- "</p> <p>4 Q. That's right. And then it begins:</p> <p>5 "Good evening, gentlemen, here is an update on</p> <p>6 progress with the approach to OnTheMarket in the north</p> <p>7 Devon region, following a second meeting of our</p> <p>8 marketing group."</p> <p>9 Do you see that?</p> <p>10 A. Sorry?</p> <p>11 Q. The first line, "Good evening, gentlemen"?</p> <p>12 A. Yes, there is different size text, yes.</p> <p>13 Q. And then it says:</p> <p>14 "The consensus is to keep Rightmove and give notice</p> <p>15 to Zoopla."</p> <p>16 "Consensus" is a meeting of minds, isn't it,</p> <p>17 Mr Symons?</p> <p>18 A. Yes.</p> <p>19 Q. And then it goes on:</p> <p>20 "The plan discussed is to defer loading properties</p> <p>21 to RM for, say, three days after they appear on</p> <p>22 everyone's own website and OTM."</p> <p>23 Do you see that?</p> <p>24 A. "The consensus is to keep ..."</p> <p>25 Q. The next sentence?</p> <p style="text-align: center;">Page 34</p>	<p>1 Stags organisation, isn't it?</p> <p>2 A. I was actually frantically looking for that and</p> <p>3 I couldn't see -- who have you spotted, sir?</p> <p>4 Q. Can I help you and in the process of helping you, can</p> <p>5 I pass out two extracts from your website which we</p> <p>6 downloaded last night?</p> <p>7 A. Simon Cooper I have spotted.</p> <p>8 THE CHAIRMAN: Where is Mr Cooper?</p> <p>9 MR HARRIS: Mr Cooper --</p> <p>10 THE CHAIRMAN: There we are.</p> <p>11 MR HARRIS: The penultimate recipient.</p> <p>12 A. I don't see any others there that I know, I am afraid,</p> <p>13 sir.</p> <p>14 Q. I think you are about to be handed an exact.</p> <p>15 A. Okay.</p> <p>16 Q. You have already said you know who Simon Cooper is,</p> <p>17 don't you?</p> <p>18 A. Yes.</p> <p>19 Q. And in fact, by reference to this extract from your</p> <p>20 website last night, he is a very long standing partner</p> <p>21 of Stags, isn't he?</p> <p>22 A. Yes, he's one of my partners.</p> <p>23 Q. Then the second extract, you see several lines above</p> <p>24 Mr Cooper's name, there is a reference to Diane</p> <p>25 Shirazian?</p> <p style="text-align: center;">Page 36</p>
<p>1 A. "The plan discussed to defer loading properties to RM</p> <p>2 for three days after they appear on everyone's own</p> <p>3 website and OnTheMarket."</p> <p>4 Yes, okay.</p> <p>5 Q. So doing the best we can, I appreciate you are not</p> <p>6 a recipient of this email, you would agree with me that</p> <p>7 that seems to be a plan discussed by the people who are</p> <p>8 referred to, who are sent this email?</p> <p>9 MR MACLEAN: Mr Harris appears to be asking -- this is</p> <p>10 either a reading competition or questions about the</p> <p>11 interpretation of an email which wasn't sent by, to or</p> <p>12 copied to this witness. So this exercise seems to be,</p> <p>13 with respect, entirely pointless.</p> <p>14 MR HARRIS: May I continue, sir?</p> <p>15 THE CHAIRMAN: Mr Harris, you can ask the questions. I see</p> <p>16 the point Mr Maclean makes, but --</p> <p>17 A. They are a very strange collection of estate agents on</p> <p>18 the list, to be honest.</p> <p>19 MR HARRIS: That's right. Let us just finish off quickly</p> <p>20 then. It talks about an aim and a strategy. It talks</p> <p>21 about "it has been agreed". And it ends by saying:</p> <p>22 "Another meeting is planned at the end of November."</p> <p>23 Do you see all of those?</p> <p>24 A. Yes, I've got it.</p> <p>25 Q. In fact, this email is copied to two people in your</p> <p style="text-align: center;">Page 35</p>	<p>1 A. Okay, on two lines.</p> <p>2 Q. That is right and you know her as well, don't you?</p> <p>3 A. Diane is the secretary in our professional department.</p> <p>4 Q. And she works with Mr Cooper at the Exeter offer of</p> <p>5 Stags, doesn't she?</p> <p>6 A. She works in the same office, she doesn't work with him.</p> <p>7 Q. If you look at the website extract, that is who she is.</p> <p>8 You accept that, don't you?</p> <p>9 A. Yes.</p> <p>10 Q. So in fact this is, on the face of it, do you accept</p> <p>11 this, an email showing consensus and joint planning by</p> <p>12 a group of Devon estate agents, including about giving</p> <p>13 notice to Zoopla, that includes a partner of yours and</p> <p>14 another employee of your firm?</p> <p>15 A. I mean, I don't know Mr Underwood. Webbers I know well.</p> <p>16 If you notice, it is addressed to Salisbury, Newby and</p> <p>17 Henderson and cc'd, which the way I deal with emails is</p> <p>18 for information to a large group of -- a group of estate</p> <p>19 agents, including Simon Cooper.</p> <p>20 Q. It is right, isn't it, that Stags were in the habit of</p> <p>21 attending group meetings about Agents' Mutual, weren't</p> <p>22 they, from time to time?</p> <p>23 A. Yes. Can I -- this email, I have never seen and</p> <p>24 Mr Cooper is one of my partners and comes to partners</p> <p>25 meetings and it has never been discussed or it's not in</p> <p style="text-align: center;">Page 37</p>

<p>1 our knowledge at all.</p> <p>2 Q. Not in your personal knowledge. Plainly in Mr Cooper's</p> <p>3 knowledge?</p> <p>4 A. Simon Cooper was obviously copied in on it.</p> <p>5 Q. So it is in his knowledge then; right?</p> <p>6 A. Yes, okay, fine.</p> <p>7 Q. Thank you. I am now moving on in your witness</p> <p>8 statement. You can put away that bundle.</p> <p>9 A. To this young lady?</p> <p>10 Q. We won't need number 8 again. I am now in your witness</p> <p>11 statement at paragraph 11.2. Do you see in the second</p> <p>12 line you say:</p> <p>13 "Would need to have a diversified inventory of</p> <p>14 property, as compared to Rightmove and Zoopla."</p> <p>15 Do you see that?</p> <p>16 A. "It was clear to me that AM would have"?</p> <p>17 Q. No, just the top line?</p> <p>18 A. Okay, that's easy, yes.</p> <p>19 Q. So you say:</p> <p>20 "Would need to have a diversified inventory of</p> <p>21 property, as compared to Rightmove and Zoopla."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. But it is right, isn't it, that Agents' Mutual or the</p> <p>25 OTM website of Agents' Mutual, it doesn't have any</p> <p style="text-align: center;">Page 38</p>	<p>1 Q. But there are other ways to raise cash to start</p> <p>2 a business, aren't there, aside from subscription fees,</p> <p>3 listing fees?</p> <p>4 A. Yes, there are, but --</p> <p>5 Q. And that is why you say here, "just the main way"</p> <p>6 because there are other ways, aren't there?</p> <p>7 A. There are other ways. You can borrow money or lend</p> <p>8 money or ...</p> <p>9 Q. I am glad you give those examples. You could perhaps</p> <p>10 get it from a bank or an investment bank; do you agree</p> <p>11 with that?</p> <p>12 A. You could, if they were prepared to take that huge risk.</p> <p>13 Q. You could perhaps get it from a venture capitalist?</p> <p>14 A. Ditto.</p> <p>15 Q. And indeed -- I don't know if you were here yesterday or</p> <p>16 you have seen the transcript?</p> <p>17 A. I am afraid I wasn't, sir, but please --</p> <p>18 Q. Do you know who Mr Livesey is?</p> <p>19 A. He is at Connells.</p> <p>20 Q. He is the chief executive of Connells. He gave some</p> <p>21 evidence -- if anyone wants the reference, it's</p> <p>22 transcript day 2, page 142. Purple Bricks; do you know</p> <p>23 who Purple Bricks are?</p> <p>24 A. Indeed.</p> <p>25 Q. And they raised just under 50 million in finance to get</p> <p style="text-align: center;">Page 40</p>
<p>1 unique properties compared to Rightmove and Zoopla, does</p> <p>2 it?</p> <p>3 A. It has some that are unique to it and Rightmove and some</p> <p>4 that are unique to it and Zoopla.</p> <p>5 Q. That is right. So everything that's on Agents' Mutual's</p> <p>6 website OTM, can be seen on either Rightmove or Zoopla,</p> <p>7 can't it?</p> <p>8 A. Yes.</p> <p>9 Q. So that means it is not unique to Agents' Mutual's</p> <p>10 website, is it?</p> <p>11 A. Certainly not from Stag's point of view, yes.</p> <p>12 Q. So in fact, Agents' Mutual's website just has a subset</p> <p>13 of the properties that can already be seen on Rightmove</p> <p>14 and Zoopla, doesn't it?</p> <p>15 A. Or vice versa.</p> <p>16 Q. Or vice versa, yes, thank you.</p> <p>17 Moving on to the next page in 11.4, do you see that</p> <p>18 at the bottom of that paragraph, the penultimate</p> <p>19 sentence begins "In order to make this investment"?</p> <p>20 A. Yes.</p> <p>21 Q. If you could just refresh your memory as to those final</p> <p>22 sentences, please?</p> <p>23 A. (Sentences read).</p> <p>24 Q. Just read to yourself the final sentence.</p> <p>25 A. Thank you. Yes, sir.</p> <p style="text-align: center;">Page 39</p>	<p>1 their business up and off the ground. Did you know</p> <p>2 that?</p> <p>3 A. I didn't know the number.</p> <p>4 Q. But you accept that a business starting up in this</p> <p>5 space, could raise money through financing, not from</p> <p>6 subscription fees?</p> <p>7 A. Indeed, providing you can provide the -- ensure the</p> <p>8 investor is confident of the business.</p> <p>9 Q. Then in the final sentence of your paragraph 11.4, you</p> <p>10 talk about:</p> <p>11 "If listing fees are offered for free or at</p> <p>12 a reduced price, it is difficult to afford marketing."</p> <p>13 Are you familiar with the term "penetration</p> <p>14 pricing", Mr Symons?</p> <p>15 A. Not specifically, no.</p> <p>16 Q. Penetration?</p> <p>17 A. You are going to explain, I hope.</p> <p>18 Q. Yes.</p> <p>19 A. We are doing the same thing.</p> <p>20 Q. I didn't mean to interrupt. Penetration pricing is</p> <p>21 where you offer, using your language, "listing fees for</p> <p>22 free or at a reduced price", that is your language, for</p> <p>23 a short period of time, in order to entice somebody to</p> <p>24 use your service. Does that now make sense to you?</p> <p>25 A. Fine.</p> <p style="text-align: center;">Page 41</p>

<p>1 Q. Indeed earlier on in your witness statement, you talked 2 about how indeed you had been enticed from time to time 3 to use other, albeit lesser portals, through reduced or 4 non-existent listing? 5 A. Nil fees, yes. 6 Q. So it is a marketing technique, you accept that, 7 penetration pricing, entice somebody in? 8 A. Okay. 9 Q. But the point about it is that it is only supposed to 10 last for a short period, isn't it? 11 A. Eventually it has to pay for itself. 12 Q. You have taken the words right out of my mouth, 13 Mr Symons. You can't carry on with the penetration 14 price in the low listing or non-existing listing because 15 then you won't have any money, but you can do it at the 16 beginning, to entice people in, can't you? 17 A. You could but there has to be a plan. It's sort of 18 brings us back, because we, in our partners meetings, 19 were considering whether to invest or not and it was 20 pretty risky for us, so clearly a bank would or 21 a venture capitalist would look at it as risky as well. 22 Q. Part of the risks for the prospective gold members -- 23 were you a gold member? 24 A. Yes, sir. 25 Q. The risk was rewarded by a 15 per cent interest rate,</p> <p style="text-align: center;">Page 42</p>	<p>1 A. Yes. 2 Q. "If Rightmove and Zoopla were maintaining their levels 3 of property stock and corresponding property seekers 4 visits, then it would be difficult to persuade an agent 5 of the benefits of moving to a third portal. Put simply, 6 would give them no advantage over the status quo." 7 That was the purpose of the OOP rule, wasn't it, to 8 damage the property offerings that were capable of being 9 offered by Rightmove and Zoopla and thereby to change 10 the status quo; right? 11 A. I think I'd use the word disrupt, I guess. 12 Q. I am happy with that. Disrupt the property listings on 13 the other two sites; right? 14 A. There had to be some disruption to get traction. 15 Q. Exactly, and what you mean by disruption is that you had 16 to take property listings away from -- 17 A. Somebody. 18 Q. Exactly, thank you very much. 19 Moving on again. I am now in your 11.6. We already 20 looked at the second line, the third line earlier, about 21 there being no discussion between the partners at Stags 22 about the OOP rule being necessary. And now further on 23 in the paragraph, where two lines further down you say: 24 "Indeed, the OOP rule is just as relevant now as it 25 was when OTM was set up. Whilst AM has done better than</p> <p style="text-align: center;">Page 44</p>
<p>1 wasn't it, on your loan? 2 A. I can't remember the exact percentage but we had a loan 3 and we committed to five years and we had reduced fees, 4 compared to those that didn't commit for five years. 5 Q. And that reward of the interest at such a high level, 6 that was partly in return for the risk that you were 7 taking? 8 A. Yes. 9 Q. So you were being rewarded for that risk? 10 A. Yes, but we also had knowledge that there were at least 11 1800 sign ups. I mean there was a whole load of very 12 delicate things that made us say: okay, let's give this 13 one a run. 14 Q. Absolutely. I understand that. 15 A. So I'm running on wheels and wings. 16 Q. We are on our wheels and wings again. 17 A. Indeed, sorry. 18 Q. No problem. I am now moving on, down the page in your 19 11.5. Perhaps you just want to read to yourself 11.5, 20 so you know what it's about. (Pause) 21 A. Yes. 22 Q. I am particularly interested in the second sentence, 23 possibly the third, my copy is rather obscured. Do you 24 have a sentence beginning three/four lines down, "If 25 Rightmove and Zoopla"?</p> <p style="text-align: center;">Page 43</p>	<p>1 I originally expected, signing up more agents and 2 attracting higher numbers, it is still a considerable 3 way behind Rightmove." 4 My question to you, Mr Symons, is this: you regard 5 Agents' Mutual as at least having been successfully 6 implemented on OnTheMarket, don't you? 7 A. I do. 8 Q. So it has entered the market but what you are saying 9 here is that it is not yet as big and strong as you 10 would like it to be? 11 A. What -- we were expecting projections of growth and 12 those have been exceeded. I think where the problem 13 lies is that the game of the two big boys has also upped 14 significantly and Zoopla moved into loads of other 15 fields. 16 Q. But I think you just agreed with me that as far as you 17 are concerned, it successfully entered the market and is 18 now trading away? 19 A. Yes, but it's a long way from a certainty. 20 Q. Yes. In fact, as we sit here today or you sit and I 21 stand, it has been trading for over two years, hasn't 22 it? 23 A. End of January, 15 it launched. 24 Q. That's right, just over two years. I am nearly there, 25 Mr Symons. Just bear with me one moment, please.</p> <p style="text-align: center;">Page 45</p>

12 (Pages 42 to 45)

<p>1 Penultimate page of your witness statement. So if 2 you just turn over one page. You are in paragraph 12.1 3 and this is under the heading "AM having 4 a pro-competitive effect." And, in particular, you pick 5 up that theme at the end of that paragraph 12.1, next to 6 (iii), and you say you think it has had 7 a pro-competitive effect in the southwest of England. 8 Then that may or may not be confidential. I certainly 9 don't need to read it out loud, the next bit. 10 But the fact is, Mr Symons, isn't it, that Rightmove 11 is now subject to less constraint from Zoopla than it 12 was before Agents' Mutual entered with the OOP rule, 13 isn't it? 14 A. Rightmove has less constraint from Zoopla. 15 Q. It is now subject to less constraint and that's because, 16 as we just explored a minute ago, the OOP rule is 17 designed to disrupt, amongst others, Zoopla's offerings 18 and take properties away from Zoopla? 19 A. No, it is designed to take properties away from one 20 other portal. The truth is there were only two. The 21 rest were little insignificance and it was designed to 22 take from both. 23 Q. But in your area, everybody came off Zoopla, didn't 24 they? 25 A. No. No, not everybody, but --</p> <p style="text-align: center;">Page 46</p>	<p>1 portal as rapidly as possible?" 2 A. Okay, and then it moves down to your 90 per cent number 3 somewhere there, doesn't it? 4 Q. Yes. Lower down. But to be fair to you, Mr Symons, 5 this one says: 6 "We want to replace Zoopla as the number 2 portal 7 by January 2016." 8 That is what you understood to be the objective of 9 Agents' Mutual; right? 10 A. I didn't understand that to be its objective. I did not 11 understand that. 12 Q. And it goes on to say between the two hole punches: 13 "If OnTheMarket.com grows its property stock by 14 120,000 and 90 per cent of this comes at the expense of 15 Zoopla, then OnTheMarket will be bigger and a tipping 16 point will have been reached." 17 So did you not appreciate that that objective had 18 been achieved by Agents' Mutual, of taking 90 per cent 19 away from and at the expense of Zoopla? 20 A. Don't tell Mr Springett but I haven't read all his 21 emails. 22 Q. That's probably a -- 23 A. I mean the third page in February and I'm busy, 24 it's ...can someone break it to him gently? 25 Q. Yes. In fact, I am grateful to Mr Woolfe because the</p> <p style="text-align: center;">Page 48</p>
<p>1 Q. Virtually everybody? 2 A. Several. 3 Q. No, no. Mr Symons, please. Far more than several. It 4 is nearly everybody in your area of the world has 5 dropped Zoopla, haven't they? 6 A. I mean if you want to talk my little spot, in the rural 7 areas, yes; in the more urban Plymouth and Exeter, no. 8 Q. But you know nationally, don't you, that 90 per cent of 9 the people who have joined OTM have dropped Zoopla? 10 A. I didn't know that number. But it doesn't shock me. 11 Q. Are you sure you didn't know that number? 12 A. No. 13 Q. Really? Can I just show you a document that we had 14 understood was sent to all agents in February 2015. You 15 will find that at bundle number 9, page 5152, it starts. 16 Do you recognise the type of document, an Agents' Mutual 17 update for members email? 18 A. Yes, I do recognise the type. 19 Q. So you certainly received updates for members like this? 20 A. Definitely. 21 Q. If you turn it over to the third page, so in the bundle 22 it is 5154. 23 A. So 5154, yes, the third page. 24 Q. Yes. Do you see on that page, under the "Objective for 25 the year ahead", that "AM is to become the number 2</p> <p style="text-align: center;">Page 47</p>	<p>1 other passage that I was looking for in the same 2 document is on the previous page. I think you got this. 3 Do you see under the heading "Market impact"? 4 A. So the likelihood is that I got this and have not 5 focused on it but okay, try me. 6 Q. Mr Symons, that is perfectly fair, I just want to take 7 you to something you may not have read but you may have 8 received. Do you see between the two hole punches in 9 italics? 10 A. At page 5152? 11 Q. I think it is 5153. 12 A. Okay. 13 Q. "It is now apparent that." By the first hole punch? 14 A. Yes. 15 Q. Under the heading "Market impact"? 16 A. Yes. 17 Q. Next paragraph down in italics "It is now apparent 18 that"? 19 A. Okay. 20 Q. "It is now apparent that over 90 per cent of our 4,700 21 member offices belong to firms which have chosen to 22 retain Rightmove as their one other portal, alongside 23 OnTheMarket." 24 A. Yes, sir. 25 Q. I think your evidence is you may have received this but</p> <p style="text-align: center;">Page 49</p>

<p>1 if so, you don't remember it and you might not have read 2 it anyway? 3 A. Correct. 4 Q. Then my last -- 5 A. Can I get rid of this? 6 Q. Yes, thank you. Thank you for bearing with me. 7 A. Not at all. No problem. 8 Q. We are nearly at the end, Mr Symons. I am now on the 9 final paragraph of your witness statement. And can the 10 witness also be handed the transcript bundle from 11 yesterday for these purposes. Do you see, just 12 orientate yourself while this other document is coming. 13 You are talking about the early bird; right? 14 A. Yes, I got that. 15 Q. Can the witness be handed a bundle of transcripts, 16 please. (Handed) And could you open it to Day 2, 17 Monday, 6th. My note reads page 24. That should be the 18 evidence of Miss Glynis Frew. 19 A. So where am I, 24/25? 20 Q. At the top of page 24. Just to let you know what this 21 is, this is an answer given by another estate agent, the 22 managing director of a group of estate agents, called 23 Hunters. She's called Miss Glynis Frew and she was 24 being asked some questions about the way in which the 25 estate agency market works. Part of her answer you see</p> <p style="text-align: center;">Page 50</p>	<p>1 Q. But in your paragraph 15.1, that is not what is capable 2 of being obtained from what you describe as the early 3 bird obligation, is it? 4 A. I completely disagree with you. So the Stags principle, 5 and I don't know how other people do it, is that we have 6 the opportunity to spread our digital marketing over 7 three days or six days, depending on how we spread it 8 out and we think that gives more people. If you do all 9 the digital marketing launch on day one, then if 10 someone's receiving their digital marketing, then on 11 that day, great, they all get it three times. I would 12 much sooner spread over a period of time and improve the 13 effect. It is a deliberate policy that we have done to 14 increase the effect of digital -- of our digital 15 marketing bit of what we do. 16 Q. Thank you, Mr Symons. We are at slightly cross-purposes 17 because I am just focussing on early bird whereas you 18 are focusing on early bird followed by stage two? 19 A. No, I'm not. I am talking about early bird allows us to 20 digitally market One Acacia Avenue on Monday, through 21 Stags. On Tuesday through OnTheMarket and in our case, 22 on Wednesday through Rightmove. 23 Q. That is right, but just focusing for a moment on the 24 early bird part. Early bird means, as I understand it, 25 either 24 or 48 hours; is that right?</p> <p style="text-align: center;">Page 52</p>
<p>1 at line 2 at the top of page 24, she says: 2 "And the auction principle says that the more people 3 you get interested in the property, be that to sell or 4 to let, the better price you are going to get and 5 therefore the better it is for that landlord or for the 6 vendor." 7 So my first question is, do you understand or 8 recognise the concept of the auction principle? 9 A. Not in this context. I mean an auction is an auction. 10 That is a method of selling a property. I think what 11 she's saying -- leave out the word auction because 12 that's confusing it. She's saying the more good buyers 13 you put in front of something, the better. 14 Q. Absolutely. 15 A. And you'll generate a better price. 16 Q. And indeed, that is part of your duty? 17 A. That's my life. 18 Q. Exactly. That's part of your life and your duty, isn't 19 it, to try to get the best price for your vendors by 20 exposing their property to the most people, so you can 21 generate the more interest and with any luck, bid up 22 the price. Great for the vendor because they get 23 a bigger price and great for you because you get 24 a bigger commission? 25 A. Absolutely, within reasonable costs.</p> <p style="text-align: center;">Page 51</p>	<p>1 A. I think it's meant to be 48, yes. 2 Q. And it is supposed to be the first in line, isn't it? 3 That is the whole point. That's why it's early? 4 A. So we do Stags first, so market through -- email out 5 through the Stags database. Then our software is set up 6 to market early bird OnTheMarket and then the next day, 7 to Rightmove. So we do all three on different days and 8 increase our coverage. 9 Q. Whilst it is on the early bird part, so the OTM part -- 10 A. The second of our -- 11 Q. In your case, the second? 12 A. In the Stags way, yes. 13 Q. That is only being marketed to people who are looking at 14 OnTheMarket; right? 15 A. On that day, yes. 16 Q. That is right? 17 A. Yes. 18 Q. That is the point of it, isn't it? The point from OTM's 19 perspective is it is supposed to be exclusive to OTM, 20 albeit only for 24 or 48 hours; right? 21 A. The digital marketing goes out exclusively on that day 22 two, yes. 23 Q. And that's what they see as being the advantage of it to 24 them because it gives them exclusivity for a period of 25 24 or 48 hours; right?</p> <p style="text-align: center;">Page 53</p>

<p>1 A. Not really worried about them. 2 Q. The point is whilst it is only being exclusively 3 marketed by early bird on OTM, it is only going to the 4 people who look at OTM, isn't it? 5 A. That receive OTM emails. 6 Q. That's right, but OTM doesn't get seen by many people 7 compared to the other portals, does it? 8 A. Well, a reasonable number. 9 Q. This is the very last thing, Mr Symons. Can you please 10 be handed bundle E, something we haven't seen before and 11 if you could open that at internal page 65. I will tell 12 you what the document is when you open it. It is in the 13 bundle. It is page 65 in the bottom right-hand corner. 14 This document, just so you know, is an expert report 15 prepared for use in these proceedings. He has gathered 16 lots and lots of data together to present to the court. 17 A. So this is Mr Parker? 18 Q. You are correct. That is an expert -- no, this one is 19 Mr Bishop, who has been appointed or whatever, to act as 20 expert by Agents' Mutual. Just so you know what it is. 21 A. Okay, so Mr Bishop. 22 Q. It doesn't really matter for you. I don't want you to 23 think that it is from some other provenance or 24 something. I am looking at figure 4 on page 65. Do you 25 see the heading is "Share of total page views,</p> <p style="text-align: center;">Page 54</p>	<p>1 not being offered to the Rightmove people until 2 Wednesday. 3 Q. That is right. 4 A. But it has been offered through the Stags people, which 5 is the greater number. 6 MR HARRIS: Thank you ever so much, Mr Symons, for bearing 7 with me. I have no further questions. 8 MR MACLEAN: I have no re-examination for this witness. 9 Questions by the Tribunal 10 THE CHAIRMAN: Mr Symons, can I ask you about another aspect 11 of estate agent jargon, leads. Is that a term of art 12 that estate agents use or is that something that the 13 lawyers are -- 14 A. Hugely muddled, as we are at times, sir. It is used in 15 lots of different ways, in my opinion. I look at leads 16 as being people who want details to go and look at 17 a property or a lead is someone I can go and appraise 18 a house. The portals have sort of grabbed the word 19 a little bit and it is very, very confusing for us 20 estate agents, to sort of tell quite what all these 21 charts really mean. Are they unique visitors, are they 22 page views? Are they -- you know, so that's quite 23 a problem. 24 We also get from the portals, people that click on 25 the websites and come to us and ask for information and</p> <p style="text-align: center;">Page 56</p>
<p>1 Rightmove, Zoopla and OTM for a certain period?" 2 A. Yes. 3 Q. And can you see where OTM is launched. It is the bottom 4 line, a sort of green-ish/grey line? 5 A. Yes. 6 Q. So as one would expect, an experienced estate agent like 7 you, vastly more page views for Rightmove at the top; 8 yes? 9 A. Yes. 10 Q. Far, far less for Zoopla but, nevertheless, in both 11 cases, far, far more than you can get than are recorded 12 as being viewed on OnTheMarket. Do you agree with that? 13 A. If you're measuring -- clearly, Mr Bishop's analysis of 14 page views -- he uses Comscore, does he? 15 Q. It looks like it. 16 A. I agree. 17 Q. Do you also agree that when something is being marketed 18 by the early bird service and, therefore, as you have 19 agreed with me, been shown only to OTM page visitors -- 20 A. On Tuesday. 21 Q. Yes. During that exclusive period? 22 A. Yes. 23 Q. Then that isn't being marketed to the most number of 24 potential buyers, is it? 25 A. Well, I mean, we can go round in circles here. It is</p> <p style="text-align: center;">Page 55</p>	<p>1 so that's often looked at as leads by the portals. So 2 it is a word that has got in a right old muddle, I am 3 afraid. In the portal world, I think it is probably the 4 people who have clicked on a set of details and asked 5 for some more information. 6 THE CHAIRMAN: I don't want to ask you about the portals, 7 I want to ask you about the way estate agents see leads 8 because that's something I think you can speak on. 9 I think early on in your answer you differentiated 10 between a lead which is involved in the viewing or 11 interest in a property, so that's a potential purchaser, 12 the purchase lead one might call it -- 13 A. Yes, okay. 14 THE CHAIRMAN: -- and then you have the appraisal lead, as 15 I think you called it, which is the other side or 16 potential vendor? 17 A. The potential vendor. 18 THE CHAIRMAN: In terms of appraisal leads, how do you 19 generate them, what is the tools? 20 A. Appraisal lead? 21 THE CHAIRMAN: Or -- 22 A. The majority, so I can talk in my little world, so -- 23 THE CHAIRMAN: Please do. 24 A. -- Stags has 250,000 applicants on its database, 20,000 25 of which are active. Sorry, I didn't mean to do an</p> <p style="text-align: center;">Page 57</p>

1 advert. So we are generally -- we work those very, very
 2 hard. So we'll pick a parish and we'll interrogate our
 3 database and start chasing, ringing, mailing people in
 4 a particular area, to see if we can do appraisals for
 5 them. We place wanted ads in newspapers. We're
 6 constantly talking to people who are viewing, that live
 7 locally and are viewing, and ask if we can appraise
 8 their properties for them. A bit of it's through the
 9 online stuff, but the big stuff is in the office.
 10 THE CHAIRMAN: How does the online stuff work? I mean, when
 11 you talk about a bit of it as the online stuff, what --
 12 A. What will happen is the portals have -- if you go there,
 13 there's "Give me a valuation", or there's a sort of
 14 "Click this button and someone will ring you", type of
 15 thing. So that does feed into us centrally. One of my
 16 colleagues collect that and circulates it out to us.
 17 I regret to say it doesn't generate a lot of meaty
 18 stuff.
 19 But we observe the people that are applying for
 20 property and if they have addresses that are interesting
 21 to us, we work at them; so if a lead came from Rightmove
 22 or OnTheMarket for us, we would see where the person
 23 lived and then start talking to them.
 24 THE CHAIRMAN: Thank you, Mr Symons.
 25 A. Does that help?

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1 THE CHAIRMAN: That was helpful, yes.
 2 MR FREEMAN: Good morning, Mr Symons. I suppose the
 3 question that follows from that is that you have made
 4 clear that you regard these online portals as
 5 a necessary business development, not one you might have
 6 desired but it's there, so you use it?
 7 A. Yes.
 8 MR FREEMAN: When deciding what it's worth to you, do you
 9 look, first of all, at what they are charging, the
 10 listing fees and how do you work out whether that's
 11 giving you value for money?
 12 A. Well it's a very difficult judgment. I mean, as you are
 13 aware, we signed up to Agents' Mutual and about a year
 14 later, made a decision to pick Rightmove over Zoopla.
 15 I think probably the most important factor was how our
 16 potential vendors perceived Rightmove or perceived
 17 Zoopla. So our potential vendors's perception of that
 18 particular portal. So we had to make that decision in
 19 about November 14.
 20 MR FREEMAN: So you work out how valuable they are from what
 21 your vendor clients think is valuable?
 22 A. Yes, and try to associate that with the cost.
 23 MR FREEMAN: Because you were asked by Mr Harris at the
 24 start of your evidence: aren't you aware that there are
 25 extra services and extra value and that might justify

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1 extra fees. But what you are telling me is that you
 2 look at the value placed by your vendor clients on the
 3 portal and what it delivers through you to them?
 4 A. Principally because these portals are not really
 5 producing that many quality vendor leads. I mean by
 6 that, unsuitable houses in unsuitable places.
 7 MR FREEMAN: Every buyer's nightmare, Mr Symons.
 8 Can I ask you another question which is whether in
 9 ten years time, you think your sort of Bricks and Mortar
 10 business will still be profitable and sustainable?
 11 A. Yes.
 12 MR FREEMAN: You don't think it will have been pushed out by
 13 digital online developments?
 14 A. We're definitely learning and changing and evolving and
 15 I'm sat in a series of meetings only yesterday, you
 16 know, looking at how we are going to evolve, looking at
 17 what the onlines are doing and to see how our business
 18 will mould and I suspect we will merge into -- they'll
 19 learn from us and we'll learn from them.
 20 MR FREEMAN: But you think buyers and sellers will still
 21 want to come in to your office to talk to your
 22 colleagues or your successors?
 23 A. Yes, regrettably, my successors.
 24 MR FREEMAN: Thank you.
 25 THE CHAIRMAN: Anything arising out of that, Mr Harris.

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1 MR HARRIS: No, sir.
 2 THE CHAIRMAN: Mr Symons, thank you very much. You are
 3 released.
 4 MR MACLEAN: Would that be a convenient time for a break?
 5 THE CHAIRMAN: All right, Mr Maclean. Five minutes.
 6 (11.52 am)
 7 (A short break)
 8 (11.57 am)
 9 MR MACLEAN: The next witness, sir, is Mr Wyatt.
 10 MR JAMES WYATT (sworn)
 11 Examination-in-chief by MR MACLEAN
 12 MR MACLEAN: Good afternoon, Mr Wyatt. Could you be handed
 13 bundle C, please. And turn to tab 5. And at page 77 is
 14 that the first page of a statement that you have made in
 15 these proceedings?
 16 A. Yes, it is.
 17 Q. Mr Wyatt, will you turn to page 87. Can you identify
 18 the signature there for me, please?
 19 A. That's my signature.
 20 Q. And that's the last page of your statement?
 21 A. It is.
 22 Q. Have you read that statement through recently?
 23 A. Yes, I have.
 24 Q. And having done so, is there anything in it you want to
 25 add or subtract or change in any way?

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<p>1 A. No, I think it's fine as it is.</p> <p>2 Q. Are you content for that to be part of your evidence in</p> <p>3 this case?</p> <p>4 A. I am.</p> <p>5 MR MACLEAN: Mr Harris may have some questions.</p> <p>6 Cross-examination by MR HARRIS</p> <p>7 MR HARRIS: Good afternoon, just, Mr Wyatt. Can I draw your</p> <p>8 attention, please, to your witness statement, to</p> <p>9 paragraph 4. Do you see there that you refer to your</p> <p>10 organisation being a member of the NAEA?</p> <p>11 A. Yes.</p> <p>12 Q. And also a member of the ARLA?</p> <p>13 A. Yes, commonly known as ARLA.</p> <p>14 Q. And two other groupings of estate agents; right?</p> <p>15 A. Correct.</p> <p>16 Q. So it would be fair to say that your estate agency is</p> <p>17 used to acting together and getting together with other</p> <p>18 agents in various groupings; correct?</p> <p>19 A. In part. Actually, that is an individual membership of</p> <p>20 NAR. In fact, they are all individual memberships</p> <p>21 rather than the firm's membership.</p> <p>22 Q. I see. So by individual, you mean you personally?</p> <p>23 A. Yes, it says "I am a member".</p> <p>24 Q. I see. Thanks for clarifying. I had assumed you meant</p> <p>25 by that, the agency. But in any event, the other</p> <p style="text-align: center;">Page 62</p>	<p>1 A. I believe we started listing with Rightmove in about</p> <p>2 2003.</p> <p>3 Q. Thank you, but in any event, what you are saying here is</p> <p>4 that, as I understand it, correct me if I'm wrong, that</p> <p>5 you were listing at the same time on the Zoopla website</p> <p>6 and on the Rightmove website?</p> <p>7 A. That's correct.</p> <p>8 Q. And then you go on to say in the next but one sentence:</p> <p>9 "I believe that my firm also listed with a number of</p> <p>10 other small portals as well, at around the same time."</p> <p>11 That is right, isn't it?</p> <p>12 A. At around the same time, well, we are talking about from</p> <p>13 the early noughties, when there were a lot of free</p> <p>14 portals. We really didn't know -- no estate agent</p> <p>15 really knew how these portals were going to work, so we</p> <p>16 were trying them all. Most estate agents were trying</p> <p>17 them all.</p> <p>18 Q. My point to you is simply that there will have been</p> <p>19 points in time when you were on more than just the</p> <p>20 Zoopla website and the Rightmove website?</p> <p>21 A. If you go back to the early noughties, as I say, we were</p> <p>22 on quite a number, as were most agents, whilst we were</p> <p>23 trying to work out how the sector actually operated and</p> <p>24 where it was going to end up.</p> <p>25 Q. So you were on, in your evidence just now, quite</p> <p style="text-align: center;">Page 64</p>
<p>1 members are also estate agents, aren't they?</p> <p>2 A. Yes, they are.</p> <p>3 Q. Thank you.</p> <p>4 A. As well as --</p> <p>5 Q. Sorry?</p> <p>6 A. As well as other -- not just estate agents. There are</p> <p>7 other types of members.</p> <p>8 Q. Thank you. And over the page, two pages further over in</p> <p>9 your witness statement at paragraph 8, you talk about,</p> <p>10 do you see, about four lines down, you are talking about</p> <p>11 the history of the portal sector and you say in the</p> <p>12 third sentence:</p> <p>13 "Following Zoopla's acquisition of DMGT", and then</p> <p>14 you say:</p> <p>15 "Our firm's properties were listed with Zoopla as</p> <p>16 well as Primelocation."</p> <p>17 So that's, if you like, two portals, albeit under</p> <p>18 one ownership; is that right?</p> <p>19 A. That's right.</p> <p>20 Q. And in the next sentence you say:</p> <p>21 "I can't remember exactly when but we also began</p> <p>22 listing with Rightmove in this period."</p> <p>23 Yes?</p> <p>24 A. Yes, I believe that was probably about 2003.</p> <p>25 Q. You mean 13?</p> <p style="text-align: center;">Page 63</p>	<p>1 a number of portals at the same time; right?</p> <p>2 A. Correct.</p> <p>3 Q. At the end of that paragraph 8 you talk about:</p> <p>4 "It being easy to sign up with a number of those</p> <p>5 portals, particularly since listings were often given</p> <p>6 for free, although generally only for a limited period</p> <p>7 of time."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Were you present in court 20 or so minutes ago, when</p> <p>11 I explored with Mr Symons the concept of penetration</p> <p>12 pricing?</p> <p>13 A. Yes, I was listening.</p> <p>14 Q. And are you familiar with that term?</p> <p>15 A. I am.</p> <p>16 Q. So you recognise that it is effectively what you are</p> <p>17 describing in the final sentence of your paragraph 8;</p> <p>18 right?</p> <p>19 A. It is in part although, of course, we are looking back</p> <p>20 at least ten years ago.</p> <p>21 Q. That is right, but the point of penetration pricing is,</p> <p>22 isn't it, that you entice people to sign up with you as</p> <p>23 a portal in this case, by giving free listings but only</p> <p>24 for a limited period of time, to use your words. That</p> <p>25 is right, isn't it?</p> <p style="text-align: center;">Page 65</p>

1 **A. That was how many portals started their businesses ten**
 2 **to 15 years ago.**
 3 Q. Yes. And by tempting people in with free listings,
 4 there's no downside to a listing of the listing person
 5 in those circumstances, is there?
 6 **A. Well, that's your opinion.**
 7 Q. No, I am putting that to you as a question. That is
 8 right, is it not? There is no downside to the lister if
 9 the lister doesn't even have to pay for the short period
 10 of time?
 11 **A. I think to be fair, that answer is partly yes, but to be**
 12 **fair, these free listings websites nearly always ended**
 13 **up in failure.**
 14 Q. Yes, but that is a different point, with respect,
 15 Mr Wyatt, is it not? My point to you and, indeed, why
 16 you saw it as "easy to sign up with a number of
 17 portals", in your paragraph 8, is because there was no
 18 downside to you, was there, because it was a free
 19 listing?
 20 **A. For a short time I would absolutely agree.**
 21 Q. In fact, what happens is you sign up with them for this
 22 period of time for free and you see if they work, don't
 23 you?
 24 **A. Fair enough.**
 25 Q. So you agree with me?

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1 **A. In part.**
 2 Q. Well, which part?
 3 **A. Well, your point is it's easy -- my point was it is easy**
 4 **to sign up but, of course, what you want to find out is**
 5 **if that portal is going to be effective and work for my**
 6 **business.**
 7 Q. Absolutely, thank you. And you make your decision on
 8 these other portals, based upon the value of that portal
 9 to your business, don't you?
 10 **A. I think also, at the same time, we were trying out these**
 11 **portals without knowing whether it was going to work or**
 12 **not.**
 13 Q. Yes, but the question is: you actually sign up to them
 14 based upon the value of that portal to your business,
 15 don't you?
 16 **A. We sign up to them, not knowing the value.**
 17 Q. Well, you assess the value of the portal by reference to
 18 what it can add to your business, don't you?
 19 **A. We can only assess after we have signed up and seen**
 20 **whether it works or not.**
 21 Q. We will be coming back to your paragraph 8 and 9, but
 22 just on this point, can you turn over to your
 23 paragraph 16?
 24 **A. Yes.**
 25 Q. The final sentence. You are talking about which other

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1 portal you are going to choose under the One Other
 2 Portal rule and you say:
 3 "In terms I made my decision on the basis of an
 4 assessment of the value of the portal to my business."
 5 That is how you go about assessing whether or not to
 6 join a portal, isn't it?
 7 **A. This is the last sentence "In any event"?**
 8 Q. That is right?
 9 **A. Yes. Sorry, if I could just read through. (Pause).**
 10 **I think you're jumping ahead in time here because we**
 11 **were talking about the early days of different free**
 12 **portals which were 2001/2003/2005. We are talking about**
 13 **much later on now, when we were assessing which portal**
 14 **we were going to drop, whether it was Rightmove or**
 15 **Zoopla. The whole portal scene had changed and matured**
 16 **and we could make a much more accurate decision as to**
 17 **which way we wanted to go.**
 18 Q. Thank you, Mr Wyatt. I am not making a time-specific
 19 point at all, I am make a generic point. That you
 20 choose whether or not to sign up with a portal, based on
 21 your assessment of the value of that portal to your
 22 business. That is right, isn't it?
 23 **A. Well it says "I made my decision".**
 24 Q. That is right. So you are agreeing with me then?
 25 **A. At that time I made my decision, absolutely.**

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1 Q. No, with respect, Mr Wyatt, these are your words at the
 2 end of your witness statement, paragraph 15. Do you or
 3 do you not agree with me that you make your decision
 4 about which portal to choose, "based upon an assessment
 5 of the value of the portal to my business"; yes or no?
 6 **A. It is not a yes or no question. Because I made my**
 7 **decision. You are asking if I make decisions. I made**
 8 **my decision at that time.**
 9 Q. I see. But the truth is, what you do is you make
 10 decisions about portals based upon whether or not they
 11 are the best value for the fees that they're charging,
 12 don't you?
 13 **A. I've only had to do it once, so I made my decision.**
 14 Q. If we look at paragraph 19, that seems to me to be what
 15 you are saying:
 16 "When it came to the decision in relation to the one
 17 other portal, I undertook the analysis of which portal
 18 provided the best value for its fees as part of that
 19 analysis. I consulted my sales team."
 20 Are you saying you wouldn't adopt that approach to
 21 any other portal?
 22 **A. If you look back at the other portals that we shed or**
 23 **got rid of, they were extremely easy decisions to make**
 24 **because they didn't work. So when we had to make**
 25 **a slightly larger decision -- and, actually, I think it**

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1 **is fair to go back to the Property Live situation.**
 2 **Property Live was the National Association of Estate**
 3 **Agents own website that failed and when Agents' Mutual**
 4 **came to us with their proposition, it was, I think, fair**
 5 **to say it was a surprise to us that the proposition was**
 6 **that we were going to have to drop another portal. But**
 7 **it was an attractive proposition to us because we are**
 8 **a small agent. You have been talking to Connells. You**
 9 **have talked to a medium sized business just now. Now**
 10 **you are talking to the minnow. We're one office,**
 11 **there's only 11 of us. So the attractive proposition**
 12 **was that we could drop one of the larger portals which**
 13 **were expensive and costing us a lot of money.**
 14 Q. I haven't got the faintest idea how that is an answer to
 15 my question, so I'll put it to you again. You make your
 16 decisions about portals, whether under the OOP rule or
 17 otherwise, according to your assessment of their value
 18 to your business and whether they are value for their
 19 fees, don't you?
 20 **A. We did in the case of Zoopla.**
 21 Q. And that is also what you did historically, isn't it?
 22 **A. Historically? Not always because some of these portals**
 23 **just disappeared. We didn't make any decision. They**
 24 **just stopped working.**
 25 Q. Good value for your business when they're free, aren't

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1 they, that is why you signed up to them?
 2 **A. Yes.**
 3 Q. Exactly, thank you. Going back then in your witness
 4 statement in paragraph 9 now, over the page in your
 5 paragraph 9. So it is at (iv) and you say in that
 6 second sentence:
 7 "There was, at the time, no readily available
 8 mechanism which enabled us to calculate the leads
 9 provided by portals and to assess the conversion rates.
 10 It became clear to me not only were listing fees high,
 11 the benefits being delivered by portals were very
 12 difficult to identify and/or quantify."
 13 But you accept, don't you, that just because they
 14 are difficult to identify or quantify, it doesn't mean
 15 that there were no leads or no benefits, does it?
 16 **A. No, there were leads and there were benefits.**
 17 Q. And as you fairly say here, Mr Wyatt, what you were
 18 struggling with was how do you find out what that value
 19 for money is? What are those leads or benefits I should
 20 be comparing with the prices that I'm paying? That's
 21 right, isn't it?
 22 **A. I think a lot of agents found that extremely difficult**
 23 **and, in part, because a lot of people didn't look at**
 24 **them at the time.**
 25 Q. Yes. But what you are struggling with and what you

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1 wanted to know was: what's the value for money here?
 2 That's right, isn't it?
 3 **A. Yes.**
 4 Q. In your next paragraph you talk about the Property Live
 5 portal. But I am right in saying, aren't I, that in the
 6 case of your agency, that was an additional third portal
 7 above and beyond your listings with the Zoopla portal
 8 and the Rightmove portal. That is right, isn't it?
 9 **A. That's correct.**
 10 Q. And I am further right in saying that Property Live
 11 lasted for four years, didn't it?
 12 **A. If not longer.**
 13 Q. And I am also right in saying that it didn't have an OOP
 14 rule, did it?
 15 **A. No.**
 16 Q. It didn't have any exclusivity, did it?
 17 **A. No, quite the opposite.**
 18 Q. And then you say in your second sentence that
 19 Property Live was funded by general membership fees of
 20 the association. Do you see that?
 21 **A. Yes.**
 22 Q. But what went wrong with it, in your view, was that it
 23 didn't have a property marketing budget. That is right,
 24 isn't it?
 25 **A. That's right in part. What went wrong with it was that**

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1 **it wasn't run commercially, it was run as a members'**
 2 **benefit and essentially didn't have a budget to run it**
 3 **properly.**
 4 Q. And the reason for that is because it didn't charge
 5 listing fees at all, in any part of its four years, did
 6 it?
 7 **A. Well, actually, it did in the early days but for this**
 8 **conversation, the answer is no, they didn't charge any**
 9 **fees.**
 10 Q. And that was its greatest flaw, wasn't it?
 11 **A. In my opinion, it was its greatest flaw.**
 12 Q. But, of course, not charging a penny for the entirety of
 13 its four years or so existence, that's not penetration
 14 pricing, is it?
 15 **A. Well, no, all right, I completely accept that.**
 16 Q. Yes, so penetration pricing is an entry tool, isn't it?
 17 It is not something that you design to employ to sustain
 18 your business throughout its life, is it?
 19 **A. Penetration pricing is used by many estate agents as**
 20 **well. They may open up a new office. It works for**
 21 **some. It does not work for others.**
 22 Q. So is the answer to my question yes, it is not something
 23 that you use for the entire life of a business,
 24 penetration pricing, in your view?
 25 **A. That's exactly what I said to the NAEA because I wanted**

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<p>1 it commercialised.</p> <p>2 Q. So the answer is yes?</p> <p>3 A. Absolutely.</p> <p>4 Q. Thank you. Over the page now in your witness statement,</p> <p>5 do you see in your paragraph 12, you are talking about</p> <p>6 a meeting in June 2013, where Mr Springett made</p> <p>7 a presentation; yes?</p> <p>8 A. Yes.</p> <p>9 Q. And just cast your mind back to that and I am picking it</p> <p>10 up lower down in the paragraph. Part of what he told</p> <p>11 you was:</p> <p>12 "In addition, members would be required to list with</p> <p>13 the portal for an initial period of five years, once it</p> <p>14 had been launched."</p> <p>15 Do you remember that part of the presentation?</p> <p>16 A. I certainly do.</p> <p>17 Q. At what point did Mr Springett tell you that the OOP</p> <p>18 rule would be less than five years, if OTM grew quicker</p> <p>19 than expected?</p> <p>20 A. I really don't recall.</p> <p>21 Q. No, he didn't say that to you, did he?</p> <p>22 A. I don't recall him saying that.</p> <p>23 Q. When did Mr Springett say to you in that conversation,</p> <p>24 that presentation, that the restriction, excluding</p> <p>25 online agents, that would be limited to five years?</p> <p style="text-align: center;">Page 74</p>	<p>1 OOP rule. Then I moved on to the restriction against</p> <p>2 online agents?</p> <p>3 A. Oh, sorry, right.</p> <p>4 Q. Now I am talking about a third and distinct restriction</p> <p>5 in the agreements, namely the restriction on promoting</p> <p>6 any other portal, except for OnTheMarket. Do you recall</p> <p>7 that in your membership agreement?</p> <p>8 A. No, I don't.</p> <p>9 Q. You don't recall, I see. I suggest to you that</p> <p>10 Mr Springett didn't tell you that the restriction on</p> <p>11 promoting other portals would be limited to five years,</p> <p>12 did he?</p> <p>13 A. I don't know.</p> <p>14 Q. Sorry, I didn't hear that?</p> <p>15 A. I don't know.</p> <p>16 Q. You don't know. Is that because you don't remember?</p> <p>17 A. I don't remember, no.</p> <p>18 Q. Can you just look in this bundle to a different tab</p> <p>19 which is tab number 4. I am in your witness statement</p> <p>20 bundle but I am moving earlier in the bundle to</p> <p>21 a witness statement by Mr Springett, his fifth witness</p> <p>22 statement. Can you pick it up, please, at</p> <p>23 paragraph 11.8 which is an internal page 59.</p> <p>24 A. Yes.</p> <p>25 Q. I don't know, is any part of that blanked out in your --</p> <p style="text-align: center;">Page 76</p>
<p>1 A. I do recall that.</p> <p>2 Q. No, he didn't say that either, did he?</p> <p>3 A. Well, I thought that was all part of the original</p> <p>4 presentation.</p> <p>5 Q. What, so you were under the impression that the</p> <p>6 restriction to online agents only lasted for five years,</p> <p>7 were you?</p> <p>8 A. I think I was, yes.</p> <p>9 Q. So you would be surprised to learn that that's not</p> <p>10 right?</p> <p>11 A. Nothing would surprise me but that was -- in the back of</p> <p>12 my mind, that was what the agreement was.</p> <p>13 Q. I see. And at what part of the presentation did he tell</p> <p>14 you that the restriction on promoting other portals</p> <p>15 would also be limited to five years?</p> <p>16 A. Well, I don't remember every bit of the presentation but</p> <p>17 that was certainly part of it.</p> <p>18 Q. So you seem to recall that that was something he told</p> <p>19 you, that it would be restricted to five years?</p> <p>20 A. Going round in circles here. The presentation that we</p> <p>21 were given in June, we were told about the OOP rule and</p> <p>22 I am sure we were told it would be restricted to five</p> <p>23 years. I might be wrong.</p> <p>24 Q. No, and to be fair to you, Mr Wyatt -- I will take it</p> <p>25 a bit more slowly. I started by asking you about the</p> <p style="text-align: center;">Page 75</p>	<p>1 A. It is not.</p> <p>2 Q. You don't need to know all of it. He is taking here</p> <p>3 about the projections that they had at the start of</p> <p>4 putting Agents' Mutual together and do you see between</p> <p>5 the two hole punches, he says:</p> <p>6 "The projections that I undertook at the time the</p> <p>7 venture was first considered and throughout the project</p> <p>8 planning stage led me to believe that the appropriate</p> <p>9 period of time for the operation of the OOP was five</p> <p>10 years."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And he goes on:</p> <p>14 "This was based on estimated numbers".</p> <p>15 And then carries on about generating profit and</p> <p>16 growth in numbers:</p> <p>17 "Moreover, on the basis of these estimates, it would</p> <p>18 only be at the end of year 5 that OTM would have access</p> <p>19 to sufficient funds."</p> <p>20 The final sentence:</p> <p>21 "However, I was and remain acutely aware that if OTM</p> <p>22 out performed these projections, in terms of member</p> <p>23 numbers, board performance and/or revenues, such that</p> <p>24 the OOP rule was no longer necessary, it might be</p> <p>25 necessary to revisit the OOP rule at a time earlier than</p> <p style="text-align: center;">Page 77</p>

<p>1 the end of the five year period." 2 Do you see that? 3 A. Yes. 4 Q. Mr Springett didn't tell you any of that at the 5 presentation, did he? 6 A. I don't recall him saying that, no. 7 Q. And it doesn't form any part of your membership 8 agreement with Agents' Mutual, does it, that if OTM 9 outperform these projections, such that the OOP rule is 10 no longer necessary, you can revisit the duration of the 11 OOP rule. That is not in your membership agreement, is 12 it? 13 A. I don't recall it being in there but I was very happy 14 with our agreement. 15 Q. That's right. Is this the first you have heard of this, 16 about Mr Springett taking the view that it might be 17 necessary to revisit the duration of the OOP rule? 18 A. Well, I have read his witness statement, so that was the 19 first, I think, I had heard of it. 20 Q. Over the page -- you can leave Mr Springett's statement 21 now and go back into tab 5 which is your witness 22 statement, and I am now moving on to your paragraph 13. 23 Do you see that you set out three reasons for being 24 attracted to the Agents' Mutual proposition. The second 25 sentence begins with the word "First", and you give one</p> <p style="text-align: center;">Page 78</p>	<p>1 portals; correct? 2 A. Absolutely. 3 Q. Thank you. Just before we leave that page, in your 4 second reason in the middle of paragraph 13, the one 5 beginning "Secondly"; do you have that? 6 A. Yes. 7 Q. You see several lines further down: 8 "The creation of a property portal service which 9 prioritised the needs and preferences of all agents and 10 their customers". 11 That is just not right, is it, Mr Wyatt, it doesn't 12 provide, let alone prioritise, the needs of anybody who 13 is a nontraditional agent, does it? 14 A. Fair enough. 15 Q. Right, so you would like to change that bit of your 16 evidence, would you? 17 A. I suppose, yes, the word "all", you should change it for 18 "some"; how about that? 19 Q. Yes, thank you. And you recognise, don't you, that 20 spending on other portals, as you were just talking 21 about how welcome it was to reduce your levels of 22 spending on other portals, that is a way and means in 23 which estate agents compete with each other in any given 24 area, isn't it? 25 A. We all have a certain pot for our marketing, whether it</p> <p style="text-align: center;">Page 80</p>
<p>1 reason there. Five lines down there is a sentence 2 beginning "Secondly", and you give another reason there. 3 And then four lines up from the bottom, the sentence 4 beginning "Lastly", and you give another reason there. 5 Do you see that? 6 A. Yes. 7 Q. Not one of those reasons is the OOP rule, is it? 8 A. No. 9 Q. So the OOP rule wasn't a reason for you to sign up to 10 Agents' Mutual, was it? 11 A. It was an attractive reason actually. It might not be 12 mentioned in there but as I've previously said, when the 13 OOP rule was announced, it was attractive to me as 14 a small business guy because I was paying at least two 15 other portals a great deal of money and it was 16 increasing rapidly and it was increasing not just for me 17 but for other small agencies. It was increasing rapidly 18 enough that our spend on marketing was becoming too 19 much, so we welcomed the idea that we could almost, if 20 you like, be pushed to drop one of the expensive portals 21 and save a not inconsiderable amount of money every 22 year. 23 Q. Thank you ever so much, Mr Wyatt, I could not have put 24 it better myself. You were attracted to it because it 25 reduced the amount of spend on these other types of</p> <p style="text-align: center;">Page 79</p>	<p>1 is portals, paper advertising, magazine advertising, PR, 2 social media and all the rest of it. It is a certain 3 pie that has to be split up. So we are always looking 4 at ways of making sure that's constrained. 5 Q. You could steal a march on your competitors, couldn't 6 you, potentially, by spending more of that pot on a 7 third or fourth portal, if it was producing any value, 8 as compared to your competitor lower down the high 9 street, who wasn't on that portal; right? 10 A. We didn't see that it was remotely required. We've 11 found that we can live with two portals quite easily and 12 without losing any market share at all. 13 Q. So that is not answering the question. You could 14 compete with your estate agent competitors in your local 15 area, couldn't you, by spending on more and different 16 portals; that is right, isn't it? 17 A. No, it's not right at all. 18 Q. You would be worried, wouldn't you, if some of your 19 local competitors were on a different portal and they 20 tried to woo your customers by saying: oh crikey, don't 21 go with Mr Wyatt's estate agency because he is not on 22 this other portal. That is the best way to sell your 23 property. That's right, isn't it? 24 A. No, it is not. You are trying to suggest that the 25 market -- the estate agency market, is all about portals</p> <p style="text-align: center;">Page 81</p>

1 **and it's not.**
 2 Q. I didn't suggest that for a minute, Mr Wyatt. There are
 3 other means of advertising. What I am putting to you,
 4 Mr Wyatt, is that there are a means of competing with
 5 your estate agent competitors in the locality and one of
 6 them is as to the number and type of portals that you're
 7 on. It is elementary, isn't it, that is right?
 8 **A. No, it's not elementary and it is not true. My**
 9 **customers are quite happy with the way we do business.**
 10 **And just to add another portal would make not the**
 11 **slightest bit of difference to my business.**
 12 Q. But when you signed up with Agents' Mutual, it is right,
 13 isn't it, that you got comfort from the fact that there
 14 were other members of your locality signing up at or
 15 about the same time; right?
 16 **A. Yes, when we eventually found out who they were.**
 17 Q. And part of that comfort was derived from what became
 18 known as the letter of intent. That is right, isn't it?
 19 **A. Yes.**
 20 Q. So in other words, you were comforted that you wouldn't
 21 be out on a limb with just these two portals, the OTM
 22 and the one other, because you knew that there was
 23 a group of other agents who had also committed, in
 24 principle, by the letter of intent. That is right,
 25 isn't it?

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1 **A. Well, slightly different, actually, because the fact**
 2 **that we knew that one of the founding partners of**
 3 **Agents' Mutual was Knight Frank, they are really our**
 4 **only competitors where my business is. The fact that**
 5 **they were in Agents' Mutual, that gave us comfort on its**
 6 **own.**
 7 Q. Right. So a particularly big influence for you then, as
 8 to the decision, was what one of the founding members
 9 was doing; is that right?
 10 **A. For me it was, yes.**
 11 Q. Over the page then, under your next heading,
 12 paragraph 15 in your witness statement, you talk about:
 13 "OTM having a unique collection of properties which
 14 does not simply replicate what could be found on both
 15 Rightmove and Zoopla."
 16 Do you see that?
 17 **A. Yes, I can.**
 18 Q. I expect you know what's coming now, Mr Wyatt?
 19 **A. You have been going round and round in circles about**
 20 **this point.**
 21 Q. I put it to you in any event. It is not right, is it,
 22 that any property on OTM is unique; that is right?
 23 **A. Ah, well, you are talking about properties coming from**
 24 **Zoopla, properties coming from Rightmove, coming**
 25 **together. It is the wording and it has been mentioned**

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1 **by several of the witnesses here. The wording is**
 2 **probably not entirely clear but it is a unique**
 3 **collection of properties, in that they are not**
 4 **identically replicated on any other website.**
 5 Q. Right, but it is right, is it not, if you take
 6 a property, a given property, that is not unique to OTM,
 7 is it? There are no unique properties on OTM because
 8 they are all either on Rightmove or Zoopla, aren't they?
 9 **A. Well the word "unique" is an overused word, frankly.**
 10 Q. But I am right, am I not, Mr Wyatt, you might as well
 11 accept it?
 12 **A. I don't need to accept anything.**
 13 Q. But I am right, am I not?
 14 **A. I don't accept that it is true, actually. And I think**
 15 **this whole question of the unique collection,**
 16 **unfortunately has been fudged.**
 17 Q. Can you think of a single property that is only to be
 18 found on Rightmove, aside from a 24 or 48-hour period
 19 early bird service?
 20 **A. I think you'd have to find it yourself, I don't know.**
 21 Q. No. You are not aware of a single one, are you?
 22 **A. No, I am, of course not.**
 23 Q. So we have really dealt with that. Then you say in your
 24 paragraph 16 that you were -- I am now about seven lines
 25 up from the bottom. Do you see the sentence beginning

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1 "At the time?"
 2 **A. Yes.**
 3 Q. "At the time -- "
 4 So that is at the time of signing up to the OTM and
 5 its OOP rule; yes?
 6 **A. Yes.**
 7 Q. "At the time, I had no idea which portal the majority of
 8 agents would choose as their one other portal."
 9 Do you want to change that evidence?
 10 **A. I suppose at the time of signing -- I can't remember**
 11 **exactly when I signed. The answer is, we didn't know.**
 12 **I mean I was probably the first agent to stick their**
 13 **head over the parapet wall and announce that I would**
 14 **be -- my firm would be leaving Zoopla and it was**
 15 **reported in the property press that I was the first one**
 16 **to come out and say that's what we were doing. As to**
 17 **what the others were doing, I think there were probably**
 18 **rumblings but no idea.**
 19 Q. It is an exaggeration, is it not, let's be honest, Mr
 20 Wyatt, no idea?
 21 **A. I suppose -- all right, fair enough.**
 22 Q. Yes. So that is an exaggeration. You did have --
 23 **A. But in those days people did not -- people did not make**
 24 **it clear, right until the last minute. As I say,**
 25 **I think I was the first one to come out in the October**

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<p>1 and say: we're out of Zoopla. That's what we're doing.</p> <p>2 And most other people didn't make their mind up or</p> <p>3 didn't come clean, you might say, until after the new</p> <p>4 year.</p> <p>5 Q. So my point, and I think you are agreeing with me on</p> <p>6 this, is that overstates it, doesn't it: "I had no idea</p> <p>7 which portal". You accept that from me, don't you?</p> <p>8 A. The point is one couldn't have any idea of which the</p> <p>9 majority (inaudible) because I only knew about a small</p> <p>10 area. I'm in Virginia Water, I don't know what people</p> <p>11 are doing in Northumberland or north Wales or south</p> <p>12 Devon.</p> <p>13 Q. You don't know for sure but you knew it was</p> <p>14 inconceivable, didn't you, that most agents would drop</p> <p>15 Rightmove? Inconceivable that most agents would drop</p> <p>16 Rightmove. That's right, isn't it, and you knew that?</p> <p>17 A. No, I didn't know that. Our best guess at the outset</p> <p>18 was that half the agents would drop Rightmove and half</p> <p>19 of them would drop Zoopla.</p> <p>20 Q. Really?</p> <p>21 A. That was the presentation. But the goalposts change</p> <p>22 over time. It became very obvious towards the end that</p> <p>23 Zoopla was going to be hammered.</p> <p>24 Q. I see. So at the time -- this is all, by the looks of</p> <p>25 your witness statement, in about 2013. You were saying</p> <p style="text-align: center;">Page 86</p>	<p>1 Q. So, so far you agree with first and second sentences.</p> <p>2 But whoever wrote this, I think Mr Springett, certainly</p> <p>3 for and on behalf of the steering committee of project Z</p> <p>4 goes on to say:</p> <p>5 "For the majority of agents it is inconceivable that</p> <p>6 they could come off Rightmove."</p> <p>7 Are you saying you don't agree with that?</p> <p>8 A. This is his statement not mine.</p> <p>9 Q. I know and I am asking, do you agree with it?</p> <p>10 A. We are talking about my witness statement not his.</p> <p>11 Q. Do you agree with that or not?</p> <p>12 A. At the time we had a free choice as to which other</p> <p>13 portal we wanted to remove ourselves from. We chose</p> <p>14 Zoopla on the basis of hard facts and evidence that it</p> <p>15 wasn't working for us. So whether other agents, and we</p> <p>16 know other agents stayed on Zoopla, that was up to them.</p> <p>17 What Mr Springett had to say in this document is up to</p> <p>18 him not me. I wasn't party to that.</p> <p>19 Q. Can I ask the question again because you didn't answer</p> <p>20 the question. Are you disagreeing with the view put in</p> <p>21 that document that it was inconceivable that most agents</p> <p>22 would drop Rightmove? Do you agree or disagree?</p> <p>23 A. At the end of the day in my area, and I'm only talking</p> <p>24 about the area where I was operating, am operating</p> <p>25 I think it was unlikely that Rightmove would have many</p> <p style="text-align: center;">Page 88</p>
<p>1 you had no idea, you thought it would be about 50/50.</p> <p>2 Can I show you a document, please, in bundle H1/178. So</p> <p>3 you know what this document is, Mr Wyatt, the first page</p> <p>4 is on 173 and it is a very early discussion draft</p> <p>5 dated November 2011, of what was at that point known as</p> <p>6 Project Z which became Agents' Mutual. So if you like,</p> <p>7 it is a nascent business plan. There are various</p> <p>8 iterations of this but I just want to show you one page.</p> <p>9 Apparently named after some posh restaurant in some part</p> <p>10 of town.</p> <p>11 Can I show internal page 6 which is bundle page 178?</p> <p>12 A. Yes.</p> <p>13 Q. So this is being principally written by Mr Springett and</p> <p>14 it is on behalf of what was then the steering committee</p> <p>15 of what became Agents' Mutual. Do you see that the</p> <p>16 author, on behalf of this steering committee, is saying</p> <p>17 at the bottom, in the paragraph beginning:</p> <p>18 "In summary", second sentence:</p> <p>19 Well first sentence:</p> <p>20 "Just two portal groups."</p> <p>21 So who would that be, Mr Wyatt?</p> <p>22 A. Rightmove and Zoopla.</p> <p>23 Q. And of these, Rightmove is the dominant market leader</p> <p>24 and you accept that, don't you?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 87</p>	<p>1 people staying.</p> <p>2 Q. So when you say you had no idea what you really mean is</p> <p>3 you did think it was unlikely that most people would</p> <p>4 leave Rightmove?</p> <p>5 A. Well, as you said right at the outset, perhaps the word</p> <p>6 "no idea" could have been slightly weakened but I am</p> <p>7 talking about -- in the word "no idea" I'm talking about</p> <p>8 the whole country. I don't know what the whole</p> <p>9 country's going to do. Big companies like Connells will</p> <p>10 have a bigger countrywide view of things.</p> <p>11 Q. I am going to move on, Mr Wyatt. I put it to you that</p> <p>12 it was inconceivable that most agents would drop</p> <p>13 Rightmove; would you agree?</p> <p>14 A. I think we've done that. It's -- in my area I think it</p> <p>15 would have been extremely unlikely.</p> <p>16 Q. Thank you. Moving on then -- we are nearly there,</p> <p>17 Mr Wyatt. Now I am towards the back end of your witness</p> <p>18 statement. Do you see in your paragraph 20 under the</p> <p>19 heading "OTM's performance in the market", just picking</p> <p>20 it up at the bottom of the page and over the next page</p> <p>21 you say:</p> <p>22 "I believe that OTM has been doing generally well</p> <p>23 bearing in mind it is a new company ..."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 89</p>

<p>1 Q. So I am right in saying, I think you would accept from 2 me, that you regard OTM as having been implemented 3 successfully on the market, right? 4 A. I do. 5 Q. And in fact it has been trading for over two years, 6 hasn't it? 7 A. Just two years. 8 Q. And it is providing you with leads, isn't it? 9 A. Yes. 10 Q. The final two points then, Mr Wyatt. I am now in your 11 paragraph 21. You also refer to the early birds so you 12 probably know what is coming. I did this with 13 Mr Symons. Have you heard of the auction principle as 14 expressed in Miss Frew's evidence that I read out 15 earlier? 16 A. I have to say -- I read her time in here yesterday. It 17 is the first time I have heard about it. I have never 18 heard another agent discuss it. 19 Q. But you accept, don't you, that it is part of your duty 20 to try and interest as many people as possible in the 21 properties that you are trying to sell on behalf of your 22 vendor clients; that is right, isn't it? 23 A. Our job is to market as fully as we can -- 24 Q. That is right. 25 A. -- using various methods.</p> <p style="text-align: center;">Page 90</p>	<p>1 portals, property portals are part of our advertising. 2 We still use print advertising. Some print advertising 3 has a lead time of several weeks in glossy magazines. 4 So the idea that the early bird service is doing 5 a disservice by excluding people for 48 hours, it is 6 just nonsense. 7 Q. Let me give you an example, Mr Wyatt. You say it is 8 nonsense, but let's assume you put a property -- I think 9 you say you do put your properties on early bird, right? 10 A. We do. 11 Q. So let's assume you are on there for this exclusive 12 24/48 hour period and the only people looking at it are 13 the visitors to OTM. That is right, is it not, so far? 14 A. Not really because a lot of people will already have had 15 the property details by other methods. 16 Q. But not via what we all accept are the most important 17 advertising methods, namely either Rightmove or Zoopla? 18 A. I'm not entirely sure I would call it the most important 19 advertising methods. 20 Q. Would you call them extremely important advertising 21 methods? 22 A. It is part of our marketing strategy. 23 Q. Come on, Mr Wyatt. You know perfectly well that 24 Rightmove at least is an extremely important part of you 25 advertising properties, don't you?</p> <p style="text-align: center;">Page 92</p>
<p>1 Q. The reason for that is because the more people to whom 2 you market the more likely you are to bid up the price 3 for the property that you are trying to sell for your 4 client; that is right, isn't it? 5 A. I don't know about "bid up". What you are trying to 6 find is a buyer who's going to make an acceptable offer. 7 I don't know about "bid up". That's the wrong word. 8 Q. Okay. What you are trying to do is generate as much 9 interest as possible in order to get the highest price 10 for the property as possible, aren't you? 11 A. I'll put it much more simply than that: we are trying to 12 the sell the property. 13 Q. That is right for the highest price you can get. That 14 is your duty to your vendor clients, isn't it? 15 A. It is, yes. 16 Q. But that isn't what happens if you put something on the 17 early bird service, is it? Because when it's on the 18 early bird service by definition it is only being 19 offered to visitors to the OTM website; that is right, 20 isn't it? 21 A. Just as the last chap who was sitting here, 22 I fundamentally disagree with that because we have so 23 many marketing routes that we use. So it will start 24 with a telephone call, it will be on our own website, it 25 will be on social media, Twitter, Facebook. Web</p> <p style="text-align: center;">Page 91</p>	<p>1 A. It is part of our marketing strategy but I can tell you 2 we don't sell an awful lot of houses directly from 3 property portals. 4 Q. I see. In any event, whether you accept that or not, if 5 it is only on the early bird service, this particular 6 house -- why do estate agent always refer to 7 Acacia Avenue, is that just part of the lingo of the 8 trade? 9 A. I don't know, it's awful though. 10 MR FREEMAN: They both begin with A I think is why. 11 MR HARRIS: Let's assume it is number 10 Acacia Avenue and 12 it is only on early bird and you sell it in that 24/48 13 hour period, you can be sure that it hasn't been 14 advertised to a large number of potentially relevant 15 buyers, can you, who would have seen it on Rightmove? 16 A. I take your point but it would be very unlikely that you 17 would actually sell that property in 48 hours. 18 Q. That may be but that is because it is limited in time? 19 A. Exchanging contracts usually takes -- 20 Q. Insofar as you do sell it in that period of time by 21 definition almost it is not going to be marketed to the 22 widest possible audience, is it, it is obvious? 23 A. No, because the property will still be marketed on other 24 website streams after that 48 hours and the vendor has 25 the absolute right to change their mind if they want to,</p> <p style="text-align: center;">Page 93</p>

<p>1 if they get offered a higher price.</p> <p>2 Q. Just bear with me, talking about that property, 10</p> <p>3 Acacia Avenue, that gets sold when it is exclusively on</p> <p>4 OTM. For sure that property hasn't been marketed to the</p> <p>5 widest possible audience including to your other portal</p> <p>6 with whom you have a listing agreement, namely</p> <p>7 Rightmove, is it?</p> <p>8 A. Well, I'll accept that in part but actually if you do</p> <p>9 actually sell it, and by selling we were talking about</p> <p>10 exchanging contracts which would be pretty rapid, the</p> <p>11 seller by definition should be extremely happy they've</p> <p>12 sold the house and they will have agreed to sell at that</p> <p>13 price.</p> <p>14 Q. Save for that vendor who says to himself, "Oh crikey,</p> <p>15 I have got an offer but only from a tiny pool of people</p> <p>16 looking at that website, whereas if it had been on the</p> <p>17 other big website, Rightmove, I might have got a much</p> <p>18 higher offer; that is right, is it not?</p> <p>19 A. I can't think of a single vendor who would think in</p> <p>20 those sort of terms.</p> <p>21 MR HARRIS: Maybe I am all by myself in that regard.</p> <p>22 Mr Wyatt, thank you for bearing with me. I have no</p> <p>23 further questions.</p> <p>24 Re-examination by Mr Maclean.</p> <p>25 MR MACLEAN: I have just have one matter. If you go back to</p> <p style="text-align: center;">Page 94</p>	<p>1 9 November 2011. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Then the passage Mr Harris wanted you to look at was at</p> <p>4 page 178 at the bottom of the page.</p> <p>5 A. Yes.</p> <p>6 Q. In summary. And I think he took you to the first couple</p> <p>7 of sentences and of course he focuses on the sentence:</p> <p>8 "For the majority of agents it is inconceivable they</p> <p>9 could come off Rightmove."</p> <p>10 Could you just read to yourself, Mr Wyatt, please to</p> <p>11 the end of that paragraph which you will see ends on the</p> <p>12 next page with the words "terms for listing" and once</p> <p>13 you have done that I want to ask you one question.</p> <p>14 A. Sure. (Pause) Yes.</p> <p>15 Q. The last sentence which begins "the reality for agents"</p> <p>16 contains a prediction or at least a possibility as to</p> <p>17 what might happen, what may be the case; do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any observation to make on whether that</p> <p>21 prediction was or was not borne out by events?</p> <p>22 A. We were certainly concerned about the ability of the</p> <p>23 merger of – the coming together of the Zoopla Group and</p> <p>24 there just being two large players to increase prices.</p> <p>25 That was part of our big concern after the collapse of</p> <p style="text-align: center;">Page 96</p>
<p>1 your witness statement in bundle C, tab 5. You were</p> <p>2 asked a number of questions about the decision you took</p> <p>3 about the other portal. If you look at paragraph 11,</p> <p>4 the heading above that is "The basis of Barton Wyatt's</p> <p>5 decision to join AM" and you refer at the end of</p> <p>6 paragraph 11 to meeting Mr Springett in June 2013.</p> <p>7 A. Yes.</p> <p>8 Q. As I understand it, the decision which was taken to join</p> <p>9 OnTheMarket must have been taken some time</p> <p>10 after June 2013, right?</p> <p>11 A. I think it must have been because June 2013, as</p> <p>12 I recall, that was an initial presentation by</p> <p>13 Ian Springett to a large group of estate agents, the</p> <p>14 Surrey branch of the National Association of Estate</p> <p>15 Agents which I was chairing at the time.</p> <p>16 Q. You remember being asked some questions about what was</p> <p>17 or was not inconceivable, do you remember that?</p> <p>18 A. Yes.</p> <p>19 Q. Mr Harris showed you a document. If you still got it</p> <p>20 with you, bundle H1. You haven't. So bundle H1 and he</p> <p>21 wanted you to look at page 178. I want to show you that</p> <p>22 again. Would you turn to page 173.</p> <p>23 A. Yes.</p> <p>24 Q. Do you see this is a discussion draft and you see the</p> <p>25 date in the top right-hand corner, Mr Wyatt,</p> <p style="text-align: center;">Page 95</p>	<p>1 Property Live, was the, there is the most heinous word</p> <p>2 "duopoly" banded around quite a lot, but the ability for</p> <p>3 them to start edging prices up was of great concern to</p> <p>4 us.</p> <p>5 MR MACLEAN: Thank you very much, Mr Wyatt, I have no</p> <p>6 further re-examination.</p> <p>7 Questions by the Tribunal</p> <p>8 MR FREEMAN: Mr Wyatt, in paragraph 23 of your statement you</p> <p>9 talk about Zoopla coming back and offering you a better</p> <p>10 deal.</p> <p>11 A. Yes.</p> <p>12 MR FREEMAN: At this time you are still using Rightmove as</p> <p>13 a portal?</p> <p>14 A. Yes, we are.</p> <p>15 MR FREEMAN: What's your experience with their pricing?</p> <p>16 A. With Rightmove?</p> <p>17 MR FREEMAN: Since joining Agents' Mutual over the last two</p> <p>18 years.</p> <p>19 A. Well, I think our experience of Rightmove is that it's</p> <p>20 an extremely well-run machine that will sell you</p> <p>21 additional products that you probably don't really need.</p> <p>22 So we have found ourselves spending more over the years</p> <p>23 probably on stuff that I don't really think we need at</p> <p>24 all and in fact, we are in the process of back peddling</p> <p>25 and trying to decrease our spend on extra items, extra</p> <p style="text-align: center;">Page 97</p>

1 sales items that they try and sell to us.
 2 MR FREEMAN: But the actual listing fees, have they gone up
 3 or stayed the same or gone up less or ..?
 4 **A. You are talking about Rightmove?**
 5 MR FREEMAN: Yes.
 6 **A. Rightmove's listing fees have edged up. Where they make**
 7 **considerable extra profits is by selling you additional**
 8 **services.**
 9 MR FREEMAN: So for the basic proposition?
 10 **A. It is roughly the same. It's edged up but I mean, not**
 11 **a lot. There's been no stampede upwards. The stampede**
 12 **upwards has been all through selling you houses that**
 13 **have flashes on them, saying "Premium listing", and all**
 14 **this sort of business.**
 15 MR FREEMAN: I have no idea what you're talking about, Mr
 16 Wyatt. Thank you.
 17 THE CHAIRMAN: No questions. Thank you very much, Mr Wyatt.
 18 MR MACLEAN: Sir, I am more than happy to call Mr Springett
 19 as the next witness or not. It is up to the Tribunal.
 20 THE CHAIRMAN: We could resume at 1.50.
 21 MR MACLEAN: Very well.
 22 (12.50 pm)
 23 (Luncheon Adjournment)
 24 (2.00 pm)
 25 THE CHAIRMAN: Mr Maclean, before we resume, I wanted to say

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1 how grateful I am for the invitation to read
 2 Mr Bronfentrinker's sixth witness statement,
 3 particularly before Mr Springett gives his evidence.
 4 And before he gives his evidence, I think there are
 5 a number of points that I want to raise with you both.
 6 Having read Mr Bronfentrinker's statement, you
 7 won't, I suspect, be surprised that I have a series of
 8 concerns and what I have got for you now is a shopping
 9 list of points that I am going to be needing to be
 10 addressed upon tomorrow morning. I am not inviting
 11 submissions now but I just want to set out what would be
 12 of particular assistance to the Tribunal. There may be
 13 other points. Obviously, we've only just read
 14 Mr Bronfentrinker's statement, but the four areas that
 15 I have identified are these.
 16 First, was this recording made unlawfully or just
 17 clandestinely? If unlawfully, does it make any
 18 difference to it being either admitted in evidence or,
 19 and I would stress this is not the same thing, put to
 20 Mr Springett?
 21 Secondly, as a matter of fairness, does more
 22 information need to be provided about how this document
 23 was made, the circumstances of the recorded
 24 conversations and who was speaking? I raise that
 25 because there may, to take an entirely invented example,

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1 there may be a question about the genuineness of the
 2 document. We all know recordings can be spliced,
 3 edited, we just don't know but leaving that on one side,
 4 I note that there are transcripts. I haven't seen the
 5 transcripts but I know they're there. Now, they are
 6 almost certainly going to be adding evidence to the
 7 evidence, if it is evidence, of the recording. Filling
 8 in the blanks, making clear unclaritys, choosing
 9 between alternative readings, identifying speakers.
 10 Now, those are all matters which will not emerge
 11 from the face of the recording but which come out of the
 12 added value, if I can call it that, of the transcript.
 13 And it does seem to me that that is a separate head of
 14 evidence and I am going to need to hear from you both as
 15 to whether the absence of these details about the origin
 16 of the transcript, the recording and the speakers, that
 17 sort of thing, whether that prejudices Mr Maclean's
 18 client and if there is prejudice, how that prejudice is
 19 to be addressed.
 20 Thirdly, and related to the second point, there is
 21 the question of the lateness of production. So leaving
 22 entirely on one side issues about the details of the
 23 recording, the fact is, production of this document is
 24 very late.
 25 I am not necessarily making a criticism but

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1 Mr Maclean, you might very well want an opportunity to
 2 take instructions, make further investigations yourself,
 3 I don't know, it is up to you, but that opportunity
 4 clearly needs to be made available to you and I will,
 5 again, want some assistance on whether you will need
 6 that.
 7 Related to that is a question of whether we need to
 8 know more about the timing of the production of the
 9 recording by X, as I will refer to the intermediate
 10 producer of the document, because if, and I am
 11 suggesting nothing, the document could have been
 12 produced earlier, I will want to be addressed on whether
 13 that makes any difference on the question of
 14 admissibility.
 15 Fourthly, I would like to know what exactly the
 16 parties, and this is particularly addressed to
 17 Mr Harris, are asking me to do. Is Mr Harris simply
 18 intending to put the document in cross-examination to
 19 Mr Springett and take whatever answers he gets or is
 20 Mr Harris seeking some independent evidential status for
 21 this document?
 22 Now, there may very well be other areas which I have
 23 missed but those are certainly the areas which over the
 24 short adjournment, we identified as being those where we
 25 would be assisted by submissions from counsel.

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<p>1 MR MACLEAN: That's extremely helpful, if I may say so. It 2 comes as no surprise to those of us on this side of the 3 Tribunal that you should have a relatively long shopping 4 list, having had even a short period of time to consider 5 the statement. 6 Can I just raise two matters which really flow from 7 what you have already said, sir? 8 You will have gathered, of course, that X, assuming 9 X to be the person identified in paragraph 6, in the 10 first line of paragraph 6 -- 11 THE CHAIRMAN: Yes, that's who I am referring to as X. 12 MR MACLEAN: If we take that person as X, then of course 13 that person is not the same as the person who one might 14 call Y, referred to in the third line of paragraph 9. 15 THE CHAIRMAN: That is absolutely right. I think I have 16 referred to him as the intermediate producer, so when 17 I talk about the details of the recording, it does seem 18 to me that I would want to hear argument on this, that 19 it might be helpful to have more details on Y. 20 MR MACLEAN: And there were two other points, sir, that 21 struck me, certainly when I read this. The first is 22 that paragraph 6, I make no criticism, I emphasise, of 23 the drafting of this, but paragraph 6 is clearly, 24 carefully drafted. If one takes the first sentence. 25 The recordings were received from X, but received by</p> <p style="text-align: center;">Page 102</p>	<p>1 And that is why, as I said this morning, 2 Mr Bronfentrinker's statement seemed to us to raise many 3 more questions than it answers. But having said that, 4 we will obviously do our best to address the questions 5 tomorrow. 6 THE CHAIRMAN: Indeed. I appreciate that in a sense, the 7 origin questions are more for Mr Harris's team. The 8 prejudice questions are more for your team. 9 MR MACLEAN: Yes. 10 MR HARRIS: Save for this remark, sir, which of course, is 11 to the extent that it is potentially to be admitted and 12 it is probative, there is prejudice in us not being 13 allowed to use it. 14 THE CHAIRMAN: I understand that. 15 MR HARRIS: I have made a careful list of all of those. 16 They are on the transcript. We will address them fully 17 tomorrow morning. 18 THE CHAIRMAN: That is extraordinarily helpful. We have to 19 discuss, I think, four logistical matters. 20 Mr Springett, as we all know, is about to give evidence. 21 My provisional thinking, but I do think we need to 22 determine this now, is that he should do so on the 23 express understanding that Mr Maclean can take 24 instructions from him on the matter of the recordings 25 and their content, whilst he's giving evidence.</p> <p style="text-align: center;">Page 104</p>
<p>1 whom? When? And talks about "without any prior contact 2 from Quinn Emanuel". It talks about "I came to learn 3 of", and then a bit later on in the paragraph 7, 4 "I understood". This omits the usual rubric about 5 identifying the basis of one's understanding or belief, 6 when it doesn't deal with facts within the witness's own 7 knowledge. And it is -- as I say, I don't make any 8 criticism of it. I am not suggesting that this 9 statement is inaccurate. It is what it doesn't say and 10 what it doesn't deal with that raises a number of 11 questions. It doesn't deal with, in particular, when 12 this material was first within the possession, custody 13 or control, either of Gascoigne Halman or of Connells or 14 Zoopla, who are of course, calling the shots in the 15 litigation. And we are concerned or would be concerned 16 if this material is to be deployed, either as simply as 17 stuff to be put to Mr Springett but, obviously, even 18 more so if it's to be in some way put in evidence for 19 the truth of its content or some of it, to understand 20 much more than Mr Bronfentrinker tells us. Because it 21 goes obviously, sir, to the point that you have raised 22 about fairness and lateness and clearly goes to the 23 exercise of such discretion as this Tribunal might have 24 and we haven't got to that stage yet, about admitting 25 this material in.</p> <p style="text-align: center;">Page 103</p>	<p>1 Mr Harris, that is my provisional indication. I would 2 obviously want to hear from you before we make any 3 ruling on that. 4 MR HARRIS: Perhaps, sir, we can deal with that in the 5 morning because I have no intention to put anything to 6 him in the transcripts today, even were they to be 7 admitted and I would like to take my own instructions on 8 that question. 9 THE CHAIRMAN: That is entirely fair. 10 MR MACLEAN: Well, subject to -- the normal rule is, as soon 11 as my witness goes in the witness box, he is in purdah, 12 until whenever Mr Harris has finished with him. 13 THE CHAIRMAN: Yes. 14 MR MACLEAN: But I have to deal with the Tribunal's shopping 15 list which might or might not involve contact with 16 Mr Springett. I don't know off the top of my head, but 17 if it does, I have to be able to take instructions from 18 him, if that's appropriate. 19 MR HARRIS: Sir, of course my response to that is that is 20 having one's cake and eating it. My learned friend's 21 team received the audio files over the weekend and they 22 have had the transcript as, obviously, as transcribed 23 since yesterday, in a situation where Mr Springett 24 hasn't been in purdah. So insofar as they wanted to 25 take some instructions about provenance or identity or</p> <p style="text-align: center;">Page 105</p>

<p>1 whatever it may be, they have had that opportunity. 2 Things happen at a rapid pace in litigation. They've 3 happened to me at a rapid pace. The first I ever learnt 4 of this was the back end of last week. 5 THE CHAIRMAN: It is very clear from Mr Bronfentrinker's 6 statement but I appreciate that you are all working 7 under enormous pressure, but I must say, I am slightly 8 reluctant to cut Mr Maclean off from taking 9 instructions, should he need to do so. 10 MR HARRIS: Sir, I will take instructions on that. It may 11 even be before we rise today, I can give you the 12 response. I will try to take instructions. 13 THE CHAIRMAN: No, because the trouble is, once he's in the 14 box, I do think this needs to be determined now. I am 15 very happy to adjourn for this afternoon if you want. 16 MR HARRIS: May we take five minutes? 17 THE CHAIRMAN: We'll rise for five minutes in a moment. 18 MR HARRIS: Yes. 19 THE CHAIRMAN: The second point you have already addressed, 20 Mr Harris, but I just want to make absolutely clear, 21 that there is not to be any questioning of Mr Springett 22 on these matters, not just today but until the matters 23 that I have listed have been resolved. 24 MR HARRIS: Absolutely. 25 THE CHAIRMAN: Then thirdly, and fourthly, do you want us to</p> <p style="text-align: center;">Page 106</p>	<p>1 But we haven't been given any indication of which 2 particular part or parts of any of these transcripts are 3 said to be relevant. Mr Bronfentrinker's witness 4 statement says that they have identified that these 5 transcripts contained information which -- 6 paragraph 13 -- they ascertained on Sunday afternoon 7 that "the recordings do contain information that is 8 relevant to the issues in dispute." 9 Of course, "relevant to the issues in dispute", that 10 is not even the test for disclosure under CPR 31.6 which 11 is how disclosure was given in these proceedings. The 12 question would be, if it is going to be deployed simply 13 as disclosure, as stuff we have to disclose, it has to 14 be more than relevant. We all know what CPR 31.6 says 15 but they haven't identified which particular part or 16 parts are relevant. And the idea that we could have 17 done so from the audio recordings is absurd because the 18 audio recordings, as Mr Bronfentrinker frequently 19 explains, are very difficult to decipher and much of 20 these transcripts -- I have done my best to read all of 21 it -- much of is it, literally, incomprehensible. You 22 don't know who's talking, you don't know who they are, 23 where they are from, whether they are an Agents' Mutual 24 member or not, whether they are a director of Zoopla or 25 not, whether they worked for Connells. We have no idea</p> <p style="text-align: center;">Page 108</p>
<p>1 read the excerpts of the transcripts or not? I am not 2 sure that I necessarily see the need at the moment but 3 I am going to be in the hands of you two gentlemen for 4 that. 5 MR HARRIS: Sir, as soon as we can after court today, we 6 will provide you and my learned friend with, if you 7 like, a crib sheet or some hot sections or whatever, 8 some highlighted parts and we would be inviting you to 9 read them before we have the contested application about 10 the admissibility or otherwise, including for the reason 11 that I already gave. The part of balance, though 12 I accept there are many other factors, including the 13 ones you have adumbrated, will be how probative are 14 they, to what matters in dispute in this case do they go 15 and do they indeed, refer to other relevant matters? 16 MR MACLEAN: Could I just say, sir, that there is 108 pages 17 of transcript. There are, as I understand it, three 18 different meetings. At one of them it is not suggested 19 anybody from Agents' Mutual was there. One of them 20 involves a meeting in February 2016, where there is 21 a transcript which identifies what's said to be four 22 people, helpfully identified as "Male voice: M1, male 23 one; M2, male 2; and F1, female 1." That one, in 24 particular, is of no use to man or beast. It is as much 25 help, evidentially, as the proverbial chocolate tea pot.</p> <p style="text-align: center;">Page 107</p>	<p>1 who these people are or what they are talking about and 2 Mr Bronfentrinker says that members of his team have 3 helpfully filled in some of the gaps in the transcript. 4 We don't know what this exercise -- 5 THE CHAIRMAN: This all goes to the fact that we are talking 6 about two evidential streams here. There is the 7 recording and then there's the transcript which for want 8 of a better phrase, adds value. It may or may not. 9 MR MACLEAN: Yes, I see that point. 10 THE CHAIRMAN: But this is, I anticipate, something we will 11 have to deal with tomorrow. Obviously, I am going to 12 encourage and do no more than that, Mr Harris, to 13 produce a reading list as quickly as possible but I am 14 sure you are going to do that anyway. 15 MR HARRIS: Precisely. 16 THE CHAIRMAN: So Mr Maclean, we will read the excerpts when 17 they are produced, as will you. 18 MR MACLEAN: Yes. 19 THE CHAIRMAN: But, obviously, we will be doing so 20 de bene esse. 21 Fourthly, when do we sit tomorrow? I don't 22 anticipate this is going to be a ten minute hearing. It 23 is going to be longer, isn't it? 24 MR HARRIS: Yes, absolutely. We spent some time on it 25 today, a quarter of an hour and we missed ten minutes</p> <p style="text-align: center;">Page 109</p>

1 earlier. I was already going to suggest we need
 2 a properly full day of evidence with Mr Springett and
 3 this is on top of and unanticipated by everybody -- no
 4 criticism, it is just the way it has happened -- I could
 5 see it taking up to an hour all in, not least of all
 6 because at least on one view of the world, you might
 7 want to rise immediately to at least give a decision in
 8 principle, even if not with reasons, because otherwise,
 9 it might potentially, if I succeed, be capable of being
 10 used with Mr Springett in his cross-examination.
 11 The other way to do it would be -- but I am in your
 12 hands -- to guillotine the time. Say, for instance,
 13 start at 10, 15 minutes for our side max, orally,
 14 15 minutes for Mr Maclean, max, orally and then you make
 15 up your mind in principle. That might shave it down to
 16 45 minutes.
 17 THE CHAIRMAN: I am not, and I don't think you are really
 18 encouraging me down this route, I am not inclined to cut
 19 people short on this. These are, for both sides, quite
 20 difficult questions.
 21 We'll sit at 9.
 22 MR HARRIS: I am very grateful, thank you.
 23 THE CHAIRMAN: And we will aim to be an hour and a half or
 24 less but we will see. There are a lot of difficult
 25 points. We will now rise for five minutes for you to

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1 take instructions on the question of Mr Maclean being
 2 able to speak to his client whilst in the box. Five
 3 minutes.
 4 (2.20 pm)
 5 (A short break)
 6 (2.25 pm)
 7 MR HARRIS: Thank you so much for the opportunity to take
 8 instructions. Yes, we are happy that it seems a
 9 sensible and just cause, there be a carve-out for the
 10 purdah, such that Mr Springett can give instructions
 11 limited to the matters connected with the Northern
 12 Ireland transcripts to his legal team overnight and then
 13 the issue will be resolved one way or another, tomorrow
 14 morning.
 15 THE CHAIRMAN: Very helpful. Mr Maclean, you will make sure
 16 it is members of your team -- I am sure they all know
 17 what they are doing.
 18 MR MACLEAN: Yes, I am sure they do, sir. I will make sure
 19 everybody knows the rules.
 20 The next witness then is Mr Springett.
 21 MR IAN SPRINGETT (affirmed)
 22 Examination-in-chief by MR MACLEAN
 23 MR MACLEAN: I was only proposing formally to put to
 24 Mr Springett, his fifth, six and seventh witness
 25 statements. You will have seen there are a number of

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1 others. You will have seen from number five that he
 2 says, in effect, this is the trial one. If Mr Harris
 3 wants me formally to put the others to Mr Springett,
 4 I will but I don't see the point.
 5 MR HARRIS: Sorry, may I just have a moment, sir?
 6 MR MACLEAN: I should have mentioned this to Mr Harris.
 7 THE CHAIRMAN: Why don't you put them all.
 8 MR HARRIS: It is a bit laborious. I think it is only
 9 number 2 of the other ones which are mentioned.
 10 MR MACLEAN: All right. I am very grateful to Mr Harris.
 11 Mr Springett, will you take bundle C, please and
 12 turn to tab number 2 first of all -- let's start at the
 13 beginning. Tab number 1, Mr Springett. Is that the
 14 first page of the first statement that you made in
 15 course of these proceedings?
 16 **A. It is.**
 17 Q. And would you turn to page 12 and identify the
 18 signature?
 19 **A. It is mine.**
 20 Q. And is that the first statement that you made in the
 21 course of these proceedings?
 22 **A. Yes.**
 23 Q. And have you read that statement through recently?
 24 **A. Yes, I have.**
 25 Q. And having done so, is there anything in that statement

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1 that you want to add, subtract or change?
 2 **A. No.**
 3 Q. So you are happy for that to be your evidence in the
 4 case. Can I then, rather than laboriously go through
 5 that question, ask you to look at your second, third,
 6 and fifth statements -- so first of all, tab 2, starts
 7 at page 13?
 8 **A. The answers are all yes.**
 9 Q. And page 28. I am sure Mr Harris won't mind me leading.
 10 That is your signature, isn't it?
 11 **A. Twenty-eight?**
 12 Q. Page 28; tab 2?
 13 **A. Yes.**
 14 Q. That is your second statement?
 15 **A. Yes.**
 16 Q. And then if we go to tab number 3 which starts at
 17 page 29. Page 35, that is the same signature; that is
 18 your signature again, isn't it?
 19 **A. It is.**
 20 Q. And then we don't have your fourth statement, for
 21 reasons I can't now remember but I am sure it doesn't
 22 matter. Can we go to tab 4, page 36?
 23 **A. Yes.**
 24 Q. That's your first page of your fifth statement which is
 25 your main statement for the trial, isn't it?

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<p>1 A. It is. 2 Q. And then if you turn to my version, I don't have 3 a signed version, page 73. Did you sign that fifth 4 statement? 5 A. Yes, I did although the signature's not there. 6 THE CHAIRMAN: No, we don't have a signature either, but 7 perhaps we could make sure there is one. 8 MR MACLEAN: I am sure we have. 9 A. I certainly signed it, sir. 10 Q. Certainly signed it. Then your sixth statement at 11 page 99 and if you turn to page 120, that is the same 12 signature; that is your signature again, isn't it? 13 A. It is. 14 Q. And at page 122 that is an annex that you produced to 15 that statement? 16 A. It is. 17 Q. I haven't dealt with your second statement yet for 18 a particular reason but looking at those statements at 19 tabs 2, 3, 4 and 7, have you read all of those 20 statements through recently? 21 A. Yes, I have. 22 Q. And having done so, is there anything in any of those 23 statements at tabs 2, 3, 4 and 7 that you want to add, 24 subtract or change in any way? 25 A. No changes.</p> <p style="text-align: center;">Page 114</p>	<p>1 A. No, just the first set. 2 Q. So beginning "Website policy" -- 3 A. Correct. 4 Q. -- down to "Results presented ..." Et cetera? 5 A. Yes. 6 Q. So we take out the quotation marks, do we? 7 A. Yes, the italics and quotation marks because that is 8 simply paraphrasing what is said in the relevant report. 9 Q. And then I think the relevant report that's identified, 10 H17/9703, isn't the correct reference; that right? 11 A. That's correct. It should refer to the Paribas 2015 12 document. 13 Q. If I can explain, sir. It is a wrong reference. It is 14 a different BNP Paribas document. It is just the wrong 15 one. The correct one and the one to which the paragraph 16 refers, has now been put into what is now known as 17 bundle X2, so if you manually change H17/9703 and write 18 in X2, tab 41, beginning at page 351, that's the correct 19 reference. 20 THE CHAIRMAN: Thank you. 21 MR MACLEAN: Subject to that change to paragraph 22, 22 Mr Springett, are you happy for that statement as so 23 amended, to be part of your evidence? 24 A. Yes, I am. 25 MR MACLEAN: Thank you very much.</p> <p style="text-align: center;">Page 116</p>
<p>1 Q. So you are happy for all of those statements we 2 discussed so far to be part of your evidence in this 3 case? 4 A. Yes, I am. 5 Q. Let me deal, finally, with your second statement. Turn 6 to page 8, Mr Springett. That is page 123. If you go 7 to the last page, 132, tell us whose signature that is? 8 A. That is me. 9 Q. And that is your seventh and so far at least, the final 10 statement for these proceedings, is it? 11 A. It is. 12 Q. Have you read that statement through recently? 13 A. I have. 14 Q. Having done so, is there anything you want to add, 15 subtract or change in any way? 16 A. Yes, there is. Paragraph 22. 17 Q. Paragraph 22, beginning "By way of example"? 18 A. That's the one. 19 Q. Can you just tell the Tribunal what the change is? 20 A. The change relates to the first parts of that paragraph 21 which is italicised. It shouldn't be italicised because 22 it is not a direct quote from the document that's 23 referenced and simply removing the italics will do the 24 job. 25 Q. Is that the first set of italics or the second or both?</p> <p style="text-align: center;">Page 115</p>	<p>1 Cross-examination by MR HARRIS 2 MR HARRIS: Good afternoon, Mr Springett. I'm right in 3 saying, am I not, Mr Springett, that if the OOP rule is 4 declared illegal and can't be severed from the 5 contracts, such that the membership contracts are void, 6 then that is the end of the Agents' Mutual business as 7 we know it, isn't it? 8 A. Well, I don't accept that they can't be severed. It is 9 not my field, but my legal team tell me that that isn't 10 necessarily the legal position. 11 Q. I accept that, but if they are declared illegal and they 12 can't be severed, such as the membership contracts are 13 void, then you would accept that's the end of the 14 Agents' Mutual business? 15 A. I don't accept that, no. 16 Q. But you do accept that there is a great deal at stake 17 for the future of Agents' Mutual's business in this 18 litigation, don't you? 19 A. Yes, I do. 20 Q. And you do accept as well that you put many, many years 21 of work into this venture; correct? 22 A. I do, yes. 23 Q. And you don't want to see that venture fail, do you? 24 A. I don't want to see it fail. 25 Q. It is effectively, in many ways, your brainchild, is it</p> <p style="text-align: center;">Page 117</p>

<p>1 not, this Agents' Mutual?</p> <p>2 A. No, sir, it's the founding members'.</p> <p>3 Q. You have been instrumental in the formation, genesis,</p> <p>4 aims and objectives of this venture right from the very</p> <p>5 beginning, haven't you, Mr Springett?</p> <p>6 A. I have been but it wasn't my brainchild because I was</p> <p>7 asked to come to help with an idea that had been formed.</p> <p>8 Q. And it is right, isn't it, that you stand to make a lot</p> <p>9 of money, personally, if the venture succeeds; right?</p> <p>10 A. I do have a bonus arrangement linked to any profits that</p> <p>11 are made.</p> <p>12 Q. That is right. In fact, it is a major sum, isn't it,</p> <p>13 that you are promised, if, at the end of the five year</p> <p>14 period, the venture has been successful. That is</p> <p>15 correct, isn't it?</p> <p>16 A. It depends how successful it's been.</p> <p>17 Q. Yes, but you are promised a major sum in five years</p> <p>18 time, if the venture is successful; yes?</p> <p>19 A. If the venture is successful, I will get a reward that's</p> <p>20 related to the profit, the cumulative profit.</p> <p>21 Q. Yes, can we just take one bundle, number 1, H1 and</p> <p>22 please turn in it to page 371. This is a document</p> <p>23 marked "Confidential". It is obviously not confidential</p> <p>24 from you because you wrote it. I don't propose to read</p> <p>25 out any of the figures or anything like this, but let me</p> <p style="text-align: center;">Page 118</p>	<p>1 Q. And then we go over the page, item 5 and we talk about</p> <p>2 various scenarios and projections and then do you see</p> <p>3 beneath the bullet points, there is a paragraph</p> <p>4 beginning "As indicated". Do you see that one?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And do you see the second sentence:</p> <p>7 "Under the committee's proposal", and then again,</p> <p>8 the figures, I am not going to read out --</p> <p>9 A. No.</p> <p>10 Q. -- they are not particularly relevant, in any event.</p> <p>11 But they talk about the business growing in certain</p> <p>12 manners, the cumulative profit being such-and-such and</p> <p>13 the management pay out rising in a certain amount?</p> <p>14 A. Yes.</p> <p>15 Q. And that's a significant amount, isn't it?</p> <p>16 A. It is performance related, but it would be a significant</p> <p>17 amount, depending on what the cumulative profit was.</p> <p>18 Q. Yes, that's right. Indeed, you go on to say after the</p> <p>19 hyphen at the end of that sentence:</p> <p>20 "... a certain proportion of the cumulative profit</p> <p>21 of the business"?</p> <p>22 A. Correct.</p> <p>23 Q. So the proposal is at that stage, for the management</p> <p>24 team, of which you are the lead, to get a percentage of</p> <p>25 the cumulative profit of the business, right, if</p> <p style="text-align: center;">Page 120</p>
<p>1 just orientate you, Mr Springett. Do you see on</p> <p>2 page 369, it is a briefing document that you wrote about</p> <p>3 project Z and, in particular, the management deal,</p> <p>4 dated September 2012?</p> <p>5 A. I see that.</p> <p>6 Q. And can I take you into the second page of the document</p> <p>7 towards the top of the page, item 4. Do you see the</p> <p>8 heading "Incentive for success"?</p> <p>9 A. I do.</p> <p>10 Q. So you are talking in this section about the incentive</p> <p>11 for success for the management team, are you not?</p> <p>12 A. Yes, I am.</p> <p>13 Q. At the bottom of the page, do you see an emboldened type</p> <p>14 in the final paragraph:</p> <p>15 "I would ask the committee to agree -- "</p> <p>16 I am not going to read out the figure in case that</p> <p>17 is particularly sensitive:</p> <p>18 "... a certain percentage as the basis for the</p> <p>19 profit share"?</p> <p>20 A. I can see that, yes.</p> <p>21 Q. And that is again, a certain percentage for the profit</p> <p>22 share for the management team; yes?</p> <p>23 A. That's correct.</p> <p>24 Q. Of which you are the leader?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 119</p>	<p>1 successful?</p> <p>2 A. Yes.</p> <p>3 Q. And then under the heading "Other matters", at the</p> <p>4 bottom of the page, the first bullet point, do you see</p> <p>5 that you propose a certain share of that pot to you</p> <p>6 personally?</p> <p>7 A. I did, yes. And that isn't the final -- sadly for me,</p> <p>8 not the final amount that was agreed.</p> <p>9 Q. As I say, Mr Springett, it is not so much the detail</p> <p>10 that I am concerned with.</p> <p>11 A. No, okay.</p> <p>12 Q. And I take your point, it is a fair point, Mr Springett,</p> <p>13 these are projections and they vary on the degree of</p> <p>14 success and what have you. But I am right in saying, am</p> <p>15 I not, if we go now -- we can put away bundle H1 and if</p> <p>16 you could be provided with H11 this time and turn it up,</p> <p>17 please, to page 6151 -- sorry, this seems to be a false</p> <p>18 reference, so we had better find the right one. I think</p> <p>19 it might be 6251. I beg your pardon. It should be</p> <p>20 6251. Just again to orientate you, Mr Springett, you</p> <p>21 are probably very familiar with these now. We have</p> <p>22 looked at them a few times in the course of the hearing.</p> <p>23 On page 226, it is the front page of a presentation that</p> <p>24 you made to Mr Livesey, Plumtree and Twigg at Leighton</p> <p>25 Buzzard in September 2005. Do you remember that?</p> <p style="text-align: center;">Page 121</p>

<p>1 A. I do. 2 Q. On the page at 6252, you can see in the right-hand side 3 of the page, an estimate upon what we say is your 4 strategy and what your counsel called a stylised 5 scenario, of a cumulative cash surplus for the period 6 2016 to 2020, can't you? 7 A. I can. 8 Q. And that is a very significant sum, is it not? 9 A. It is a significant sum. It is probably pertinent to 10 say that our management arrangements at the time were 11 constructed for the period 2014, February 2014 12 to January 2020. 13 Q. Thank you. But it is right then, overall -- 14 A. So it included the initial losses, in other words. 15 Q. Yes, thank you very much. But I am right, am I not, 16 there, therefore, if Gascoigne Halman succeeded in what 17 it sets out to achieve in this competition defence, you 18 stand to lose a lot personally, don't you? 19 A. I haven't got it to lose but the potential. 20 Q. Not to obtain; is that fair? 21 A. I think it's fair. 22 Q. Thank you. Now against that background, Mr Springett, 23 it is also right to say that you have been prone to 24 exaggerate your evidence to the court, to get your own 25 way in this litigation, haven't you?</p> <p style="text-align: center;">Page 122</p>	<p>1 the final sentences, you say: 2 "There is a state of affairs that I do not believe 3 can be allowed to continue with the business and in 4 these circumstances, I would respectfully invite the 5 court to grant the injunction sought." 6 A. Yes. 7 Q. So this was your witness statement in support of your 8 urgent interim injunction application, wasn't it? 9 A. Correct. 10 Q. Can I take you in the document to paragraphs 37 to 42. 11 Mr Springett, I don't want you to be unfamiliar. You 12 said you have re-read this but could you just cast your 13 eye again from 37 to 42 and members of the Tribunal, 14 would you mind doing the same, because I apprehend you 15 haven't seen this document before? 16 THE CHAIRMAN: We'll read it. (Pause) We have but we'll 17 read it again. 18 MR HARRIS: I am grateful. Perhaps if we all do it fairly 19 quickly then. (Pause). 20 Have you had an opportunity just to refresh your 21 memory? So amongst other things, picking it up at 37, 22 you are making various contentions about the alleged 23 effect of Gascoigne Halman being in breach of contract 24 and its impact, you say, upon Agents' Mutual; right? 25 A. Correct.</p> <p style="text-align: center;">Page 124</p>
<p>1 A. No. 2 Q. In fact, you have been prone to provide incomplete and 3 misleading evidence, haven't you, when it suits your 4 purposes? 5 A. No. 6 Q. Do you recall seeking an urgent interim injunction in 7 this case? 8 A. Yes. 9 Q. Can I take you, please, to bundle C, and it is your 10 first witness statement. You will find that behind 11 tab 1. And can you just note the date for the moment. 12 It is on 17 February 2016 that you saw this statement, 13 isn't it? 14 A. It is. 15 Q. And that was only a few days after you learnt of what 16 you describe as the breach of contract by Gascoigne 17 Halman, wasn't it? 18 A. Yes. 19 Q. So a few days after learning of the alleged breach, you 20 issue an application for an urgent interim injunction; 21 yes? 22 A. Correct. 23 Q. Can I just draw your attention within this statement to 24 paragraph 4 and this summarises to some extent, the 25 purpose of this witness statement and, in particular,</p> <p style="text-align: center;">Page 123</p>	<p>1 Q. In 37 you describe yourself as "will suffer -- " Not 2 you personally, but AM, "will suffer extensive and 3 irreparable damage"; do you see that? 4 A. Yes. 5 Q. You say as a result of what Gascoigne Halman is doing, 6 it will "lead to other agents adopting a similar course 7 of action"? 8 A. Yes. 9 Q. This was evidence you were putting to the court; right? 10 A. Correct. 11 Q. And indeed you go on to claim that: 12 "As a consequence, the whole viability of the OTM 13 network will be under severe threat." 14 Do you see that? 15 A. Yes. 16 Q. In 38.2 you talk about the alleged breach by Gascoigne 17 Halman being bound to undermine confidence in OTM and 18 exacerbate the risk of further breaches. Do you see 19 that? 20 A. Yes. 21 Q. In 39 you describe this alleged breach "given the 22 network effects", and this is in the second line, as 23 being -- they were giving rise to risks for AM and OTM 24 that are in your view "very clear and very serious." Do 25 you see that?</p> <p style="text-align: center;">Page 125</p>

<p>1 A. Yes. 2 Q. Forty-one, the last sentence you talk about the effect 3 of the alleged breaches being "will severely compromise 4 OTM's attempts to build a viable alternative portal. 5 Ultimately, this will severely compromise OTM's attempts 6 to build --" 7 Do you see that? 8 A. Yes, I do. 9 Q. And these were all the reasons that you were saying why 10 you needed this urgent interim injunction, weren't they? 11 A. Yes. 12 Q. But you didn't tell the court absolutely critical 13 information, did you? Didn't give a full picture, did 14 you? 15 A. What are you suggesting? 16 Q. What I am suggesting is that nowhere upon -- 17 MR MACLEAN: I am sorry, there never was a hearing. This 18 wasn't an ex parte hearing and there never was 19 a hearing, undertakings were given. So I am not sure 20 about not giving the court a full picture. 21 MR HARRIS: Nowhere in this statement do you mention that 22 instead of rushing into an injunction to avoid this 23 alleged serious and irreparable harm, you could have 24 just hidden Gascoigne Halman's properties from the OTM 25 website, do you? You don't say that anywhere?</p> <p style="text-align: center;">Page 126</p>	<p>1 details of name, what it means, et cetera. Do you see 2 that? 3 A. Yes. 4 Q. Do you know what the response of your solicitors was to 5 this letter? 6 A. I don't recall. 7 Q. Well, they wait an entire week and then they write back 8 at the next tab, tab 15. This is in the context of you 9 by this stage, having obtained the interim relief that 10 you sought by way of undertakings from my client, isn't 11 it? They wait an entire week, having that interim 12 relief by undertakings in place and then they write 13 back, don't they, in the second substantive paragraph: 14 "Despite", and they say: 15 "What's the relevance?" 16 Do you see that? 17 A. I see it. 18 Q. And then there is a letter, it is in a different bundle, 19 we don't need to turn it up, dated 20 May, in which we 20 say: 21 "It is highly relevant to your supposed case of 22 damage to the Agents' Mutual. We are going to apply to 23 discharge the interim relief that was given by consent." 24 Do you recall that? 25 A. I do.</p> <p style="text-align: center;">Page 128</p>
<p>1 A. I don't say that. 2 Q. Instead you rush to court for an injunction, without 3 telling the court in this witness statement about the 4 ability to hide listings and we only found out about 5 that practice of OTM, about hiding listings, from the 6 press. And we wrote to you, didn't we, in a letter that 7 you will find at bundle X, if you could be provided with 8 that, please, at tab 14. You ought to find at internal 9 page 159, a letter dated 9 May 2016. Is that what you 10 find? 11 A. It is. 12 Q. Good because you are ahead of me. Just bear with me. 13 And you see that letter -- so this is a couple of 14 months after your application for the injunction, 15 supported by your first witness statement, isn't it? 16 A. It is. 17 Q. We say that -- incidentally, sir, members of the 18 Tribunal, this is the former firm of solicitors acting 19 for Gascoigne Halman, Hill Dickinson, and at that stage, 20 Hill Dickinson say that they have obtained an article 21 from Property Industry Eye, referring to "a letter/email 22 from you." They want to know whether it was accurate or 23 not and in particular, they ask various questions, 24 requesting particulars about number of firms that have 25 had their properties hidden and asking for specific</p> <p style="text-align: center;">Page 127</p>	<p>1 Q. And then we followed that up with a witness statement 2 from the then instructing solicitor which you will find 3 in this bundle at tab 35. If you could please turn that 4 up and, in particular, if you could go to paragraph 36 5 within that statement. So it begins on internal 6 page 296. You will have read this at the time; right? 7 A. Just let me check which document. 8 Q. Yes, it is Mr Campbell's first witness statement and 9 amongst other things, the heading at page 296. Do you 10 see the heading at section B is "Discharge of the 11 defendant's undertaking"? 12 A. Yes. 13 Q. So you recall this now, do you? At the moment, broadly 14 recall? 15 A. Broadly recall. 16 Q. So you recall that my lay client wanted to have the 17 interim relief undertaking discharged? 18 A. I recall that. 19 Q. That's right. This statement is dated 24 May and it 20 puts forward various reasons for the discharge that we 21 were then applying for. Do you see over the page at 22 36.4 that it says that: 23 "One of the reasons is there wasn't full and frank 24 disclosure by the claimant, when seeking interim relief. 25 Material documents were not drawn to the attention of</p> <p style="text-align: center;">Page 129</p>

<p>1 the court and have still not been provided to the 2 defendant." 3 It cross-refers to paragraph 40. 4 Do you see that was the reason we put forward at the 5 time? 6 A. I saw that was your reason. 7 Q. Just before we turn to 40, can I take you to 8 paragraph 38, over the page, where Mr Campbell draws to 9 the attention of the court the fact that in the event 10 that the claimant does not seek again to pursue interim 11 relief, there will be a need for urgent disclosure. 12 That is from your side before any such application can 13 be progressed. 14 That is because we thought that you hadn't been 15 telling us the full story, including about the hiding of 16 properties on the portal; that is right, is it not? 17 A. I don't know what you thought. 18 Q. That is the contention that we were putting forward at 19 the time, wasn't it? 20 A. That's what appears to be the case. 21 Q. Yes. Indeed, at 39.2 at the bottom of the page, we 22 specifically refer to: 23 "Press reports indicating that members of the 24 claimant have had their properties hidden." 25 And we point out that:</p> <p style="text-align: center;">Page 130</p>	<p>1 are responding in this section which begins on the 2 previous page under the heading "Full and frank 3 disclosure". You respond to Mr Campbell and I just want 4 to draw your attention, please, to your paragraph 40.3. 5 So this is on the question of "What have you done with 6 other agents, including hiding?" And you say: 7 "Similarly, there are a number of other situations 8 where it would not have been appropriate for AM to 9 enforce the terms of its agreement against members. 10 These can broadly be grouped into the following 11 categories." 12 I don't know if you want to add a note here. There 13 are various categories. The first one is agents that 14 have ceased trading. The second one is agents that have 15 retired. The third one is agents that have experienced 16 technical issues during launch. The fourth one is 17 agents that have been allowed to cancel for 18 compassionate reasons, and you give an example of a sole 19 agent and then fifthly, there is a slightly more 20 compendious one: 21 "And agents which, in the vast majority, are one or 22 two office firms, who for reasons set out in 23 paragraph 41 below, do not have the effect on AM's 24 business to the same magnitude as the present case." 25 Do you remember giving that evidence?</p> <p style="text-align: center;">Page 132</p>
<p>1 "Such a step evidently falls far short of injuncting 2 relevant members and fatally undermines the suggestion 3 that it is necessary to have an injunction, in order to 4 prevent catastrophic damage to the claimant's business 5 model." 6 Do you see that? Do you recall those were the 7 contentions we were making? 8 A. I recall that. 9 Q. Over the page at 40, we then go on to say, Mr Campbell's 10 evidence: 11 "Before any interim relief application is allowed to 12 progress, there will need to be full disclosure of all 13 these specific instances"?" 14 A. I see that. 15 Q. So that is what we were asking for, wasn't it? And we 16 say it all goes to whether or not you were correct in 17 your first witness statement, where you don't mention 18 hiding properties at all, so conjure up these images of 19 serious and irreparable harm. 20 You respond to this witness statement in the run-up 21 to a hearing, where one of the items was going to be the 22 discharge application, in your second witness statement 23 and you will find that back in bundle C now. You will 24 find that at tab 2. And if you could pick it up. First 25 of all, note the date. So it is 27 June 2016 and you</p> <p style="text-align: center;">Page 131</p>	<p>1 A. Yes. 2 Q. And it is correct, is it not, that you have never once 3 told us or the court, who falls outside the vast 4 majority and into the minority, therefore, have you? 5 A. No list was provided, from what I can recall. 6 Q. That's right. You have referred to majority, so you 7 accept that there is a minority that does not fall into 8 this category, don't you? 9 A. I do. 10 Q. And never once told us or the court what that minority 11 category of one or two office firms is, who have been 12 hidden; correct? But haven't caused catastrophic damage 13 to your business? 14 A. That's correct. 15 Q. That's correct, isn't it? But, nevertheless, in this 16 witness statement at paragraph 43, you continue to 17 contend, don't you, that GH, which of course has 18 18 offices in south Cheshire and Manchester -- 19 A. Yes. 20 Q. -- that one, "if they aren't obliged to keep their 21 undertaking in place", and this is your words, "enabling 22 them to list on both Rightmove and Zoopla, that is 23 likely to lead to a speedy and catastrophic effect on 24 AM's business." 25 That continues to be your contention; right?</p> <p style="text-align: center;">Page 133</p>

<p>1 A. Yes, Gascoigne Halman was easily the largest such case 2 of a breach of the one other portal rule. And as you 3 will have heard from Mr Forrest, they were one of the 4 first people to sign up. They were one of our group of 5 firms that were the foundation of the network of 6 independent agents in the first place and their presence 7 as an Agent's Mutual member, certainly drew a large 8 number of agents in that area, to consider the 9 Agents' Mutual's proposal. And in the same way that 10 they helped construct our network in that part of the 11 world, their breach of contract would have caused an 12 unwinding up in that area.</p> <p>13 We were also more broadly concerned that this was 14 a very high profile situation and it would have 15 compounded a feeling and a kind of perception that was 16 being put about by our competitors, that we could not 17 enforce our contract.</p> <p>18 Q. So you just said, Mr Springett, your own words, 19 Gascoigne Halman was easily the largest such case of 20 a breach of the one other portal rule at the time?</p> <p>21 A. I have said that.</p> <p>22 Q. That is false evidence, is it not, Mr Springett? Would 23 you like to retract that?</p> <p>24 A. No.</p> <p>25 Q. Can you be handed bundle 15 and turn to page 8356. It</p> <p style="text-align: center;">Page 134</p>	<p>1 Q. That is right. A moment ago you talked about -- I think 2 your phrase was "public profile" or "high profile nature 3 of Gascoigne Halman", as being one reason you needed to 4 have an injunction against them. You would accept from 5 me, wouldn't you, it is obvious, that Strutt & Parker, 6 in the context of your organisation, is not just bigger 7 but it is much more high profile than Gascoigne Halman, 8 isn't it?</p> <p>9 A. I think it's a different situation because, as I have 10 just said, the website FT.com by PropertyGo is not --</p> <p>11 Q. I am sorry, if we are going to -- sir, we are going to 12 go through the emails and we need to take the questions 13 item by item.</p> <p>14 THE CHAIRMAN: Take it step by step. Mr Springett, I think 15 you were asked simply about the size of Strutt & Parker. 16 Don't worry, if you need to add anything about context, 17 you will certainly be allowed to do so.</p> <p>18 MR HARRIS: Mr Springett, what I will do is we are going 19 through both emails, so you can make your points about 20 the website and what have you. But this question is, 21 you agree with me, that Strutt & Parker is much larger 22 than Gascoigne Halman, isn't it?</p> <p>23 A. I agree it's larger, yes.</p> <p>24 Q. No, much larger. They have approximately 60 offices, 25 don't they?</p> <p style="text-align: center;">Page 136</p>
<p>1 is an email which begins at 8354 and first of all, can 2 you see the date, Monday, 14 March 2016? Right at the 3 same time as these events that we are talking about, 4 isn't it? You have issued your application for the 5 injunction. You have obtained interim relief from 6 Gascoigne Halman by undertakings and we are making 7 a fuss about it and saying "leading to us wanting to 8 discharge including -- " Because you haven't given 9 full and frank disclosure about who is in breach of the 10 OOP rule. Do you accept that as the context?</p> <p>11 A. I think what's relevant here is that we hadn't 12 established at this point that the website that is 13 referred to here, that Strutt & Parker were listing on, 14 was to be regarded as a competing portal.</p> <p>15 Q. Let us go through these emails so we can see exactly 16 what you thought at the time. It starts, doesn't it, at 17 8354, "Dear Ian", and it is signed by Michael Fiddes, 18 who is a partner at Strutt & Parker. He was a director 19 of Agents' Mutual, wasn't he, at the time?</p> <p>20 A. He was.</p> <p>21 Q. And indeed a founder member, wasn't he?</p> <p>22 A. He was a founder member or at least their firm was.</p> <p>23 Q. And indeed it is far, far larger, is it not, Strutt & 24 Parker, than Gascoigne Halman?</p> <p>25 A. It is bigger.</p> <p style="text-align: center;">Page 135</p>	<p>1 A. They have about 40 offices in fact.</p> <p>2 Q. We'll provide the website --</p> <p>3 A. But it is larger, I agree with that.</p> <p>4 Q. We will provide you with the website entry in the 5 morning but according to last night's look, they have 60 6 offices. Gascoigne Halman was 18, right, at the 7 relevant time?</p> <p>8 A. That's correct.</p> <p>9 Q. And indeed the evidence we had from Mr Forrest is it is 10 still 18?</p> <p>11 A. Understood.</p> <p>12 Q. And it is more high profile, isn't it, obviously, than 13 Gascoigne Halman, in the context of your organisation 14 because it's a founder member?</p> <p>15 A. I think -- well, I was referring before to the nature of 16 the breach being high profile.</p> <p>17 Q. Really, I see. Let's have a look at the email then. At 18 the top of this page there are some pleasantries at the 19 beginning which we don't need to look at.</p> <p>20 A. Remind me again of the page, please?</p> <p>21 Q. So we are now at the top of 8355, Monday, 14 March, 22 2016. So right in the thick of the injunction battle 23 you are having with Gascoigne Halman?</p> <p>24 MR MACLEAN: I am sorry, there was no injunction battle. 25 The undertakings were given in February and then there</p> <p style="text-align: center;">Page 137</p>

<p>1 was an application to discharge later which was 2 dismissed. Mr Harris ought to put his questions on an 3 accurate factual basis. 4 MR HARRIS: I stand by exactly the wording I used, sir. You 5 can see the nature of the dispute about the injunction 6 and the undertaking, so I don't withdraw that. 7 Mr Springett, it says at the top, this is Mr Fiddes 8 writing to you -- perhaps you could just read to 9 yourself the first paragraph, to refamiliarise yourself. 10 (Pause) 11 A. The first paragraph? 12 Q. Yes. 13 A. Yes. 14 Q. So what's going on here is, isn't it, that Mr Fiddes and 15 his Strutt & Parker firm have some kind of affiliation 16 with CIRE; that is Christie's International, is it not? 17 A. That's right. 18 Q. And through that affiliation, he is explaining that he 19 doesn't think that it is a competing portal; yes? 20 A. Yes. 21 Q. And he's going on to say that he's staying on Rightmove 22 but no longer signed to Zoopla? 23 A. Yes. 24 Q. But he's obviously also on OTM, is he not? 25 A. Yes.</p> <p style="text-align: center;">Page 138</p>	<p>1 is two pages earlier in the bundle at page 8352. 2 A. Yes. 3 Q. You write back: 4 "Dear Michael, thanks for your message. Don't have 5 a note of our conversation." 6 You can see what you say in the first paragraph. 7 I am not going to read out the whole thing but please do 8 familiarise yourself with it. (Pause). 9 I am going to pick it up, if you have had a chance 10 to refresh your memory, at the bottom of that page. 11 A. Yes. 12 Q. And what you write back to Mr Fiddes is: 13 "The FT property search is a competing portal (as is 14 PropertyGo) -- something I confirmed to Strutt & Parker 15 (Annabel) in June last year -- and you are 16 directly-instructed UK properties are being listed on it 17 as well as OTM and RM, placing you in breach of your 18 agreement with AM." 19 That was view at the time, wasn't it? 20 A. It was. 21 Q. So whether they're branded Strutt & Parker or not is 22 irrelevant. That was your view, wasn't it? 23 A. It was. 24 Q. You go on to say over the page that your notes -- 25 I think you are referring to, effectively, his email --</p> <p style="text-align: center;">Page 140</p>
<p>1 Q. Because he's a founder member? 2 A. Correct. 3 Q. And then he goes on to say, doesn't he, that "Strutt & 4 Parker are not signed up to FT.com, CIRE are." But as 5 you can see from the remainder of the paragraph, it is 6 clear that there are properties which are being marketed 7 by CIRE affiliates, that are on FT.com but are branded 8 as Christie's, not by the respective agents? 9 A. Yes. 10 Q. It is only when you drill down you come to the Strutt & 11 Parker branding and then he says the contract is between 12 CIRE and FT.com, not ourselves, not within our gift. 13 This is a decision taken by CIRE to be on FT.com, not 14 Strutt & Parker's? 15 A. I agree. 16 Q. So you can see where the potential dispute lies, can't 17 you, that they are on Rightmove, they are on OTM and 18 some of their properties are also appearing on FT.com, 19 albeit via this affiliation with CIRE and Mr Fiddes is 20 saying: well that's a matter of that contract; yes? 21 A. Yes. 22 Q. And you don't accept that, do you, as being an 23 acceptable way to comply with the OOP rule; correct? 24 A. That's correct. 25 Q. So if we can take your response then at 16 March which</p> <p style="text-align: center;">Page 139</p>	<p>1 arrived after the start of the board meeting: 2 "I did raise with the board, who all agreed that 3 this is a breach." 4 It wasn't just you who thought it was a breach by 5 one of your founder members of the OOP rule, was it? 6 A. That's correct. 7 Q. And you go on to point out in the first bullet point 8 that other members are complaining; yes? 9 A. Yes. 10 Q. And you think it is not unreasonable that they should 11 complain? 12 A. I do. 13 Q. That is right. And indeed you go on in the next bullet 14 point to say what would happen if, in addition to 15 FT.com, Christie's sent your stock to Zoopla and then 16 the Mayfair office and many others might then follow 17 suit? 18 A. Yes. 19 Q. And that is exactly the sorts of concerns that you were 20 putting forward to the court in your first witness 21 statement, dated 17 February, weren't you, about other 22 people seeing a largish, high profile-ish estate agent 23 breaching the rule and then them following suit which 24 would lead to what you describe as a catastrophic effect 25 upon Agents' Mutual's business, isn't it?</p> <p style="text-align: center;">Page 141</p>

<p>1 A. The FT.com property search in the UK carries maybe 2 a couple of hundred properties on it, sir. It bears no 3 resemblance to a breach, so if Strutt & Parker have gone 4 back on to Zoopla, that would be a wholly different 5 thing. 6 In any event, this was resolved and Strutt & Parker 7 agreed to make arrangements with CIRE to have their 8 properties withdrawn. 9 Q. We'll come to the present arrangements in just a moment 10 but the point is that this is a high profile, large 11 office, in your view and the view of the board, in clear 12 breach of the OOP rule; yes? 13 A. Clear breach of the OOP rule. 14 Q. That is right, isn't it? 15 A. I am agreeing with you. 16 Q. Yes, that's right. And in fact other members in the 17 relevant locality, namely the Mayfair office, have seen 18 it? 19 A. They have. 20 Q. And they have been complaining about it; yes? 21 A. Well, they're not members. 22 Q. Other agents have seen it; correct? 23 A. The Mayfair is not a member. It is another affiliation 24 group. 25 Q. Thank you for that correction but all other estate</p> <p style="text-align: center;">Page 142</p>	<p>1 the one other portal rule and we didn't accept your 2 contention that it would lead to a speedy and 3 catastrophic effect upon your business model, you still 4 didn't tell us, did you? 5 A. I think there's a bit of a difference here because when 6 this came to light, we had discussions with Strutt & 7 Parker and they resolved the matter. In the case of 8 Gascoigne Halman, we asked for clarifications of their 9 intentions and they told us they had no intention of 10 withdrawing from Zoopla. 11 Q. I see. So that's your distinction, is it? 12 A. It is. 13 Q. I see. Let's just see what those other discussions, so 14 far as you have disclosed to us, even in this 15 litigation, lead to. If you go earlier in the bundle, 16 you will see that you have to chase Mr Fiddes a week 17 after your -- well, let me take them all. You see at 18 the very bottom of 8351, in the next day after your 19 email, Mr Fiddes writes a very short one back, saying: 20 "Thanks for your email. I am not sure I can agree 21 but I am keen to find a sensible way. I'll take it up 22 with our senior partner." 23 Do you see that? 24 A. I do. 25 Q. And then you have to chase him a week later because he</p> <p style="text-align: center;">Page 144</p>
<p>1 agents could see it because by definition, FT.com is 2 a publicly available site to sell property, isn't it? 3 A. It is. 4 Q. In fact, it didn't lead to any negative impact upon 5 Agents' Mutual, let alone a catastrophic death spiral, 6 did it? 7 A. It certainly didn't. 8 Q. No. In the next bullet point you even go on to say: 9 "We are in a costly legal battle with Gascoigne 10 Halman to uphold our contract. One other portal is 11 central to that dispute. Right now we are open to the 12 charge that we had a founder/board member firm breaching 13 its contract with us but we are not acting to rectify it 14 in the same way." 15 Can you point me to any paragraph in your first or 16 second witness statement in which you provide that 17 information to the court? 18 A. No. 19 Q. No, you can't because you didn't tell the court, did 20 you? 21 A. I didn't tell the court. 22 Q. And you didn't tell us either, did you? 23 A. No. 24 Q. Even though we said you had not been providing full and 25 frank disclosure about the people who were in breach of</p> <p style="text-align: center;">Page 143</p>	<p>1 hasn't got back to you. So on 23 March "Any news, 2 please?" Do you see that one? 3 A. Yes. 4 Q. And if we go earlier in the bundle, Mr Fiddes says: 5 "There is a paper I have written with 6 a recommendation to the management executive but 7 unlikely it will be dealt with until the week after 8 Easter." 9 And we don't have that paper in the bundles. And 10 you pass that on in confidence at the top of the page, 11 to another board member, don't you, Mr Flint? 12 A. Sorry, you have lost me. The page now? 13 Q. I am very sorry, Mr Springett. The very top of 8350. 14 A. Yes. 15 Q. So you pass Mr Fiddes's response on to Mr Flint? 16 A. Yes. 17 Q. Mr Flint -- now going earlier in the bundle, as one does 18 with these emails, to 8349 at the bottom. Mr Flint 19 enquires of you, in writing back to you: 20 "Are we to read into that that he [that's Mr Fiddes] 21 is recommending that they [that is Strutt & Parker] cut 22 their feed, it seems that Christie's are the only firm 23 that are feeding London property." 24 Then you respond to Mr Flint, 24 March 2016, do you 25 see, at the top of 8349?</p> <p style="text-align: center;">Page 145</p>

1 **A. Yes, I do, yes.**
 2 Q. "I am hoping so. Could be very messy if they do not.
 3 We would then have a founder board member firm breaching
 4 its contract on the One Other Portal, as well as,
 5 arguably, one or two breaching on co-branding."
 6 That is because they would also be promoting another
 7 portal, wouldn't they? In this case, FT.com or
 8 Christie's?
 9 **A. No, that would be not branding sufficiently**
 10 **fromthemarket.com.**
 11 Q. You even go on --
 12 **A. I think it is relevant to say here that, actually, the**
 13 **most concern about this issue would be from other**
 14 **founder members because the primary advertisers on the**
 15 **FT property website, certainly as far as the UK is**
 16 **concerned, come from a very small handful of very**
 17 **upmarket estate agency businesses. So the main concern**
 18 **that had been expressed had actually come from Savills,**
 19 **who had noticed that this had slipped through in the**
 20 **Strutt & Parker arrangements and were keen to have them**
 21 **addressed and that was the process we went through.**
 22 Q. But Savills are not the Mayfair office, are they?
 23 **A. No, they are not.**
 24 Q. So there were lots of other people because you say in
 25 your next sentence:

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1 "We are receiving regular complaints from the
 2 Mayfair office?"
 3 **A. I didn't say that.**
 4 Q. You do, page 8349. You do say that.
 5 **A. "From among others, the Mayfair office."**
 6 Q. So you were receiving regular complaints from the
 7 Mayfair office; yes?
 8 **A. The Mayfair office, as I have said, is not a member**
 9 **agent.**
 10 Q. No, but you are receiving regular complaints about
 11 breach of the OOP rule from other agents, aren't you?
 12 **A. I think the Mayfair office was seeing it as an**
 13 **opportunity rather than a threat, to be honest.**
 14 Q. Mr Springett, come on. You are receiving complaints
 15 from other agents about the fact that one of your
 16 founder members is in breach of the OOP rule, aren't
 17 you?
 18 **A. I wasn't receiving, actually, any other complaints from**
 19 **any other member.**
 20 Q. Why do you say it here? "We were receiving regular
 21 complaints from, among others, the Mayfair office." Is
 22 that false?
 23 **A. No.**
 24 Q. So you did receive complaints then?
 25 **A. Yes, we received complaints from Savills.**

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1 Q. Why doesn't it say that? It says "from, among others,
 2 the Mayfair office". That doesn't say Savills, does it?
 3 **A. They are in the "among others".**
 4 Q. I see, so there is the Mayfair office and, among others,
 5 Savills?
 6 **A. Yes, but I repeat, the Mayfair office is not a member of**
 7 **Agents' Mutual.**
 8 Q. I understand that but we are talking about a different
 9 point, not who is or isn't a member but how many people
 10 you got complaints from. You are accepting from me that
 11 there are a number of complainants. Some were members,
 12 some were not and one of the complainants was indeed
 13 another founder member, Savills; is that right?
 14 **A. That's correct, yes.**
 15 Q. And what they are complaining about is the fact that,
 16 supposedly, Agents' Mutual is "allowing Struts to
 17 sidestep the One Other Portal rule", and they are
 18 complaining that if they are allowed to do it via
 19 Christie's, then why should their members not achieve
 20 the same via them, aren't they?
 21 **A. And I was extremely keen to put pressure on Strutt &**
 22 **Parker to resolve the matter as soon as possible.**
 23 Q. I have no doubt you were but you didn't tell us or the
 24 court, did you?
 25 **A. It's not in my witness statement.**

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1 Q. No, that's right. Despite the fact that we wrote you
 2 a letter, that we have seen, 16 May, asking for full
 3 disclosure, you didn't tell us, did you?
 4 **A. I would think it had been resolved by then.**
 5 Q. You didn't provide any information at any stage, to us
 6 or to the court, about this breach, in your own view of
 7 the OOP rule, did you?
 8 **A. There are frequent breaches of this rule. Certainly in**
 9 **the early stages and we have a process for addressing**
 10 **them.**
 11 Q. That is right?
 12 **A. And the process for addressing them is more intense,**
 13 **shall we say, when it relates to our core competitors**
 14 **and less intense for this kind of thing, for small niche**
 15 **websites.**
 16 Q. Really, where does it say that in the OOP rule?
 17 **A. We administer the OOP rule according to what works for**
 18 **the business.**
 19 Q. So what you are saying is there are tiers of other
 20 competing portals now, are you? Some are more competing
 21 than others?
 22 **A. I am saying --**
 23 Q. You can't breach if it is a more --
 24 **A. I'm saying they are policed differently.**
 25 Q. Then the trail runs cold in our disclosure bundles now.

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<p>1 You say you wanted to address this as soon as possible.</p> <p>2 I am paraphrasing your evidence from just a moment ago.</p> <p>3 But the fact is that this multi-listing on OTM and</p> <p>4 Rightmove and FT.com is still continuing as of today,</p> <p>5 isn't it?</p> <p>6 A. I saw additional evidence added in the last couple of</p> <p>7 days and I contacted the two board firms involved and</p> <p>8 they've apologised and resolved the situation. It was,</p> <p>9 I believe, an error on both parts and related to one</p> <p>10 property in relation to Savills and a handful, I think,</p> <p>11 in relation to Strutt & Parker.</p> <p>12 Q. So in fact, the problem that we have just seen with</p> <p>13 Strutt & Parker that you and your board members regarded</p> <p>14 as a clear breach, has persisted and if you now please</p> <p>15 take up bundle X.</p> <p>16 THE CHAIRMAN: One moment, I thought, Mr Springett, you</p> <p>17 thought the problem had been resolved; is that right?</p> <p>18 A. And it had been, sir.</p> <p>19 THE CHAIRMAN: Can you tell us roughly when that was?</p> <p>20 A. How these things arise. To the best of my</p> <p>21 understanding, by the end of March, Strutt & Parker had</p> <p>22 resolved the issue internally. They had a relationship</p> <p>23 with CIRE which they had to have some discussions with</p> <p>24 them about this matter. CIRE agreed that their</p> <p>25 properties would no longer be marketed on other portals</p> <p style="text-align: center;">Page 150</p>	<p>1 Q. And do you see that it is still branded Savills because</p> <p>2 if you look at page 312, it is part of the same extract.</p> <p>3 OTM is inviting the above details to go to Savills and</p> <p>4 it has the Savills's logo; right?</p> <p>5 A. Correct.</p> <p>6 Q. So this house, so far we have it on Rightmove and then</p> <p>7 OnTheMarket and at tab 17, that is the same house, isn't</p> <p>8 it?</p> <p>9 A. Yes.</p> <p>10 Q. That is also being marketed on the same day by none</p> <p>11 other than one of your large founder board members,</p> <p>12 Savills, on FT.com, isn't it?</p> <p>13 A. Yes.</p> <p>14 Q. So there is a clear breach of the OOP rule in respect of</p> <p>15 another founder board member, just the other day, isn't</p> <p>16 there?</p> <p>17 A. That's the one I have just been referring to.</p> <p>18 Q. That is right. And this is notwithstanding that even</p> <p>19 though our email trail goes cold at the one I showed you</p> <p>20 in March 2016, you said you understood that you had put</p> <p>21 a stop to all this?</p> <p>22 A. In relation to Strutt & Parker, yes.</p> <p>23 Q. I see. So far as you are aware, these other founder</p> <p>24 board members could have carried on doing it at the same</p> <p>25 time?</p> <p style="text-align: center;">Page 152</p>
<p>1 and that was the end of it. In terms of the latest</p> <p>2 situation, we are talking about one property for Savills</p> <p>3 and a couple for Strutt & Parker, where in the course of</p> <p>4 uploads, errors were made and I have had, for example,</p> <p>5 an email from Savills, confirming that it was an error</p> <p>6 and apologising.</p> <p>7 MR HARRIS: So we have had absolutely no disclosure of any</p> <p>8 of that, zero. What we do have, of our own efforts, is</p> <p>9 to be found in bundle X at tab 36. Mr Springett, if you</p> <p>10 could please be provided with that. And what we can</p> <p>11 see, this is a web download on 6 February of this year;</p> <p>12 yes?</p> <p>13 A. Yes.</p> <p>14 Q. For a particularly nice looking house in the Salisbury</p> <p>15 region and this is a Savills property, isn't it?</p> <p>16 A. It is.</p> <p>17 Q. And this is the excerpt that shows it being marketed on</p> <p>18 Rightmove on that day, doesn't it?</p> <p>19 A. It does.</p> <p>20 Q. That is right. So, so far, Savills with this property</p> <p>21 on Rightmove. If you could turn over in this tab to</p> <p>22 page 308. That is the same house, isn't it?</p> <p>23 A. It is.</p> <p>24 Q. This is that house being marketed on OnTheMarket; yes?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 151</p>	<p>1 A. Well they weren't involved with FT at that time.</p> <p>2 Q. Let's take the next tab, can we, in bundle X at tab 37.</p> <p>3 This is another example of the same thing, Strutt &</p> <p>4 Parker just the other day. This one doesn't have the</p> <p>5 web entry date on it because of the way it was printed</p> <p>6 out but it was done on 12 January 2017 and if anyone</p> <p>7 wants to see the proof of that, we can provide it.</p> <p>8 This one is a Strutt & Parker house, isn't it, in</p> <p>9 Ascot, advertised on Rightmove?</p> <p>10 A. Yes.</p> <p>11 Q. If you turn to the back side of that same sheet of</p> <p>12 paper, you will see it is the same Strutt & Parker</p> <p>13 property, this time advertised on OnTheMarket, isn't it?</p> <p>14 A. Yes.</p> <p>15 Q. And over the page on the same day, we downloaded the</p> <p>16 same house by Strutt & Parker, this time on FT.com;</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. So notwithstanding that you said it was a clear breach</p> <p>20 and that he had to address it, there they are, just</p> <p>21 a matter of two weeks ago, continuing to breach in</p> <p>22 exactly the same way, aren't they?</p> <p>23 A. Is it two weeks? I'm not sure it is two weeks ago, is</p> <p>24 it?</p> <p>25 Q. This is the one I told you a moment ago, Mr Springett,</p> <p style="text-align: center;">Page 153</p>

1 was downloaded on 12 January, this one.
 2 **A. Oh. Sorry, which one is the 12 January?**
 3 Q. The one at tab 37.
 4 THE CHAIRMAN: Page 318, Mr Springett.
 5 **A. I am not sure, are you saying this is still there?**
 6 MR HARRIS: No, I was saying that on the day we downloaded
 7 this, which as I say, we are happy to provide a document
 8 showing when we did that, but take it from me it was
 9 12 January this year. So they were still in breach in
 10 exactly the way that you described in that note was
 11 impermissible and had to be stopped and which you just
 12 gave evidence to the Tribunal, you thought you had taken
 13 measures to bring to an end; right?
 14 MR MACLEAN: I am sorry, he didn't say that at all.
 15 THE CHAIRMAN: Mr Maclean, just a moment. Mr Springett,
 16 I will just read back to you the question that Mr Harris
 17 put to you because I'd like your assistance. He said:
 18 "Notwithstanding that you said it was a clear breach
 19 [referring to the Strutt & Parker matter] and that he
 20 had to address it, they are just a matter two minutes
 21 [sic] ago, continuing to breach in exactly the same way,
 22 aren't they?"
 23 And I wonder if you could just answer the question,
 24 particularly the continuing question?
 25 **A. Yes. There are a variety of ways in which properties**

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1 **can find themselves on property websites and the core**
 2 **portals that we are focusing on as the main part of this**
 3 **case are fed on a -- sometimes an instantaneous basis**
 4 **from an agent office. So as soon as a property is**
 5 **loaded on to the system, there are arrangements in place**
 6 **that immediately transmit those new properties or**
 7 **changes to them on to the portal system. Some of it is**
 8 **done in batch which has, until fairly recently, been the**
 9 **main method. So if an agent is subscribed to a portal,**
 10 **then those kind of arrangements are in place and are**
 11 **constantly in place.**
 12 **I think one of the witnesses, and I don't remember**
 13 **which one, has discussed placing a print advertisement**
 14 **and finding that that property, I think it was Mr Symons**
 15 **actually, that those properties are uploaded, that that**
 16 **publication, having had access to the data in order to**
 17 **make the print advertisement and those properties can**
 18 **sometimes find their way on to that publication's**
 19 **website.**
 20 **So in this situation I don't believe that either**
 21 **Savills or Strutt & Parker have the kind of regular**
 22 **uploading arrangements to the portal concerned.**
 23 THE CHAIRMAN: And so to be clear, you would not categorise
 24 this as a continuing breach?
 25 **A. I wouldn't say so, no, sir.**

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1 THE CHAIRMAN: Thank you. Sorry, Mr Harris. Are we going
 2 to be much longer on this topic, Mr Harris?
 3 MR HARRIS: No, on this topic, I could see it being another
 4 ten minutes and then there is a completely separate
 5 topic and I am in your hands and, of course, I am
 6 conscious that Mr Springett has to put up with me and my
 7 questioning.
 8 **A. I am fine for ten minutes.**
 9 THE CHAIRMAN: Let us try and wrap this particular subject
 10 up then, shall we.
 11 MR HARRIS: Can the transcript be corrected because you read
 12 out -- it's recorded here as me saying "just two minutes
 13 ago", but in fact I said "just two weeks ago", and I had
 14 referred to 12 January as being that approximately two
 15 weeks ago; in fact it is more like three weeks ago. But
 16 just so that is corrected on the transcript.
 17 You just explored, Mr Springett, with the chairman,
 18 whether it was a continuing breach, and I think you said
 19 no, it wasn't, for the reasons you gave and that is
 20 a fair point.
 21 But it is a breach, isn't it, by Strutt & Parker, of
 22 the One Other Portal rule, these documents at tab 37?
 23 **A. I would say it is an inadvertent breach which they took**
 24 **steps to rectify.**
 25 Q. So a breach by a founder member; correct?

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1 **A. That's correct.**
 2 Q. Capable of being viewed by all other members; correct?
 3 **A. That's correct.**
 4 Q. And then the last one is at tab 38, something similar,
 5 so I am happy to take it quickly. Do you see at tab 38
 6 there is another one of your members, isn't it, Croft
 7 Residential?
 8 **A. Yes.**
 9 Q. Advertising a rather nice house in Ripon on Rightmove.
 10 That is page 321 and then at 327, it is the same house
 11 on OnTheMarket and you can see at 321, that is Croft
 12 Residential and then at 333, the same house, this time
 13 on FT.com and, again, Croft Residential's logos
 14 emblazoned all over it, at 336. Do you see all of that?
 15 **A. Yes.**
 16 Q. And that is another breach, isn't it?
 17 **A. Yes, and we are in the process of contacting Croft to**
 18 **have that resolved.**
 19 Q. You would accept from me, wouldn't you, that Savills,
 20 one of these people in breach, they have over 100
 21 offices in the UK, don't they?
 22 **A. They do.**
 23 Q. So they're one of your biggest, most important and most
 24 high profile founder members, aren't they?
 25 **A. Yes, they are.**

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1 Q. Going back to the injunction, I put it to you that you
 2 should have disclosed this material other breach at the
 3 time when we asked for it, shouldn't you?
 4 **A. At what point -- remind me at what point you asked for
 5 it, please?**
 6 Q. Yes, do you remember your first witness statement,
 7 17 February and we wrote a letter on 9 May and your
 8 solicitors respond on the 16th and then we wrote again
 9 on the 20th and then Mr Campbell's witness statement
 10 was, I think, the 24th?
 11 **A. Of February?**
 12 Q. No, those were of -- we went through the dates before.
 13 They were of May and those emails that we saw, in which
 14 you tell Mr Fiddes that he is in breach, they were
 15 in March 2016, weren't they?
 16 **A. They were.**
 17 Q. And we asked for that information and you didn't provide
 18 it, did you?
 19 **A. The breach had been resolved by that time. That's
 20 a point I would make. And I wouldn't consider either,
 21 these are material breaches.**
 22 Q. The truth is that what you really wanted in your
 23 injunction opponent was somebody who had the ability to
 24 go through a court case and get a determination. That
 25 is why you really had to go for the injunction against

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1 Gascoigne Halman, isn't it?
 2 **A. Not at all. I can tell you precisely why, if you wish.**
 3 Q. Perhaps I can just draw your attention, before I finish
 4 this topic, to -- bundle 13/7507, please. The start of
 5 the email is at 7506. Do you see this is an email
 6 within a group of agents in west Wales on
 7 7 December 2015, to which you are copied?
 8 **A. Yes.**
 9 Q. So that is pre-injunction, isn't it?
 10 **A. Yes.**
 11 Q. And there are various things reported on. Over the
 12 page, the only one I want to pick up with you on this
 13 point is at the bottom of the next page, 7505. What's
 14 going on here is that Mr Evans is reporting back to
 15 everyone who attended a meeting where you gave
 16 a presentation; right?
 17 **A. Yes.**
 18 Q. At the bottom of the next page -- so this man, Mr Evans,
 19 is reporting back about what you had said at the
 20 presentation and he says:
 21 "There was a discussion about agents who had
 22 breached their contracts with OnTheMarket. Ian -- "
 23 That is you, isn't it?
 24 **A. I've lost the page, I'm sorry.**
 25 Q. The bottom of 7507.

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1 **A. 7507. "Ian said that there is a process to go through."**
 2 Q. Mine reads:
 3 "There was a discussion about agents", at the
 4 bottom. Do you have that?
 5 **A. Yes, that's the paragraph.**
 6 Q. "... who have breached their contracts with OnTheMarket.
 7 Ian said -- "
 8 That is you, isn't it?
 9 **A. That's me.**
 10 Q. "Ian said that there is a process to go through before
 11 legal action is taken. They would want to be sure that
 12 any company who they take on have the ability to go
 13 through to a court case, to get a determination, as in
 14 most cases, these matters get settled before court."
 15 That was a factor that was relevant to you taking on
 16 Gascoigne Halman in the litigation, wasn't it?
 17 **A. No, actually.**
 18 Q. You knew at the time that you issued the injunction
 19 application that Gascoigne Halman had been bought by
 20 Connells, didn't you?
 21 **A. I did certainly know that, yes.**
 22 Q. And you knew that Mr Livesey had wanted to speak to you
 23 about Gascoigne Halman, hadn't he?
 24 **A. He had mentioned it. Although we had spoken at
 25 the September 15 meeting about it.**

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1 Q. And you knew perfectly well that having been bought by
 2 Connells, if there was a dispute, then Gascoigne Halman,
 3 having been bought by Connells, to quote your words
 4 "would have the ability to go through a court case and
 5 get a determination", didn't you?
 6 **A. I'm not sure I did know that. I didn't know who would
 7 fund the litigation at all.**
 8 Q. I put it to you that, in fact, far from Gascoigne
 9 Halman's breach having a speedy and catastrophic effect
 10 upon your business model, when it didn't have that
 11 effect for some of your founder members even, that one
 12 of the reasons you decided to press ahead with the
 13 litigation against Gascoigne Halman, as opposed to
 14 hiding its properties while the issue was resolved, was
 15 because you knew that Gascoigne Halman had the ability
 16 to go through a court case and get a determination.
 17 That is right, isn't it?
 18 **A. No, it isn't right because they had made it very clear
 19 that the matter wasn't going to be resolved. They made
 20 it very plain that Connells had instigated the breach.
 21 We wrote to them to get clarification of their
 22 intentions and they made it plain that they weren't
 23 going to comply.**
 24 Q. That's simply not right, is it, Mr Springett?
 25 **A. It is right.**

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<p>1 Q. Gascoigne Halman said to you, when you issued your 2 injunction application, one of the very first things 3 they said to you, was, "Hang on a minute, there's 4 a mediation provision in our membership agreement, why 5 haven't you done that? We want to mediate so we can 6 reach a settlement." That is exactly what they said to 7 you at the beginning, isn't it?</p> <p>8 A. They didn't instigate. If they had an issue with us, 9 why didn't they instigate the mediation process?</p> <p>10 Q. Because, Mr Springett, you rushed headlong into court 11 within days of finding out what you called the breach. 12 That is why, isn't it?</p> <p>13 A. That's not true. Because at the meeting in September, 14 and this is prior to the Connells' acquisition of 15 Gascoigne Halman, I was asked what would be the 16 implication, were Connells to acquire one of our larger 17 member firms. And I told Mr Livesey at the time that it 18 would be a matter of contract, for lawyers to resolve. 19 So he knew a long time in advance that there was 20 a potential situation of this and if he had had an 21 issue, particularly in relation to competition law 22 issues, he could easily have invoked a conversation or 23 a discussion or a mediation around that subject, without 24 instigating a breach, as they did.</p> <p>25 Q. When you went crash, bang wallop into litigation, the</p> <p style="text-align: center;">Page 162</p>	<p>1 that by advising them that that would be a breach of 2 contract and we reserved the right to take action. And 3 then when the step was actually taken and Gascoigne 4 Halman did return to Zoopla, we then instructed 5 Eversheds, who wrote seeking clarification.</p> <p>6 Q. That is right. And you didn't take any notice of the 7 provision in the membership agreement that provides for 8 a mandatory mediation, did you?</p> <p>9 A. The breach had already occurred by then.</p> <p>10 Q. And you didn't take any notice --</p> <p>11 A. So if there was a dispute with us -- bearing in mind 12 that Gascoigne Halman was an original gold member firm 13 and had listed perfectly happily with us until that 14 point, if they had had an issue with the One Other 15 Portal rule, they should have invoked the dispute 16 procedure.</p> <p>17 Q. And you sued without taking any notice of that provision 18 in the membership agreement that provided for mandatory 19 mediation, didn't you?</p> <p>20 A. Not true.</p> <p>21 Q. It is true. You didn't invoke the mediation point?</p> <p>22 A. It was in Gascoigne Halman's hands to invoke the dispute 23 resolution.</p> <p>24 MR HARRIS: Perhaps we can take a short break.</p> <p>25 THE CHAIRMAN: Mr Harris, I am not sure how far the Tribunal</p> <p style="text-align: center;">Page 164</p>
<p>1 very first thing that Gascoigne Halman said was "Hang on 2 a minute, you need to have the mediation that's provided 3 for in our contract." And we took steps to ensure that 4 that happened, didn't we?</p> <p>5 A. They had already gone into breach.</p> <p>6 Q. We took the steps to provoke the mediation that you 7 hadn't invoked under the membership agreement, didn't 8 we?</p> <p>9 A. I don't recall the precise series of emails. There was 10 a series of emails between myself and Mr Livesey on the 11 subject.</p> <p>12 Q. I remember it very clearly.</p> <p>13 A. But that was after.</p> <p>14 Q. You didn't --</p> <p>15 THE CHAIRMAN: I am not sure you can give evidence, 16 Mr Harris.</p> <p>17 MR HARRIS: No.</p> <p>18 MR MACLEAN: More is the pity, sir, otherwise we would have 19 a witness to cross-examine.</p> <p>20 MR HARRIS: We can provide any materials that aren't in the 21 bundles but the --</p> <p>22 A. The original dialogue was between Mr Halman and 23 Ms Whiteley, at which he gave notice that Gascoigne 24 Halman were going to resume listing on Zoopla. So that 25 was the first thing that happened and we responded to</p> <p style="text-align: center;">Page 163</p>	<p>1 is going to be assisted very much more on the mediation. 2 MR HARRIS: No, this is the --</p> <p>3 THE CHAIRMAN: Or the non-mediation.</p> <p>4 MR HARRIS: I agree, sir, that is the end of that. I am 5 moving on.</p> <p>6 THE CHAIRMAN: I am very grateful. Five minutes. 7 (3.35 pm)</p> <p>8 (A short break)</p> <p>9 (3.40 pm)</p> <p>10 MR HARRIS: Mr Springett, it is right, isn't it, that in 11 general terms, in putting together Agents' Mutual, you 12 were instrumental in setting up regional groups of 13 agents around the country, weren't you?</p> <p>14 A. I think from the outset, what I chose as my approach was 15 to initially identify leaders, and I am talking about 16 the independent sector now, leaders in their local 17 markets and to contact them and see whether there was 18 attraction for this. In the earliest part of the 19 project which is really May 2013, that was the point at 20 which we first began to expose the proposition to other 21 agents. We were very much at a point where we were 22 putting it out there, to see whether it would even find 23 attraction. So there was clearly no portal. It was 24 a proposition, so I was identifying key players in the 25 local markets as the first step.</p> <p style="text-align: center;">Page 165</p>

<p>1 Q. As the first step and then what you wanted was estate 2 agents to come on board and join Agents' Mutual 3 together, in groups, didn't you? 4 A. I think more relevant is to say that at that point I was 5 the only person involved and I had to find a way as 6 rapidly as possible to expose the proposition, so 7 certainly, if I could gather agents together in groups, 8 that was the most efficient way to expose the 9 proposition to them. 10 Q. You realise that to some extent, estate agents -- there 11 is no disrespect meant to any such people in the room -- 12 to some extent, they are a bit like sheep, aren't they, 13 in that they have to or they feel inclined to follow the 14 portal listing decisions of their local competitors; 15 right? 16 A. Well, I don't think that's been borne out, actually, 17 since OnTheMarket launched. 18 Q. Really, it is what your counsel, I think, was referring 19 to in part yesterday as the herd mentality, following 20 your local competitors. Do you not accept that? 21 A. Well, I think the reality is that since we've launched, 22 some agents have chosen to join us and others have not. 23 I think the situation prior to us launching is much more 24 that all agents were on Rightmove or pretty much all 25 and, increasingly, all agents were also on Zoopla. So</p> <p style="text-align: center;">Page 166</p>	<p>1 estate agent's locality are doing by way of listing 2 decisions; yes? 3 A. Well, I can only repeat what I said. I don't think that 4 was a focus of competition prior to OnTheMarket's 5 arrival. I think it absolutely has become a serious 6 focus of competition since we arrived. 7 Q. And would you accept though, that estate agents, if they 8 know in advance what others are going to do about 9 whether or not to join Agents' Mutual, then there is 10 a better chance that they themselves will join? 11 A. I think I would separate out the decision to join from 12 any decision as to which portal to retain, if you are 13 referring to the One Other Portal rule, yes. 14 Q. No, I am absolutely making the same distinction as you, 15 Mr Springett. So you are separating out, on the one 16 hand, the decision to join? 17 A. I wouldn't -- so my example earlier about Gascoigne 18 Halman. I was hoping that Gascoigne Halman would, as 19 they did do, support, at least on a non-binding basis, 20 our proposal and that would give me a basis to go to 21 others in that part of the world and say to them, you 22 know, "Gascoigne Halman are interested in this. Will 23 you come and listen to my story?" 24 Q. And my point is, just taking that one stage further, 25 that if others in the locality of Gascoigne Halman know</p> <p style="text-align: center;">Page 168</p>
<p>1 in that sense, I agree that there is a herd instinct or 2 a wish not to be separated from the herd, shall we say. 3 Q. Thank you. I am happy with that. I think you would 4 accept from me, wouldn't you, that in competing with 5 each other, estate agents that is, one important 6 parameter of that competition is the number and identity 7 of the portals that they can choose to list their 8 properties on; right? 9 A. I think the situation that pertained prior to 10 OnTheMarket's launch wasn't really like that at all. 11 And in fact, as I was making my proposals round the 12 country to groups of agents, I would be pointing out to 13 them that there was really no competitive advantage to 14 be gained from being on Rightmove or Zoopla because 15 everybody was on them. 16 Q. But you would accept that the number and identity of 17 portals that the estate agents list on, that can be an 18 important parameter of competition for estate agents 19 can't it? 20 A. I think it has become so. I don't think it was so 21 because the only meaningful portals to be on and the 22 biggest brands, were Rightmove and Zoopla. 23 Q. And you would accept, wouldn't you, that a critical 24 consideration for the local decision about which portal 25 to list on for an estate agent, is what others in that</p> <p style="text-align: center;">Page 167</p>	<p>1 in advance what Gascoigne Halman is going to do, then 2 there is a better chance of those others also joining 3 up? 4 A. Do you mean if they're going to join Agents' Mutual? 5 Q. Yes? 6 A. Yes, I completely agree with that. 7 Q. It is a fairly simple proposition. I mean you've made 8 use of it, haven't you? That the others get the 9 security of knowing -- the other agents in that locality 10 get the security of knowing that the group or, if you 11 like, the herd, is moving in the same direction? 12 A. We were trying to build up network, in the same way that 13 Zoopla and Rightmove had created very strong networks 14 over the last ten or 15 years. 15 Q. And the problem is that if the venture won't really get 16 up and off the ground, it won't work if one agent says 17 yes to join and another agent in the same locality says 18 no. That was the problem you were facing, wasn't it? 19 A. Not necessarily. What we were looking for in the first 20 year, I am talking 2013, was simply, sufficient support. 21 As I mentioned before, I wanted to see whether the 22 proposition would even get traction and we'd set 23 a business plan, a minimum business plan to say, how 24 could we bring a portal to market which would be 25 scalable? So if there was more demand for it, we could</p> <p style="text-align: center;">Page 169</p>

<p>1 accommodate that and take advantage of it. And 2 therefore, we were looking for numbers and we had no 3 mechanism, actually, at the time, for tracking 4 regionally, where people were. Not -- we didn't do that 5 until the very end of the process. However, it is also 6 true to say that we had concluded that a fully national 7 proposition was required. So we were looking to appeal 8 to all traditional estate agents everywhere. So whilst 9 I began seeing people in London and the southeast, 10 I made it my business at a very early stage, to go all 11 over the place. I spent more time on trains than I ever 12 wish to again. In order to provide that nucleus, if you 13 like, of interest in the portal, all over the mainland 14 UK.</p> <p>15 Q. Thank you. I am still on the topic of, if you like, the 16 security in numbers. It is in the interests of the 17 agents on this issue of joining Agents' Mutual in the 18 first place, to do so in groups. You would accept that, 19 wouldn't you? It gives them that security?</p> <p>20 A. I completely agree with that and the strongest of our 21 regional groupings are those which were borne out of 22 those early meetings.</p> <p>23 Q. Thank you. Can I give you an example of this. You may 24 remember. In bundle 4, if you could be provided with 25 bundle 4 and please turn to page 2268. Do you see at</p> <p style="text-align: center;">Page 170</p>	<p>1 they had to take when making their decision to join or 2 not and it's one of the things that has caused us to 3 lose members subsequent to launching, because people 4 have occasionally found themselves in difficulty because 5 other competitors have not joined us.</p> <p>6 Q. That is right. I am interested, Mr Springett, that you 7 should describe that as a risk. So Mr James Kersh. If 8 he made a decision unilaterally to join, that would be 9 risky for him, wouldn't it?</p> <p>10 A. Which is what he would have done, had he joined.</p> <p>11 Q. But if he groups together with other agents, that 12 competitive risk is mitigated, isn't it, because he has 13 the security of numbers of a group joining rather than 14 a unilateral decision to join; that is right, isn't it?</p> <p>15 A. I couldn't disagree with that.</p> <p>16 Q. So you agree with that?</p> <p>17 A. I agree with that.</p> <p>18 Q. Indeed, if you go up the page at 2268, that is 19 effectively what you describe. So when you respond to 20 Helen:</p> <p>21 "We can't offer contingent gold contracts." 22 What you say is: 23 "His concerns are no different to any other agent 24 anywhere. If he is prepared to work with us to assemble 25 a group meeting, that would be the most effective and</p> <p style="text-align: center;">Page 172</p>
<p>1 the bottom of 2268, there is an email to your colleague 2 Helen Whiteley on 4 February 2014?</p> <p>3 A. Yes, I do.</p> <p>4 Q. From a man called Mr James Kersh in Sutton Kersh?</p> <p>5 A. Yes.</p> <p>6 Q. I think he's an agent up in the Liverpool area?</p> <p>7 A. I believe that's right.</p> <p>8 Q. And what he says is:</p> <p>9 "Hi Helen -- " this is passed on to you up the 10 chain, so you have seen this before?</p> <p>11 A. Yes.</p> <p>12 Q. "Hi Helen, my concern is there are not enough agents in 13 our area to take up your proposal. I appreciate that 14 you will try and get as many as you can on board and 15 certainly having us signed up, will help you. What 16 I can't have is a situation where we have to drop one of 17 the portals but there is not enough agents using you in 18 the area and you don't have the necessary presence. 19 Undoubtedly, this will work against us. What I will be 20 looking for is an agreement to say, if you don't have 21 the biggest ten agencies in our area by the launch date, 22 we would be able to pull out. Regards, James." 23 So that sums up nicely, the issue from the 24 perspective of a local agent, doesn't it?</p> <p>25 A. It does, and they had -- that was one of the risks that</p> <p style="text-align: center;">Page 171</p>	<p>1 there is nothing to stop them [ie that is the proposed 2 group, right] entering silver contracts altogether, at 3 a time to suit the group."</p> <p>4 So you are expressly acknowledging the problem and 5 advocating a group approach to the question of whether 6 or not to join OTM; right?</p> <p>7 A. I think that email points out in the first line that 8 there were no contingent contracts. In other words, 9 there was no basis on which an agent entering the 10 contract could say: this contract that I'm entering into 11 now, will only become effective if others, named agents, 12 joined. So no basis for that.</p> <p>13 Q. That is right and that is fair. That is one part of 14 your answer but the next part of your answer is, and 15 I am paraphrasing, tell me if this is not fair, but what 16 they should and could do is proceed together as a group?</p> <p>17 A. What we needed was a group meeting to put the proposal 18 to agents in that area. He's already said that his 19 interest in the business, as I described before, in the 20 case of Gascoigne Halman, would have been significant in 21 the Liverpool area. It didn't go anywhere actually. 22 Regrettably.</p> <p>23 Q. No, the point is, Mr Springett, it is not limited to 24 a group meeting, is it? You go on to say "the most 25 effective, there would be nothing to stop them entering</p> <p style="text-align: center;">Page 173</p>

1 silver contracts altogether, at a time to suit the
 2 group."
 3 Not just a meeting with them but what you are
 4 advocating is there is a group decision to join
 5 OnTheMarket?
 6 **A. I'm saying there's nothing stopping them.**
 7 Q. But your view is that that is the most effective way
 8 forward, isn't it? Do it as a group?
 9 **A. No, the most effective way forward for us is to present**
 10 **to the agents as a group and that was the same**
 11 **methodology that we used everywhere.**
 12 Q. We can see what it says, Mr Springett.
 13 In fact, you were all of the view that getting
 14 agents to join up together en bloc was the best approach
 15 because it would give smaller firms the confidence to
 16 sign up. That is right, isn't it?
 17 **A. That was one of the benefits of the group approach, that**
 18 **people could see the proposition and it was convenient**
 19 **for them to come along in their local areas and it was**
 20 **pretty likely that others that they knew and were**
 21 **competitors of theirs would be present at those**
 22 **meetings, so there is a gauging of interest at that**
 23 **stage.**
 24 Q. Yes, but it doesn't end there, does it? It is the same
 25 point, Mr Springett. It is one thing doing some group

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1 marketing and group gauging of interest but you went
 2 further because what you wanted and saw as the most
 3 effective was that they would sign up into membership in
 4 groups, didn't you?
 5 **A. No, because we'd been expressly advised that they**
 6 **shouldn't do that. They needed to make individual**
 7 **decisions which they would have had to do because at the**
 8 **point that they contract, there is no contingency. That**
 9 **is why it's a risk.**
 10 Q. I see. So we'll see whether you at the time understood
 11 that to be anything wrong with it, at a much later
 12 stage. But can I just take you to bundle 5, please, and
 13 page 2427. Just so you know what this document is, the
 14 front page is on 2401. So this is your revised core
 15 business plan of January 2014 and I am now looking at
 16 page 2427, under the heading "Summary." Do you have
 17 that slide?
 18 **A. I do, yes.**
 19 Q. The second sentence in the second paragraph. Your view
 20 at the time -- you were largely responsible for the
 21 writing of this business plan, weren't you?
 22 **A. Largely responsible, yes.**
 23 Q. And your view and the view of the company at the time
 24 was, and I quote:
 25 "We believe recruitment of groups of agents in local

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1 agents is likely to be the most effective route, as it
 2 is clear that what matters most to agents is how they
 3 are positioned relative to their immediate competition."
 4 So that's right, isn't it? That's what you did
 5 believe as a company?
 6 **A. I do, yes.**
 7 Q. And you often appointed local reps to do the recruitment
 8 in these local areas, didn't you?
 9 **A. What do you mean by local reps?**
 10 Q. You had people that you employed as the company grew, to
 11 go around and try to sign up new agents; right?
 12 **A. Yes, those are what we call the business development**
 13 **consultants, on the list that you handed out earlier.**
 14 Q. Yes, thank you.
 15 **A. And they began to be recruited and come on stream**
 16 **in April 2014.**
 17 Q. Thank you. Gentlemen, members of the Tribunal, if it is
 18 not noted down on that hand up I gave before, some of
 19 the papers refer to BDC, and I think I am right in
 20 saying, Mr Springett, that is what you just said?
 21 **A. I did, business development consultant. So those are**
 22 **our local field sales representatives, effectively.**
 23 Q. If you see in the papers BDC, that is what it means. Am
 24 I right also in saying that "RSM" which is another
 25 acronym that you use in some of these papers, is that

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1 regional sales manager?
 2 **A. Yes, it is.**
 3 Q. Are they more or less the same?
 4 **A. As the business grew -- I can't remember when we made**
 5 **the change, but I think once the business was**
 6 **operational, the span of control for Mrs Whiteley was**
 7 **too great to cross what was by then 22 salespeople. So**
 8 **we promoted some of the business development consultants**
 9 **to run regions, so they would typically have three or**
 10 **four business development consultants reporting to them.**
 11 Q. So RSM is, if you like, more senior than BDC?
 12 **A. Yes, although they all had their own patch as well, so**
 13 **it was not too hierarchical.**
 14 Q. Was one of these people Lorna Kerr?
 15 **A. Do you mean BDC or --**
 16 Q. Was she a BDC or --
 17 **A. It depends when you are asking the question. She**
 18 **started as a BDC. She later was made RSM.**
 19 Q. And her patch of responsibility, that was the whole of
 20 Scotland really, wasn't it?
 21 **A. Correct.**
 22 Q. And then it morphed into being the whole of Northern
 23 Ireland as well?
 24 **A. Later, I think during late 2015.**
 25 Q. So she was one of the people who went around, trying to

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<p>1 do this -- what was referred to on that summary slide as 2 local recruitment of groups of agents; correct? 3 A. By that time I think we were doing less group 4 recruitment. The period in the run-up to getting the 5 business off the ground, where we got past our hurdle of 6 a thousand branches, that was primarily done by me and 7 Ms Whiteley, but once we got into 2014, we built up the 8 network of sales agents and so it was more typical that 9 they would go to agents individually and talk to them. 10 Q. But you were -- 11 A. So the groups I referred to earlier were established in 12 the main, during 2013. 13 Q. Thank you, that is very helpful. Mr Springett. Am 14 I right in saying you were pleased when there were good 15 strong local groups which emerged, right? 16 A. On the basis that that involved me making the 17 proposition to them, yes, I was. 18 Q. And you tried to facilitate such groups all round the 19 country, didn't you? 20 A. I went -- I visited as many places as possible in the 21 time and resources available. 22 Q. Yes, but the question, Mr Springett, is you were trying 23 to facilitate groupings of agents all around the 24 country, weren't you, so that they could make group 25 decision about whether or not to join?</p> <p style="text-align: center;">Page 178</p>	<p>1 Do you see that? 2 A. I do. 3 Q. So what you were doing your best to facilitate groupings 4 of agents such as this one where there is a good 5 dialogue between a strong critical mass and you were 6 hoping to do that everywhere, weren't you? 7 A. I think by March 2014 the creation of groups had largely 8 finished and of course the group that we're referring to 9 here, the West Wales group were already members, so they 10 had signed their contracts with Agents' Mutual by the 11 end of January 2014. And so I think what this refers to 12 is the beginnings of a some kind of collective 13 negotiation with the other portals in addition to 14 thinking about ways to promote and expand the membership 15 of Agents' Mutual. 16 Q. That has confused me, Mr Springett, because I read it, 17 it seems very clear to me. You are talking about 18 a situation where there is a good dialogue between 19 a strong critical mass of local firms, and that is the 20 West Wales area, yes? 21 A. Yes. 22 Q. And what you are saying is we will, so it is looking 23 forward, be doing our best to create such critical mass 24 everywhere. So you are trying to facilitate and take 25 steps to create other such strong critical mass</p> <p style="text-align: center;">Page 180</p>
<p>1 A. No, that's not true. 2 Q. Can I just show you a document, please, in bundle 3 number 5? 4 A. Page 5? 5 Q. Bundle 5. Do you have a bundle H5? 6 A. H5, yes. 7 Q. And this time at page 2577. This is an email that you 8 wrote to Mr Jones, part of what we will see later is the 9 West Wales grouping, yes? 10 A. I am just looking for when it was. 11 Q. The bottom of the previous page, 28 March 2014, the very 12 last line of 2576. Do you see that? 13 A. I see it thank you. 14 Q. Just to orientate yourself, you are writing to a group 15 of West Wales agents, March 2014. 16 A. Yes. 17 Q. The only point I would like to pick up for the moment, 18 do you see near the second hole punch, that larger 19 paragraph beginning "I am not able"? 20 A. Yes. 21 Q. And then the final sentence: 22 "Situations such as your own where there is a good 23 dialogue between a strong critical mass of firms remain 24 the exception rather than the rule although we will be 25 doing our best to create such critical mass everywhere."</p> <p style="text-align: center;">Page 179</p>	<p>1 groupings with good dialogue in other places going 2 forward, aren't you? 3 A. Yes, okay. I just want to be clear about the purpose of 4 that which is that these groupings were talking to each 5 other about methods by which they could expand the 6 membership of Agents' Mutual, could prepare for the 7 launch and do pre-launch and post-launch marketing. 8 Those were my interests in it really. 9 Q. In fact, another way that you put it, in this document 10 you use the phraseology of "critical mass" and "good 11 dialogue between a local grouping", but another way you 12 put it was "good idea for you to create clusters of 13 prospective members"? 14 A. Mmm. 15 Q. Yes, do you accept that? 16 A. Yes, that's true but that can be done -- let me be clear 17 about that. That can be done one agent at a time and it 18 has been the basis since I have been in the industry of 19 developing a strong network. So you start with one, you 20 add a second, you add a third, you create a network. 21 Q. But you would accept from me, wouldn't you, 22 Mr Springett, that, as we explored with both Mr Wyatt 23 and Mr Symons this morning, that the letter -- perhaps 24 this afternoon -- the letter of intent process 25 facilitates the making of group decisions by estate</p> <p style="text-align: center;">Page 181</p>

1 agents, doesn't it, because they'll know what other
 2 people are going to do?
 3 **A. Well, I'm not sure Mr Symons agreed with you on that.**
 4 **And that wasn't the purpose of the letter of intent**
 5 **process. The letter of intent process was to give**
 6 **everybody assurance that sufficient support nationally**
 7 **and sufficient money actually during the 2013 process**
 8 **would be available to make the venture viable.**
 9 Q. That is right. It was a way of giving them security of
 10 knowing what the other agents would be doing by way of
 11 joining Agents' Mutual, right?
 12 **A. I didn't say that, no. What we were doing in 2013 was**
 13 **establishing a business, a venture. So if it was to fly**
 14 **we needed to establish what level of support and**
 15 **a minimum level of support for it.**
 16 Q. But so you don't accept this. Let me try again.
 17 I thought you did accept that it gave, if you like,
 18 comfort, that the other agents could see that there
 19 would be enough agents on board near them so that those
 20 agents could overcome any doubts that they may have?
 21 **A. It is the "near them" point which I think I would take**
 22 **issue with. In relation to the process that we**
 23 **followed, and it might help the Tribunal if I was to run**
 24 **through that process. Would that be okay?**
 25 THE CHAIRMAN: Yes.

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1 **A. So we established the business plan, and no doubt we'll**
 2 **be referred back to that at some point. The information**
 3 **memorandum flowed directly from the business plan and**
 4 **the presentation that I was using during 2013 was**
 5 **a derivative of the information memorandum. So those**
 6 **three things were pretty strictly aligned. Because we**
 7 **had very limited resources I was out there talking to**
 8 **groups, I don't resile from that in any way at all. It**
 9 **was in my opinion the most efficient and really the only**
 10 **way to get the kind of mass that we were looking for.**
 11 **The letter of intent process which was non-binding**
 12 **was simply to allow us to accumulate numbers of people**
 13 **who were basically saying to us, "Actually we like the**
 14 **look of this, and we're going to give you this letter of**
 15 **intent in good faith. We understand it's non-binding**
 16 **but we have discussed it with our colleagues and if you**
 17 **reach the minimum of a thousand offices, which is what**
 18 **the threshold was set and the associated amount of**
 19 **money, then we will enter into the contracts", a summary**
 20 **of which was given as part of the letter of intent.**
 21 **So towards the end of 2013 and the momentum was**
 22 **building very strongly so we passed the thousand branch**
 23 **mark in the autumn I would say and by Christmas we had**
 24 **received letters of intent actually in relation to 2,000**
 25 **branches. So just before Christmas we advised everybody**

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1 **that we were going to move to implementation and the**
 2 **process by which we did that was to send out the company**
 3 **documents, articles of association and the membership**
 4 **rules. We told everybody that they would shortly be**
 5 **receiving a contract to be signed and we asked --**
 6 **I think we originally set the date for that, return of**
 7 **that for the second week of January. And we also told**
 8 **them that they would be able to see on a limited basis**
 9 **a list of all of those firms that had signed a letter of**
 10 **intent and in fact, we made it possible for them at that**
 11 **point to view a map where all of the branches of all of**
 12 **those firms were located and it, happily for us, showed**
 13 **a pretty good national distribution.**
 14 **And having gone past that point, it was then in**
 15 **their hands to respond and send their contracts in if**
 16 **they chose to do so. And in fact, I think we ended up**
 17 **extending the deadline which moved to the third week**
 18 **of January.**
 19 **The submission of the contracts was individually**
 20 **from each firm directly to our administrative centre**
 21 **which was in Aldershot at that point. So the process**
 22 **was built to make sure that we complied with the**
 23 **original legal advice that we had taken and been given**
 24 **about firms needing to make their own independent**
 25 **decisions.**

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1 MR HARRIS: Thank you, Mr Springett. I am a little confused
 2 about why you didn't accept from me earlier then in
 3 light of what you have just been saying that estate
 4 agents do get some assurance when they can see that they
 5 will be enough agents on board near them to overcome any
 6 doubts that they may have. In fact you do agree with
 7 that?
 8 **A. The assertion of the "near them" part of that which --**
 9 Q. Perhaps I can show you where you used those exact words
 10 then. Bundle 12/6752. I hope that you have a copy
 11 where you can see the numbers because they are not --
 12 **A. 6752. Yes, I can, thank you.**
 13 Q. I am not going to this document for the numbers but,
 14 members of the Tribunal, can I just invite you to note
 15 that this is a document that gives the state of the
 16 number of offices at Agents' Mutual at various stages,
 17 some of which are redacted because that will be germane
 18 at a later stage?
 19 THE CHAIRMAN: Should we read it, Mr Harris?
 20 MR HARRIS: Please. (Pause)
 21 So, members of the Tribunal, it may be you would
 22 just like to mark this as a document where you can find
 23 the numbers because, as I say, they will come back.
 24 Mr Springett, I think I am right in saying, aren't
 25 I, by reference to this document that the letter of

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1 intent process does assist because, and these are your
 2 words, "because agents can see that when these
 3 thresholds are reached there will be enough agents on
 4 board near them and/or in total to overcome any residual
 5 doubts they have."
 6 Those are your words, aren't they?
 7 **A. If you look at the date of this email this is after the**
 8 **launch, so people can see for themselves who's where.**
 9 Q. Right, but that doesn't make any difference, does it?
 10 Because the letter of intent process, as you just
 11 explained, that you showed them a map and you showed
 12 them some form of a list of agents, is designed to give
 13 the assurance to others when they are signing up that
 14 they are signing up together with other people that are
 15 signing up. That is the whole point, isn't it?
 16 **A. No, because the process after the launch had taken place**
 17 **is on the basis that people can see the portal, they can**
 18 **see who's there. We are continuing to sign up people**
 19 **directly to contract who continue to appear on the**
 20 **portal and so when they are making their decision about**
 21 **whether to come into contract or not, they are in**
 22 **a position to see what they're joining. And the real**
 23 **issue at the 7,500 stage is just scale and ability to**
 24 **resource the level that agents sometimes express concern**
 25 **about.**

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1 Q. With respect, Mr Springett, that is not what it says.
 2 It says, "Can see that when these thresholds are
 3 reached", so it is giving them comfort of something that
 4 has yet to happen that will happen in the future. It is
 5 not about them looking at somebody who's already on the
 6 website, is it? That is not what's happening?
 7 **A. It would be a combination of those things.**
 8 Q. Yes.
 9 **A. But if you add what's there already to a threshold at**
 10 **7,500 offices that gives us overall the coverage and**
 11 **resources we need, that's a basis for decision making**
 12 **for them.**
 13 Q. That is right. And it critically involves at least in
 14 part looking forward to what will happen which they know
 15 about because there is a letter of intent process. That
 16 is right, isn't it?
 17 **A. But then they are going to be making an individual**
 18 **decision as to whether to join or not. In fact at this**
 19 **stage group recruitment has long passed and we are**
 20 **talking about individual field sales personnel meeting**
 21 **individual agents.**
 22 Q. You know perfectly well, don't you, Mr Springett, that
 23 the letter of intent process has been a big contributor
 24 to your recruitment drive because it allows people to
 25 see horizontally amongst themselves what other people

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1 are going to do, as well as what some of them might have
 2 already done, don't you?
 3 **A. The only time I think that we have shown people but**
 4 **I would like to check this if I may, overnight,**
 5 **I believe the only time we've ever shown people a list**
 6 **of -- at the trigger point, when the threshold is**
 7 **reached, who else has signed up a letter of intent, was**
 8 **in the original process, where we were looking to raise**
 9 **the initial capital and form the business. I don't**
 10 **believe that we did it in 2014 but I would grateful for**
 11 **the opportunity to check that before I continue my**
 12 **evidence tomorrow, perhaps.**
 13 Q. It is right, isn't it, that Mr Forrest -- do you
 14 remember Mr Forrest, who gave evidence yesterday from
 15 Gascoigne Halman?
 16 **A. I do, yes.**
 17 MR FREEMAN: Mr Harris, I hate to interrupt. Have you moved
 18 on from this email?
 19 MR HARRIS: I have, yes.
 20 MR FREEMAN: Can I just ask a question to Mr Springett on
 21 it?
 22 MR HARRIS: Please.
 23 MR FREEMAN: The final paragraph of this email you have been
 24 referred to, the one that begins "Confidential".
 25 **A. Yes.**

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1 MR FREEMAN: In the final sentence you say:
 2 "I hope the penny is finally dropping that the two
 3 monsters they have helped create"; and that presumably
 4 is Rightmove and Zoopla?
 5 **A. Yes, it is.**
 6 MR FREEMAN: And "they" is the three big corporates?
 7 **A. Yes.**
 8 Q. "And benefited from financially, are steadily eroding
 9 their core businesses".
 10 **A. Yes, sir.**
 11 MR FREEMAN: That is your belief, is it, that the two
 12 established portals are eroding the businesses of the
 13 Bricks and Mortar estate agent groups?
 14 **A. Yes, and even to the extent that the same effects**
 15 **impacts the business of the three corporates themselves**
 16 **and that was --**
 17 MR FREEMAN: So you wouldn't agree that it is one grand,
 18 happy partnership going forward into the future, with
 19 a place for the online portals and the Bricks and Mortar
 20 estate agents?
 21 **A. I think there is a significant threat and Mr Harris**
 22 **referred to it, I think, at an earlier stage, in one of**
 23 **our very original documents that for sale by owner**
 24 **emerging and being facilitated, effectively the portal**
 25 **is becoming the competitor of the agent, is quite**

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<p>1 a likely development. And so it is not the main element 2 of why we formed ourselves but it is certainly a factor 3 that if, in anticipation that the portals are going to 4 become the competitors of agents, there is no reason why 5 agents shouldn't respond by being a competitor to the 6 portal. 7 MR FREEMAN: Mr Harris, I interrupted your flow. You are 8 not a witness, you are counsel. 9 MR HARRIS: Thank you. 10 A. Can I get rid of H12? 11 MR HARRIS: Can I draw your attention -- I beg your pardon. 12 A. May I get rid of H12? 13 MR HARRIS: Yes. I am afraid it is the way, Mr Springett. 14 Can we replace it with a different bundle, this time D. 15 Could you please open it to tab 6 which is the witness 16 statement of Mr Forrest, who gave evidence yesterday, 17 oral evidence. Would you open it in internal page 93, 18 please, at paragraph 39. You see that Mr Forrest gives 19 evidence. This evidence wasn't challenged by your 20 learned leading counsel. 21 A. No, that's right. 22 Q. And he gives evidence that: 23 "Whilst we thought there was a risk to our 24 investment, should Agents' Mutual not get the interest 25 from other agents that they expected they ought to get,</p> <p style="text-align: center;">Page 190</p>	<p>1 Q. That is right. But you accept that all estate agents, 2 for these purposes, are at the same horizontal level, 3 don't you, of the market? 4 A. I have been educated by reading quite a bit on this 5 lately, yes, sir. 6 Q. So yes is the answer to that? 7 A. They are in the same horizontal market, yes. 8 Q. And the LOI does give them visibility across that same 9 level of the market, doesn't it? 10 A. What do you mean by "does give them visibility"? 11 Q. Gives them the comfort that we have been talking about, 12 that they know that other people will be signing up at 13 the same time as they are signing up, doesn't it? 14 A. Yes, broadly, nationally and in numbers terms. 15 Q. Thank you. And in fact, the OOP rule is also part of 16 this giving visibility amongst estate agents, isn't it, 17 because everybody in their membership contract, 18 everybody has the OOP rule and all estate agents who 19 sign up, know that all other estate agents who sign up 20 will also only have to choose one other portal, don't 21 they? 22 A. A maximum of one other portal, yes. 23 Q. So they have that degree of horizontal visibility 24 amongst themselves as well, don't they? 25 A. If they have joined Agents' Mutual, of course.</p> <p style="text-align: center;">Page 192</p>
<p>1 we felt that the risk was controlled by the letter of 2 intent process, in that Agents' Mutual would obtain an 3 early indication of the level of support it would 4 receive." 5 That is right? 6 A. Yes, it is. 7 Q. And so the risk of joining up for an individual estate 8 agent such as Gascoigne Halman, that is to some extent, 9 as to use his word "controlled", by the fact that other 10 agents are indicating their intention to join up, using 11 the LOI process, isn't it? 12 A. It is true. Although I think, I repeat it is a matter 13 of scale and resources. So if insufficient agents had 14 signed the letters of intent, the business would never 15 have got off the ground. 16 Q. So the more horizontal visibility the agents have 17 amongst themselves, the more security they get; correct? 18 A. No, not correct. 19 Q. Well that is what you mean by a matter of scale? 20 A. If by which you mean horizontal visibility, knowing who 21 else was there, I think you heard Mr Wyatt say it is 22 irrelevant to him who else around -- in his decision to 23 join, it was more to do with how many and was the scale 24 there to allow us to do the job? Because this is 25 a start-up business.</p> <p style="text-align: center;">Page 191</p>	<p>1 Q. Exactly. That is because every one of them knows that 2 as a matter of contract, they won't be out on a limb 3 because every other one of them within this mutual 4 company will also be restricted or be bound by, if you 5 prefer, the OOP; right? 6 A. Yes. 7 Q. Thank you. And I think you would accept that if there 8 aren't enough agents locally, who have joined up to OTM, 9 that would or could give rise to a competitive 10 disadvantage to those who have signed up to OTM? 11 A. It could do. 12 Q. In fact -- 13 A. It is one of the risks the agents took. 14 Q. In fact, the OOP rule helps to avoid that competitive 15 disadvantage, doesn't it, by giving this further degree 16 of horizontal visibility, that everyone will only be 17 allowed to have two portals? 18 A. I really don't follow, I'm sorry. 19 Q. And it is also right, isn't it, that -- can I just -- 20 A. I didn't follow what you were saying, I am sorry. 21 Q. I am going to move on, Mr Springett, so don't worry 22 about it, thank you. 23 I am right in saying, aren't I, that in Northern 24 Ireland, there is a less restrictive version of the OOP 25 rule, isn't there?</p> <p style="text-align: center;">Page 193</p>

<p>1 A. That's correct.</p> <p>2 Q. Have I got this right, because I am only new to this</p> <p>3 part of the party, that in Northern Ireland, the OOP</p> <p>4 rule for the first 12 months, that allows an individual</p> <p>5 agent to select any property or each of his or her</p> <p>6 properties and choose for that property which one other</p> <p>7 competing portal it can list that property on?</p> <p>8 A. Yes, it is a combination. We ask them to select their</p> <p>9 other portal at firm level but the local market</p> <p>10 conditions and the request from the agents, when we were</p> <p>11 setting up there, was that they be given that initial</p> <p>12 flexibility.</p> <p>13 Q. But you accept, don't you, that that is a less</p> <p>14 restrictive way of entering that part of the relevant</p> <p>15 market in Northern Ireland; right?</p> <p>16 A. Well, it doesn't change the intent, which was to disrupt</p> <p>17 and create a situation where no one portal had all the</p> <p>18 properties.</p> <p>19 Q. No, I accept that. But it is less restrictive than the</p> <p>20 OOP rule, as applied in the rest of the --</p> <p>21 A. In relation to the agents, yes. May I explain the</p> <p>22 reason why it is like that?</p> <p>23 Q. Mr Springett, please.</p> <p>24 A. In Northern Ireland the portal market is different.</p> <p>25 Rightmove and Zoopla are not established there but there</p> <p style="text-align: center;">Page 194</p>	<p>1 MR FREEMAN: The portals operate in different market</p> <p>2 sectors.</p> <p>3 A. In terms of their audience, do you mean, sir?</p> <p>4 MR FREEMAN: Yes, buyers for more expensive properties and</p> <p>5 buyers for mainstream properties?</p> <p>6 A. That is my understanding but we haven't done any</p> <p>7 research to really verify that. This is information</p> <p>8 that the agents themselves have given to us.</p> <p>9 MR HARRIS: Sir, I am conscious of the time. I had one last</p> <p>10 question or two questions on the Northern Ireland</p> <p>11 version of the rule and then I will be moving on, but</p> <p>12 equally -- you know, there is still much to do but I am</p> <p>13 conscious Mr Springett has had a long afternoon and the</p> <p>14 Tribunal.</p> <p>15 THE CHAIRMAN: Yes, I think -- why don't you finish this</p> <p>16 topic and then we'll adjourn until tomorrow.</p> <p>17 MR HARRIS: Yes, thank you.</p> <p>18 So Mr Springett, are you aware that nowhere in any</p> <p>19 of the many, many witness statements that have been put</p> <p>20 forward by your side or in the experts' report or in the</p> <p>21 pleadings, has there been, ever, any suggestion that</p> <p>22 Northern Ireland forms a different market in any</p> <p>23 respect?</p> <p>24 A. I am not aware that anything has been said, no.</p> <p>25 Q. In fact, we only found out, didn't we, a matter of days</p> <p style="text-align: center;">Page 196</p>
<p>1 are miniature versions there of the same situation, with</p> <p>2 two well established portals that are called</p> <p>3 Property Power and Property News. But whereas in</p> <p>4 mainland UK, the charging method for portals is</p> <p>5 a monthly subscription and within reason, all you can</p> <p>6 eat, some portals have a kind of reasonable usage</p> <p>7 clause, in Northern Ireland, the portals charge on a per</p> <p>8 property basis. It can be -- it is not a territory</p> <p>9 I have actually been into, particularly been part of the</p> <p>10 development there, but I understand between 30 and £50</p> <p>11 per property. The property is then loaded on to the</p> <p>12 portal and it remains there until it's been sold or</p> <p>13 withdrawn.</p> <p>14 And so that market is, I understand at least, the</p> <p>15 dynamics there are that the vendor will be more involved</p> <p>16 in the choice of the portal and I also understand that</p> <p>17 one of the portals is more efficient for what I might</p> <p>18 call mainstream properties and one more effective for</p> <p>19 more expensive property.</p> <p>20 THE CHAIRMAN: So it is a one-off fee per property --</p> <p>21 A. Yes.</p> <p>22 THE CHAIRMAN: -- rather than a monthly fee per branch for</p> <p>23 a basket of properties?</p> <p>24 A. That's my understanding, yes, sir.</p> <p>25 MR HARRIS: But are you aware --</p> <p style="text-align: center;">Page 195</p>	<p>1 ago, from an answer to a request for further information</p> <p>2 under a statement of truth, about some of these details.</p> <p>3 For example, the differing rule in Northern Ireland;</p> <p>4 right?</p> <p>5 MR MACLEAN: I am sorry, but Mr Springett can't possibly</p> <p>6 answer that question about what Mr Harris's side knew.</p> <p>7 MR HARRIS: Let me rephrase it. We only found out from your</p> <p>8 side?</p> <p>9 A. You asked us for a list of all of the contracts,</p> <p>10 I believe, and information about all of the different</p> <p>11 schemes and I regret that we omitted that from the list</p> <p>12 that was provided.</p> <p>13 MR HARRIS: That is right, so we found out about it from</p> <p>14 your side a matter of days ago.</p> <p>15 The last question then on this topic, Mr Springett,</p> <p>16 is do you agree with me that from Agents' Mutual's</p> <p>17 perspective, it is in fact better to have a more</p> <p>18 rigorous OOP rule, such as the one that applies in the</p> <p>19 mainland, rather than the less, because it's much easier</p> <p>20 to enforce the OOP rule, where all of the properties</p> <p>21 from a given estate agent have to be on OTM and one</p> <p>22 other portal, as opposed to split -- any particular</p> <p>23 property can be on this, that one or the other one?</p> <p>24 A. I think there are two reasons. I think that is</p> <p>25 certainly one of them and the other one is it implements</p> <p style="text-align: center;">Page 197</p>

<p>1 much more clearly, one of the objectives of One Other</p> <p>2 Portal which is to create a situation where we have a</p> <p>3 differentiated set of properties.</p> <p>4 MR HARRIS: Thank you, Mr Springett. That is enough from</p> <p>5 me.</p> <p>6 THE CHAIRMAN: Can I just be clear. Your client, Gascoigne</p> <p>7 Halman, has no business in Northern Ireland?</p> <p>8 MR HARRIS: That is correct. They are south Manchester,</p> <p>9 Cheshire and the High Peak.</p> <p>10 THE CHAIRMAN: Mr Springett, we'll adjourn until tomorrow.</p> <p>11 For the lawyers it is 9 o'clock. For you it is 10.30</p> <p>12 but do feel free to come earlier.</p> <p>13 A. Oh, thank you, yes. I appreciate that.</p> <p>14 THE CHAIRMAN: At this point I give all witnesses a blanket</p> <p>15 warning not to speak about the case to anyone. In your</p> <p>16 case, it is going to be a more nuanced warning. You</p> <p>17 were present, I think, in court when we were discussing</p> <p>18 the recording and you may discuss aspects of that with</p> <p>19 your legal team. You have a very experienced legal</p> <p>20 team. They'll ensure that you stay within the right</p> <p>21 parameters and I would let them talk to you rather than</p> <p>22 you approach them.</p> <p>23 A. Indeed.</p> <p>24 THE CHAIRMAN: You raised one matter regarding the checking</p> <p>25 of, I think, sharing of letters of intent to agents</p> <p style="text-align: center;">Page 198</p>	<p>1</p> <p>Examination-in-chief by MR MACLEAN111</p> <p>2</p> <p>Cross-examination by MR HARRIS117</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 200</p>
<p>1 which you wanted to check.</p> <p>2 A. Yes.</p> <p>3 THE CHAIRMAN: To be clear, that is permissible but it must</p> <p>4 be done, as it were, as your own work, you have to do it</p> <p>5 yourself.</p> <p>6 A. Yes, right.</p> <p>7 MR MACLEAN: I think it wasn't sharing the letters of intent</p> <p>8 but rather, the fruits of that process.</p> <p>9 THE CHAIRMAN: The fruits of the process. Yes, I'm sorry,</p> <p>10 I abbreviated that too much but do feel free to do that</p> <p>11 but it is your own work.</p> <p>12 We'll adjourn until 9 o'clock tomorrow.</p> <p>13 (4.35 pm)</p> <p>14 (The court adjourned until the following day at 9.00 am)</p> <p>15 Housekeeping2</p> <p>16 MR PETER SYMONS (affirmed)9</p> <p>17 Examination-in-chief by MR MACLEAN9</p> <p>18 Cross-examination by MR HARRIS10</p> <p>19 Questions by the Tribunal56</p> <p>20 MR JAMES WYATT (sworn)61</p> <p>21 Examination-in-chief by MR MACLEAN61</p> <p>22 Cross-examination by MR HARRIS62</p> <p>23 Re-examination by Mr Maclean.94</p> <p>24 Questions by the Tribunal97</p> <p>25 MR IAN SPRINGETT (affirmed)111</p> <p>MR IAN SPRINGETT (affirmed)111</p> <p style="text-align: center;">Page 199</p>	

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