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**IN THE COMPETITION**  
**APPEAL**  
**TRIBUNAL**

Case No: 1351/5/7/20

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Monday 24 January – Wednesday 2 February 2022

Before:  
The Honourable Mr Justice Zacaroli  
Paul Lomas  
Derek Ridyard  
(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Churchill Gowns Limited and Student Gowns Limited

-v-

Ede & Ravenscroft Limited and Others

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**A P P E A R A N C E S**

Fergus Randolph QC & Derek Spitz (On behalf of Churchill Gowns Limited and Student Gowns Limited)  
Conall Patton QC & Michael Armitage (On behalf of Ede & Ravenscroft Limited and Others)

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Tuesday, 25 January 2022

(9.00 am)

Housekeeping

THE CHAIRMAN: Good morning.

MR SPITZ: Good morning, members of the tribunal. Before we call Mr Muff, if I could just make a couple of housekeeping points.

The first one is, as far as we understand it, Mr Muff is going to be on for a two-hour slot today, from 9 am until 11 am, and then we will pick up again with the order of witnesses; Mr Patton will continue cross-examining Ms Nicholls.

Mr Muff has asked me to just mention two points to the tribunal. The first is that the office from which he will be giving his evidence is not air-conditioned and so he has requested that he can give his evidence without his jacket on.

THE CHAIRMAN: That is fine.

MR SPITZ: Thank you very much. We're grateful.

The second point is that he informs us that the lighting in the building is susceptible to being switched off if he does not move in 15 minutes. Hopefully, he will find reasons to move around enough to keep it on, but he asked that we give you advance notice of that.

1           The last point is that Mr Patton and I have had  
2           a word and because we are starting early today, it is  
3           a long day for everyone and we are in the tribunal's  
4           hands as to what to do with that. We do not suggest  
5           that we finish a full hour and a half early, but we  
6           raised the question as to whether it would be sensible  
7           to rise a little bit early and, coupled with that,  
8           whether we might think of extending the breaks,  
9           the mid-morning and mid-afternoon breaks, by some time,  
10          a 15-minute break rather than shorter breaks, and then  
11          rise somewhat early at the end.

12         THE CHAIRMAN: That all makes sense. I think, given that  
13          it's two-hour time slot, if possible, we should go for  
14          the full two hours. Does that cause a problem for  
15          anybody, including the transcribers?

16         MR SPITZ: That is fine.

17         THE CHAIRMAN: Then we will take a longer break at that  
18          point, certainly.

19         MR SPITZ: I am grateful, thank you.

20                 All right, with those matters out of the way,  
21                 Mr Stefan Muff is the next witness. Can we have him on  
22                 screen.

23                         MR STEFAN MUFF (called)

24         MR SPITZ: Good morning, Mr Muff.

25         WITNESS: Good morning.

1 MR SPITZ: Good morning. I am Derek Spitz, and welcome.  
2 Thank you very much for agreeing to give your evidence  
3 at this time. We understand that it is late evening in  
4 Australia where you are sitting. The tribunal's  
5 programme is to run for a two-hour slot with your  
6 evidence and then we will have a break, and we will  
7 resume your evidence tomorrow at the same time, if that  
8 is convenient.

9 WITNESS: Yes.

10 MR SPITZ: I am going to show you your witness statements  
11 and then my colleague Mr Patton is going to ask you some  
12 questions about your evidence.

13 THE CHAIRMAN: I think, Mr Spitz, should he not be sworn in  
14 before we start?

15 MR SPITZ: Indeed, thank you.

16 THE CHAIRMAN: Yes, if we could do that.

17 (Witness affirmed)

18 Examination-in-chief by MR SPITZ

19 MR SPITZ: If you can be shown the document at {D1/3/1}.

20 A. Sorry, I cannot see that yet.

21 Q. Do you have a hard copy of your witness statement,  
22 Mr Muff?

23 A. I do.

24 Q. Okay, let us work with that then.

25 You will see page 1 of that document is headed,

1 "Witness statement of Stefan Muff". If you go to  
2 page 17 of that hard copy -- page 17 --  
3 A. Yes.  
4 Q. -- do you see your signature on that document?  
5 A. Yes.  
6 Q. It is dated 21 August 2021, and underneath it, is that  
7 your statement of truth?  
8 A. Yes, it is.  
9 Q. You have signed that?  
10 A. I have.  
11 Q. Then if you go to your second witness statement.  
12 The bundle reference is {D1/6/1}. If you turn to page 3  
13 of that witness statement {D1/6/3}, is that your  
14 signature?  
15 A. Yes.  
16 Q. It is dated 17 September 2021?  
17 A. Yes, that is correct.  
18 Q. Underneath that, is that your statement of truth?  
19 A. Yes, it is.  
20 Q. You have signed that on the same date?  
21 A. That is correct.  
22 Q. Are the contents of these witness statements correct?  
23 A. Yes.  
24 Q. Thank you.  
25 Is there anything you would like to add to or alter

1 or comment on further in relation to your witness  
2 statements?

3 A. No.

4 MR SPITZ: I am going to then hand over to counsel for  
5 the defendants to ask you some questions about your  
6 evidence.

7 A. Thank You.

8 Cross-examination by MR PATTON

9 MR PATTON: Good evening, Mr Muff.

10 A. Good morning, sir.

11 Q. Can you just have to hand the hard copy of your witness  
12 statement, please, because I will be asking you  
13 questions by reference to that. It is your first  
14 witness statement that is going to be relevant.

15 A. Okay, yes, sir.

16 Q. So, could we go at {D2/3/3} -- this is your witness  
17 statement, page 3, at paragraph 14.

18 A. Yes.

19 Q. You say here that you:

20 "... confirm that the content of paragraph 26 of  
21 the Re-Amended Claim Form is true, and that Alec ..."

22 That is Mr Ramsey; correct?

23 A. It is, yes.

24 Q. "... and [you] were the source of the information stated  
25 there."

1           Now, could you be shown {B/9/2}. This is  
2           the pleadings bundle, which the tribunal may also have  
3           in hard copy. Actually, could I start with {B/1/6}.  
4           I am sorry.

5           Do you see, at the foot of the page, paragraph 26?  
6           This is the claim form. It should appear on your  
7           screen. Have you got that?

8           A. It is just coming up now. Yes.

9           Q. Paragraph 26, you are familiar with this paragraph, are  
10          you not?

11          A. I am. If I could have a moment to refresh my memory.

12          Q. Please do.

13                         (Pause)

14          A. Okay.

15          Q. So there is the paragraph you are referring to in your  
16          witness statement; correct?

17          A. Yes, that is correct.

18          Q. Now could you be shown {B/9/2}. If you let me know when  
19          you have got that on the screen, please.

20          A. It just came up.

21          Q. Okay.

22                 So, just to explain the document, this consists of  
23          a series of questions that were asked by the defendants,  
24          Ede & Ravenscroft, of your companies, the claimants. If  
25          you see in the middle of the page, can you see, "Under

1 Claim Form, paragraph 26"; do you see that?

2 A. Yes.

3 Q. Do you see the first question, question 3:

4 "What was Churchill Australia's market share in  
5 relation to the University of Queensland in its third  
6 year of trading ... and in any subsequent years of  
7 trading up to the present?"

8 Then if I could skip the answer for the moment, can  
9 you see question 4:

10 "What was Churchill Australia's market share in  
11 relation to the University of Melbourne for each year  
12 from 2015 to the present?"

13 Do you see that?

14 A. Yes, I do.

15 Q. If we could turn over the page, please {B/9/3}. Can you  
16 see at the top of the page, question 5:

17 "For each year from 2013 until the present, what was  
18 Churchill Australia's market share in relation to all  
19 other Australian universities to whose students it has  
20 applied academic dress?"

21 6:

22 "Other than the University of Sydney, which  
23 Australian universities' prices for the sale of hire of  
24 academic dress to their students have changed (whether  
25 upwards or downwards) since Churchill Australia first



1 entered the Australian market (and by how much have  
2 prices changed)?"

3 Then 7:

4 "Since 2013, have any entities other than Churchill  
5 Australia entered the market for the supply of academic  
6 dress to students at Australian universities?"

7 Did you see those questions when they were asked?

8 A. I believe so. It is possible.

9 Q. You do not have a recollection?

10 A. I do not have a firm recollection, no. I am sorry. It  
11 is possible that I saw them.

12 Q. If we go back to page 2 {B/9/2}, if you can find again  
13 question 3, do you see underneath in bold, "Response"?  
14 The response says:

15 "The matters contained in paragraph 26 of the Claim  
16 Form are factual background to the claim, as required to  
17 be set out fully by paragraph 5.25 of the Guide to  
18 Proceedings. The Claimants do not rely on the facts to  
19 which Requests 3-7 inclusive relate to establish their  
20 claim of infringement of UK competition law by, or  
21 entitlement to any relief against, the Defendants.  
22 Accordingly, this request does not relate to matters  
23 which are reasonably necessary and proportionate to  
24 enable the Defendants to prepare their own case or  
25 understand the case which they have to meet."

1           Then that response is repeated for each of the other  
2 requests.

3           Now, did you see this response when it was  
4 submitted?

5 A. I do not recall. I am sorry.

6 Q. Did you approve this response?

7 A. I do not recall approving it.

8 Q. Could we go to bundle {C/4}. Now, this is an order made  
9 by the tribunal in these proceedings and it is dated  
10 January 2021. Would you have been sent a copy of this  
11 when it was made?

12 A. It is likely, yes.

13 Q. Could you be shown page 4 {C/4/4}. Do you see  
14 the heading, "Categories of disclosure to be provided by  
15 claimants"? Do you see that?

16 A. Yes, sir.

17 Q. Are you familiar with this list of categories of  
18 disclosure to be provided by the claimants?

19 A. Yes, I am.

20 Q. Now, if you could look at paragraph 7, do you see  
21 the category is:

22           "Churchill Australia company accounts for 2013-15  
23 (entity Churchill Gowns) and Churchill Australia company  
24 accounts for 2015 onwards (entity Churchill Gowns Pty  
25 Ltd); and documents ..."

1           Just pausing there. You are a director of  
2           the Churchill Gowns Pty Ltd entity, are you not?  
3           A. Yes, sir.  
4           Q. That was a company which was incorporated in 2015;  
5           correct?  
6           A. Yes, sir.  
7           Q. Presumably that company has prepared accounts?  
8           A. Yes, they have.  
9           Q. Were you aware that the tribunal ordered those accounts  
10          to be disclosed?  
11          A. No, I cannot say that I was.  
12          Q. How do you explain that you were not aware of that? Do  
13          you have any explanation for that?  
14          A. I do not recall having conversations with our legal team  
15          about these -- about these disclosures.  
16          Q. Did you read the categories of disclosure set out in  
17          this order?  
18          A. It is possible I did.  
19          Q. Well, if you had read it you would have seen that you  
20          were required to disclose the Churchill Australia  
21          company accounts, would you not?  
22          A. Yes, sir.  
23          Q. So do you have any explanation for why those accounts  
24          have not been disclosed?  
25          A. I do not, other than our legal team did not follow up

1 with me about this.

2 Q. So you say it is their fault; is that right?

3 A. No, I should have -- I should have -- no, I accept that  
4 it is my responsibility.

5 Q. You are a director of both of the claimants in these  
6 proceedings, are you not?

7 A. Yes, sir.

8 Q. You accept that it is your responsibility to ensure that  
9 the claimants complied with this tribunal's order, yes?

10 A. Yes, sir.

11 Q. Are you aware that around two weeks ago, the defendants'  
12 solicitors wrote seeking to understand why these  
13 accounts had not been disclosed?

14 A. I was not aware of that, no.

15 Q. Could you be shown {G6/14}. This is a letter from  
16 the defendants' solicitors dated 10 January. Could we  
17 look at page 2, please {G6/14/2}. Do you see the bottom  
18 paragraph, there is a heading "Documents not Disclosed"?

19 A. Yes.

20 Q. Can you read that paragraph, please.

21 A. "We refer to Annex A --"

22 Q. No, no, sorry, just read it to yourself.

23 A. Okay.

24 (Pause)

25 Q. Is this the first time you are reading that letter?

1 A. Yes, I believe so.

2 Q. No one has asked you in the last two weeks about  
3 the Churchill Australia company accounts?

4 A. No, sir.

5 Q. If we go back to {C/4/4}, and if you look again at  
6 paragraph 7, the point where I stopped reading at  
7 the semi colon in the fourth line, it says:

8 "... documents going to University of Sydney pricing  
9 pre-2013 and post-2013."

10 You would have access to documents on that subject,  
11 would you not?

12 A. Yes, sir.

13 Q. What did you do to cause the claimants to give  
14 disclosure in accordance with that requirement?

15 A. We have not provided those documents.

16 Q. Why is that?

17 A. To my knowledge, they were not asked for, but  
18 I understand that that is an error.

19 Q. I am sorry, were you finishing that sentence?

20 A. No, I said -- I said it was -- we were asked, but  
21 I do -- I accept that I should have known.

22 Q. Okay.

23 If you could look at paragraph 5, do you see that it  
24 says:

25 "Documents going to market analysis, business model,

1 market share of Churchill Australia and allegation of  
2 gain of market share rapidly."

3 Now, what did you do to cause the claimants to give  
4 disclosure in accordance with that requirement?

5 A. We did not provide disclosure.

6 Q. Any explanation?

7 A. The same as the previous explanation, sir.

8 Q. Paragraph 6, the same point?

9 A. Yes, sir.

10 Q. So we saw that you did not answer the questions that  
11 were asked in the request for further information, and  
12 do you accept that you have not given disclosure of any  
13 of the documents that would be needed to test what you  
14 say in paragraph 26 of the claim form?

15 A. Yes.

16 Q. Now, if we could look in your witness statement at  
17 paragraph 12, which is at {D2/3/3} -- I am so sorry?

18 MR LOMAS: I think the signal broke just as the witness was  
19 giving the explanation you asked. Would it be possible  
20 to ask him to repeat that explanation so as we are all  
21 clear on what it actually is, because the transmission  
22 broke down.

23 MR PATTON: You are right, Mr Lomas, I am sorry, I should  
24 have raised that immediately.

25 I do not know if you could remind me what

1 the question was?

2 MR LOMAS: The question was, I think, why were documents not  
3 disclosed, as you have been pointing out in 7, 5 and 6,  
4 and I think the witness gave the answer, "same  
5 explanation as before", but I think we want to be clear  
6 on what that explanation was.

7 MR PATTON: Absolutely. I am grateful and I will clarify  
8 that.

9 I think I was asking you about the documents going  
10 to the University of Sydney pricing, what  
11 the explanation was for why those were not disclosed,  
12 and you said "same explanation as before". What is that  
13 explanation?

14 A. That I was unaware that those documents were requested.

15 THE CHAIRMAN: Mr Patton, before we carry on, I notice that  
16 the picture of this courtroom that Mr Muff can see has  
17 so far only been of counsel. Is that right?

18 A. Yes.

19 THE CHAIRMAN: I think it would just be useful to introduce  
20 him to the panel so that he knows who he is talking to.

21 Could the camera be turned on the panel for  
22 a moment. Is it possible to have the whole panel?

23 Yes, so Mr Muff, I am the chairman,  
24 Mr Justice Zacaroli. On my left is Mr Lomas; on my  
25 right is Mr Ridyard. So that is the panel that is

1 listening to your answers, even though you cannot see  
2 us.

3 Right, carry on.

4 MR PATTON: I am grateful.

5 If you have page 3 of your witness statement, that  
6 is {D2/3/3}, do you see paragraph 12? It is the hard  
7 copy that you have, Mr Muff, I think.

8 A. Yes.

9 Q. Paragraph 12, do you have that?

10 A. Yes.

11 Q. So you say:

12 "When we entered the Australian market the large  
13 majority of our customers were students looking to  
14 purchase their graduation attire from us directly. At  
15 that time we did not offer a hire option. Over time we  
16 have built relationships with wholesale customers  
17 including universities, colleges, tertiary institutions  
18 and high schools, and the B2B market is now our largest  
19 revenue source."

20 Do you agree that that gives the impression that you  
21 happily moved from supplying students directly to  
22 the B2B market? That was something you did happily,  
23 voluntarily?

24 A. I would not say it was happily. There was -- but there  
25 was movement from B2C to B2B.



1 Q. Do you agree that the impression given in paragraph 12  
2 is that that was a voluntarily decision on your part to  
3 expand into B2B?

4 A. Yes, given the structure of the Australian market, that  
5 was necessary.

6 Q. I am sorry, what do you mean by "the structure of  
7 the Australian market, that was necessary"?

8 A. Well, the Australian market is -- the Australian B2C  
9 market is structurally quite different to the UK B2C  
10 market, so that necessarily meant that the assessable  
11 market for B2C sales was a lot smaller than in, say,  
12 the UK, and consequently the economies of scale in that  
13 market are not as large.

14 Q. When you said it was necessary to move into the B2B  
15 market, can you explain why that was necessary?

16 A. Some features of the Australian market are, for example,  
17 a large number of hoods at certain universities compared  
18 to the number of graduating students. Therefore we  
19 would need to stock a vast number of hoods in order to  
20 gain access to that university.

21 Q. Is that the only feature that you say made it necessary  
22 to move into B2B?

23 A. No, we also encountered some difficulties from  
24 the universities themselves, where they were protecting  
25 their -- their market, such as universities bundling

1 ticketing together with gowning, which in effect shuts  
2 us out of certain markets.

3 Q. This is in Australia, you are talking about?

4 A. Yes, sir.

5 Q. Could you please look at page 5 of your witness  
6 statement {D2/3/5}. Just for the context, if you look  
7 at paragraph 19, can you see that you are talking about  
8 the UK in June 2016 and you say at the end of that that  
9 the universities were "angry at [your] attempt to sell  
10 to their students"; do you see that?

11 A. Yes, sir.

12 Q. Then in paragraph 20 you say:

13 "Our reaction was one of surprise, given  
14 the assumptions previously made about the market and our  
15 relative lack of resistance selling in Australia."

16 Do you see that?

17 A. Yes.

18 Q. That is rather different from the evidence you have just  
19 given, is it not?

20 A. In the first few years of operations in Australia, there  
21 was no resistance.

22 Q. Which years are you talking about?

23 A. '14/'15/'16.

24 Q. So when did the resistance start in Australia?

25 A. I would need to check my documents, sir.

1 Q. Okay.

2 Do you refer to this resistance that you encountered

3 in Australia anywhere in your witness statement?

4 A. I do not believe beyond what is written here.

5 Q. Could you be shown {F3/90}. So you should have

6 a document headed, "Fundraising: Background Information,

7 Churchill Gowns". Do you have that?

8 A. Yes.

9 Q. The lights are going off.

10 A. Yes. I can see the document.

11 Q. So you have a document, "Fundraising: Background

12 Information", yes?

13 A. Yes.

14 Q. The metadata that is on the system we have suggests this

15 is a document from 7 November 2016. Does that sound

16 right to you?

17 A. That seems about right.

18 Q. Were you involved in preparing this document?

19 A. Yes, I was.

20 Q. Did you draft it?

21 A. Together with Oliver and Alec, yes.

22 Q. You were happy that its contents were accurate?

23 A. Yes, at the time -- yes.

24 Q. Could we look at page 2, please {F3/90/2}. You should

25 have a heading "Market Dynamics" and then there is

1 a heading, "Australia - B2C."

2 I will just read, but if you could just read along:

3 "The Australian B2C market was the original  
4 foundation of our company. Our operations involve  
5 targeting students directly through a combination of  
6 social media ..."

7 Et cetera.

8 Then it says:

9 "Within the last 12 months, there has been  
10 a substantial decrease in the Australian B2C market  
11 resulting from changes in university regulations. These  
12 changes have come about as a response to the impact of  
13 our business model on their sales."

14 Just pausing there, that reference to "the last  
15 12 months", is that a reference to the period from, say,  
16 November 2015 to November 2016?

17 A. Yes, it could be.

18 Q. The changes in university regulations that you refer to,  
19 what were they?

20 A. As I mentioned, it could be the bundling of ticketing  
21 together with gowning.

22 Q. Anything else it could be?

23 A. There could be others. None that spring to mind  
24 instantly.

25 Q. Then you say:

1           "There was one existing competitor -- Gowntown --  
2           and previously there were a handful of other much  
3           smaller, copycat businesses in the same space.  
4           The latter have all but disappeared since starting, due  
5           to the shrinking B2C market. Our only direct  
6           competitor, Gowntown, has pivoted towards an on-demand  
7           photography business."

8           So is it right that as at November 2016 the B2C  
9           market in Australia was shrinking, not expanding?

10          A. Yes, I think that is correct. Since then, there have  
11          been a number of new B2C competitors that have sprung  
12          up.

13          Q. As at November 2016, Gowntown, what, it had left the B2C  
14          market to focus on photography; is that right?

15          A. Not entirely. They are still operating in the B2C  
16          market today.

17          Q. They changed their focus to photography?

18          A. The founders of Gowntown left the company and started  
19          their own photography business, but the company Gowntown  
20          itself still trades in the B2C market.

21          Q. Then you say:

22                 "Our response to this change in regulations has been  
23                 to leverage our streamlined business model to push into  
24                 the B2B wholesale space."

25                 So the reason why you pushed into the wholesale

1 space was that the B2C market was shrinking; correct?

2 A. Yes.

3 Q. Then in the next paragraph:

4 "We will continue to pursue a B2C model while it  
5 remains profitable, but for the last 18 months have  
6 focused, and will continue to focus, the bulk of our  
7 energies within Australia towards the larger B2B  
8 market."

9 That was true, was it not?

10 A. Yes, we have and we continue to operate in the B2C  
11 market today.

12 Q. But you have focused the bulk of your energies on  
13 the B2B market; correct?

14 A. That is correct.

15 Q. We do not have any documents from you which identify how  
16 many B2C sales you make in Australia, for example; that  
17 is correct, is it not?

18 A. That is correct, yes.

19 Q. If you look at page 3 {F3/90/3}, can you see in  
20 the middle of the page a paragraph beginning,  
21 "Primarily ..."?

22 A. Yes.

23 Q. It says:

24 "Primarily however, we believe sustainability is  
25 the key to our expansion and long-term success. In

1           Australia, as in the UK, we see a very large opportunity  
2           to differentiate ourselves not just by price, but  
3           through sustainable branding."

4           You thought that sustainable branding was an  
5           important way to differentiate Churchill; correct?

6           A. Yes, that is one of our USPs.

7           Q. Can I just ask you while I am on this document, if we  
8           could look at page 8, please {F3/90/8}. Do you see that  
9           strategic plan?

10          A. It is coming up now.

11          Q. Sorry, yes. Let me know when it is there.

12          A. Yes, it is there.

13          Q. Now, it says:

14                 "Strategic Plan.

15                 "Step 1 - Establishing UK B2C Operations."

16                 Then do you see in the fourth bullet point:

17                 "Purchased original gowns, hoods and mortarboards  
18                 for the purposes of replication ..."

19                 Do you see that?

20          A. Yes.

21          Q. Part of the business plan was to buy gowns, hoods and  
22                 mortarboards from other suppliers for the purposes of  
23                 copying them; do you agree?

24          A. That was one of the methods that we used to, you know,  
25                 build up our inventory of different hoods.

1 Q. Yes.

2 Could you go back in the same document just to  
3 page {F3/90/4}. Let me know when you have it, please.

4 A. I have it.

5 Q. Can you see at the top of the page, "UK - B2C" heading;  
6 then you say:

7 "In a mirror image of when we started in Australia  
8 three years ago, there is currently no existing B2C  
9 graduation market in the UK."

10 That was your understanding at the time; correct?

11 A. Yes.

12 Q. Then you say:

13 "Unlike Australia, the majority of universities in  
14 the UK have only one hood for bachelor and masters  
15 degrees ... This makes it much easier for us to enter  
16 different university markets and compete quickly, and  
17 with less investment."

18 Then you say:

19 "Also unlike Australia, around 95% of universities  
20 in the UK outsource their graduation gowning to external  
21 companies. As a result, universities will not have  
22 the same profit motive to change their regulations once  
23 we enter the B2C market. In fact, due to the high level  
24 of media scrutiny in the past regarding the price of  
25 graduation, the institutions that we have spoken to



1 welcome the opportunity for increased competition in the  
2 hope that it will deliver better value for their  
3 students."

4 Now, was that true?

5 A. Which part, sir?

6 Q. Was it true that the institutions you had spoken to in  
7 the UK told you that they welcomed the opportunity for  
8 increased competition?

9 A. I do not recall. I do not remember writing that, or  
10 I am not sure who wrote that statement.

11 Q. Did you believe it to be true?

12 A. Yes, I have no reason to believe why it would not be  
13 true.

14 Q. Okay.

15 Could you go back to your witness statement, please.  
16 This is at {D2/3/5}, so page 5 of the hard copy for you.  
17 If you have paragraph 19, at the bottom of that  
18 paragraph, at the end of that paragraph you say you:

19 "... called and emailed many universities directly,  
20 almost all of whom were incredibly angry at our attempt  
21 to sell to their students."

22 Can you explain why that is a very different account  
23 from what we see in this document?

24 A. Could you please refresh my memory, when was the other  
25 document written?

1 Q. The date we have is November 2016.

2 A. Okay.

3 No, I am not sure, sir. Perhaps this was copied  
4 from an earlier document.

5 Q. Meaning what?

6 A. Perhaps the information that was in this document was  
7 outdated, was from an earlier version. I am not sure.

8 Q. Do you have any reason to think that is the explanation?

9 A. I do not, no.

10 Q. Could you be shown {F4/64}. Let me know when you can  
11 see it.

12 A. I can see it.

13 Q. So, can you see it has a similar but slightly different  
14 cover page. It is, "Fundraising: Questions & Answers".  
15 Do you recognise this document?

16 A. It is a long time ago, so not explicitly.

17 Q. Do you recall that you had input into this document?

18 A. It is likely.

19 Q. Yes.

20 Then could I just show you -- it is quite similar to  
21 the previous document, but could I just show you one  
22 item on page 3 {F4/64/3}. Just at the foot of the page,  
23 can you see the heading, "UK - B2C"?

24 A. Yes.

25 Q. The first sentence says:

1           "There is no comprehensive B2C graduation market in  
2           the UK, or anywhere else in the world that we are aware  
3           of."

4           Was that your understanding at the time?

5           A. I believe so.

6           Q. Was that based on some research that you had done?

7           A. Likely, yes.

8           Q. Could we go in your witness statement to page 2  
9           {D2/3/2}, paragraph 6. Do you have that?

10          A. Yes.

11          Q. You say that:

12                 "Churchill Gowns Australia was set up because we saw  
13                 an opportunity in the market to sell academic dress to  
14                 students for less than they could hire them for from  
15                 the universities."

16                 You originally intended to have a similar strategy  
17                 in the UK, did you not?

18          A. In Australia, we started by selling and then we  
19                 understood that there was a strong demand for hire, and  
20                 when we moved to the UK, we set up straightaway with  
21                 the intention of hiring as well as selling.

22          Q. Do you agree that when you started in the UK, there was  
23                 more of an emphasis on selling than hiring?

24          A. No, I do not believe that there is any evidence of that.

25          Q. Could you go in your witness statement at page 5

1           {D2/3/5}, paragraph 21. So you are now dealing with  
2           the UK companies, and in particular the first claimant,  
3           Churchill Gowns Limited. Now, that was incorporated in  
4           July 2016, was it not?

5           A. Yes, sir.

6           Q. You say in paragraph 21:

7                         "Although the basic infrastructure to trade was in  
8                         place from its incorporation (in particular, we held  
9                         some stock, our warehouse had been secured and a first  
10                        version of the website was live) CGL ..."

11                       That is the first claimant:

12                       "... did not trade in the first year (2016-17), as  
13                        explained above, because of the anti-competitive  
14                        practices we had encountered."

15                       Now, what stock did Churchill Gowns Limited hold at  
16                        the date of its incorporation in July 2016?

17           A. I do not believe that it held any sizeable amounts of  
18           stock.

19           Q. Well, did it hold any stock?

20           A. It is possible that it held some samples, some --  
21           a small amount of stock.

22           Q. So when you say in paragraph 21 that "we held some  
23           stock", all you mean are samples, what, that had been  
24           delivered by a manufacturer?

25           A. We also had the ability to deliver stock directly from

1           Australia to the UK should there be a need.

2           Q. But that is Churchill Australia stock, is it not?

3           A. Yes.

4           Q. So far as CGL is concerned, it did not hold any stock,  
5           apart from possibly some samples; correct?

6           A. Yes.

7           Q. It is right, is it not, that there was no stock in  
8           the UK at any time before May 2017, disregarding  
9           samples?

10          A. I believe that is correct.

11          Q. Now could we look at {F3/2967}. So, these are  
12          the accounts for Churchill Gowns Limited for the period  
13          ended 31 July 2017; do you see that?

14          A. Yes.

15          Q. You were a director of CGL at that time, were you not?

16          A. That is correct.

17          Q. Do you recall that you signed these accounts on behalf  
18          of the board?

19          A. Yes.

20          Q. You were satisfied that they were accurate, yes?

21          A. To the best of my knowledge, yes.

22          Q. Now, we see on the front page, the page we are looking  
23          at, that the company is described as "dormant". So  
24          is it correct that CGL had not yet traded as at  
25          31 July 2017?

- 1 A. It is probably correct.
- 2 Q. Why do you say "probably"?
- 3 A. I do not specifically recall, sir.
- 4 Q. Well, I may have shown it to you. If you look at  
5 page {F3/2967/5}.
- 6 A. Yes.
- 7 Q. We can see in bold that the report was approved by the  
8 board of directors and signed on behalf of the board by  
9 you, it seems actually on 21 February 2021 (sic), and  
10 you presumably did not have any reason to think that  
11 the description of the company as "dormant" was wrong?
- 12 A. I am so sorry. Where did you read 2021?
- 13 Q. I can see that. Do you see the bold on page --
- 14 A. Yes, but it says October.
- 15 Q. No, my mistake. My mistake. The date is October 2017.  
16 I was looking at the wrong document. I apologise.
- 17 So that was in fact signed by you in October 2017  
18 and you did not have any reason to think that  
19 the description of the company as being dormant was  
20 wrong, did you?
- 21 A. Correct.
- 22 Q. Now, if we look at page 4 {F3/2967/4}, this is  
23 the balance sheet of CGL as at 31 July 2017, yes?
- 24 A. Yes.
- 25 Q. It has no assets; correct?

- 1 A. Yes.
- 2 Q. So it did not have any cash; correct?
- 3 A. That is correct.
- 4 Q. So, CGL was not able, as at 31 July 2017, to buy any  
5 stock; correct?
- 6 A. I would disagree. Up until that point, Churchill Gowns  
7 Australia had been paying for all of Churchill Gowns  
8 Limited's expenses, and if the need had -- would have  
9 arisen for the purchase of stock, then Churchill Gowns  
10 Australia would have been able to fund that purchase.
- 11 Q. What was the basis on which Churchill Australia would  
12 buy stock for Churchill Gowns Limited?
- 13 A. It would be seen as an investment. Churchill Gowns  
14 Australia invested in the order of £70,000 into that  
15 business.
- 16 Q. I see. So what you are saying is the shareholders -- so  
17 Churchill Australia was the 95% or something shareholder  
18 in CGL; correct?
- 19 A. Yes, that is correct.
- 20 Q. So what you are saying is that the shareholder could  
21 have made an investment and thereby allowed CGL to  
22 acquire stock?
- 23 A. Yes, that is correct.
- 24 Q. But CGL itself had no money with which to buy any stock;  
25 correct?

- 1 A. Yes, correct.
- 2 Q. That was the position as at the end of July 2017 and it  
3 is right, is it not, that CGL never acquired any assets  
4 ever?
- 5 A. Yes.
- 6 Q. The shareholders never invested any money into CGL?
- 7 A. Some expenses were paid for. I am not entirely sure.
- 8 Q. Could we look at {F3/2980}. So these are the accounts  
9 the year ended 31 July 2020. Do you see those?
- 10 A. Yes.
- 11 Q. You were still a director of CGL when these were  
12 approved?
- 13 A. Yes.
- 14 Q. If you could look at page 5 {F3/2980/5} -- this was  
15 the mistake I made earlier. If you look at page 5, you  
16 see in bold here it is approved, understandably, on  
17 12 February 2021, and you signed on behalf of the board  
18 to approve these accounts; correct?
- 19 A. Yes.
- 20 Q. If you look at page 4 {F3/2980/4}, CGL still has no  
21 assets as at the end of July 2020; correct?
- 22 A. Yes, correct.
- 23 Q. That is accurate, is it not?
- 24 A. Yes.
- 25 Q. CGL had still not traded; correct?



- 1 A. Yes.
- 2 Q. It did not have any money with which to buy any stock?
- 3 A. No. In order to raise investment in the UK, we needed  
4 to form a new company, Student Gowns Limited. So all  
5 investment then went into Student Gowns Limited.
- 6 Q. But CGL never raised any investment; correct?
- 7 A. Yes.
- 8 Q. So, although you say in paragraph 21, just going back to  
9 that at page {D1/3/5}, that "CGL did not trade in  
10 the first year ... because of the anti-competitive  
11 practices we had encountered", CGL did not trade because  
12 it had no money.
- 13 A. I would disagree, but there was the option to have money  
14 from the shareholders should money be required.  
15 The money was not given because they were unable to  
16 trade.
- 17 Q. Now, moving on to a different topic, I want to ask you  
18 about the statements made on the Churchill UK website  
19 about recycled plastics. Could we start with {F3/1280},  
20 please.
- 21 You can see that this is from the Wayback Machine,  
22 which is an archive of the World Wide Web. You are  
23 familiar with that, are you not?
- 24 A. I am, yes.
- 25 Q. Can you see that the date at which this is taken is

1 8 August 2017; yes?

2 A. Yes.

3 Q. You see the heading, "And We're Sustainable":

4 "We're the only supplier in the country to  
5 manufacture all our gowns from 100% recycled polyester,  
6 keeping 28 plastic bottles from reaching landfill for  
7 every gown made. We're also completely carbon neutral,  
8 and donate 10% of all our profits to charity, to help  
9 live ..."

10 "Lift", I think it should be:

11 "... disadvantaged communities out of poverty and  
12 provide them with an education."

13 You accept that your website made statements of that  
14 kind?

15 A. Yes, I do.

16 Q. You say you do not know when those statements were first  
17 made; is that correct?

18 A. I do not have the specific date.

19 Q. You say, I think, that Mr Ramsey is the person who would  
20 have uploaded these pages onto the website, yes?

21 A. It is quite likely.

22 Q. Is there any reason why Mr Ramsey could not have given  
23 evidence?

24 A. No.

25 Q. If you look at page 2 {F3/1280/2}, we see some images.

1           One:

2            "It starts with you! Remember to recycle.

3            "Recycled bottles are collected and flaked."

4            We see a picture of a recycled bottle:

5            "2. Bottle flakes are formed into chips.

6            "3. From chips to fibre. Chips are extruded into

7            yarn."

8            Then do you see an image with "28 =" and then

9            a picture of someone in a gown? Do you see that?

10          A. Yes.

11          Q. The point being made here in line 4 was 28 plastic

12            bottles equals one gown; yes?

13          A. Yes.

14          Q. If we look at page 7 {F3/1280/7}, this is another

15            extract, which has been recorded on 28 August 2019,

16            under, "Environmental & Social Responsibility", and if

17            you look at the bottom paragraph:

18            "As a textile manufacturer, we are also very aware

19            of the environmental impact that has plagued our

20            industry. Our EcoThread Gowns are 100% recycled, made

21            from a post-consumer plastic waste that keeps 28 PET

22            bottles from reaching landfill for every gown made."

23            Then finally, if you can be shown page 9

24            {F3/1280/9}, this is also something captured by

25            the archive in August 2019. Do you see on

1 the right-hand side there is a picture of a turtle with  
2 a plastic bottle on its head; yes?

3 A. Yes, sir.

4 Q. Then it says:

5 "Save the Environment.

6 "We proudly donate 10% of profits to charity,  
7 manufacture our gowns from 100% recycled plastic bottles  
8 and operate carbon neutral."

9 Now, you understood that students who looked at your  
10 website would believe that your gowns were manufactured  
11 from 100% recycled plastic bottles, did you not?

12 A. I am not sure if they specif -- I am not sure if that is  
13 correct. The plastic bottle is a very common analogy  
14 that is used throughout the industry, and we used it as  
15 a visual metaphor to quickly and easily explain to  
16 the general public that our products, that our gowns  
17 were made from recycled plastic.

18 Q. Yes, I am not going to argue with you about what it  
19 means. What I am putting to you is that you understood  
20 that someone looking at this website -- and I am just  
21 literally reading what it says under the picture of  
22 the turtle with the plastic bottle -- is that your gowns  
23 were made from 100% recycled plastic bottles and you  
24 understood that that is what they would take away from  
25 this?

- 1 A. It is possible. It is possible, but also I believe  
2 consumers are aware enough to look past the very, very  
3 simplified explanation and understand that by "plastic  
4 bottles", it could mean any plastic waste, whether that  
5 is ocean waste or other types of plastic waste.
- 6 Q. Well, do you accept that you understood that at least  
7 some students would understand that your gowns were made  
8 from 100% recycled plastic bottles?
- 9 A. It is possible that some students -- some consumers  
10 might have. I cannot speculate on that.
- 11 Q. No, but you understood that. You appreciated that that  
12 is what at least some students would take away from  
13 the website; yes?
- 14 A. Yes, I believe some students may have believed that,  
15 although I believe that the majority would have  
16 understood this to be a simplification of the concept.
- 17 Q. I suggest that is what you intended them to understand;  
18 you intended them to understand that the gowns were made  
19 from 100% recycled plastic bottles?
- 20 A. No. In other descriptions we say that it is  
21 the equivalent of plastic bottles, or it is used from --  
22 it is made from plastic waste. So we do not always  
23 explicitly say that it is made from plastic bottles.
- 24 Q. But you did often say that, did you not?
- 25 A. Often as a very -- using it as a fast way of

1 communicating the idea.

2 Q. If we could look at {F3/457}. This is called,  
3 "Churchill Gowns Rough Storyboard", which does not  
4 communicate much, but if you look at page 2 {F3/457/2},  
5 do you see that this is a storyboard for a cartoon that  
6 was meant to be put on the website, yes?

7 A. Yes.

8 Q. This cartoon was in fact put on the website, was it not?

9 A. It was, yes.

10 Q. If you look at page 3 {F3/457/3}, can you see slide 7 in  
11 the top left-hand corner? It is an image of -- well,  
12 what does one see there in that image?

13 A. I believe in the video, in the cartoon, it was a bunch  
14 of waste that forms together to form the shape "28".

15 Q. Would you not accept that it was actually a bunch of  
16 plastic bottles formed into 28?

17 A. It looks like there are plastic bottles there as well as  
18 other unidentifiable objects.

19 Q. The person who was speaking over this said:

20 "Each graduation gown that we make saves 28 plastic  
21 bottles from ending up in landfill or the ocean."

22 Yes?

23 A. Yes.

24 Q. You knew that was being said on your website, yes?

25 A. Yes, I did.

- 1 Q. If you look at the explanation underneath:
- 2 "Camera snaps to new scene bottles float around and
- 3 come together to form 28 shape in time with VO."
- 4 Do you see that?
- 5 A. Yes.
- 6 Q. The intention was that this would depict 28 plastic
- 7 bottles, was it not?
- 8 A. Yes, it is our visual metaphor for describing that our
- 9 gowns are made from recycled plastic, and the bottle
- 10 analogy is used by many other suppliers.
- 11 Q. Then the voiceover at 8 would say:
- 12 "We break down the bottles."
- 13 Yes? Again, the reference to bottles; correct?
- 14 A. Yes.
- 15 Q. Then:
- 16 "and spin them into yarn.
- 17 "producing a soft fabric ..."
- 18 It is also right, is it not, that there was
- 19 a counter on your website giving a specific number of
- 20 plastic bottles that had been recycled so far?
- 21 A. Yes, that is correct.
- 22 Q. We can see at that {F3/1672}. Do you see, what are
- 23 the numbers appearing against?
- 24 A. Bottles.
- 25 Q. This was intended to communicate the precise number of

1 bottles that had been recycled and turned into your  
2 gowns; correct?

3 A. Again, I think consumers would understand this to be an  
4 approximation of our efforts thus far, and this kind of  
5 counter is used, this kind of imagery is used by a large  
6 number of different organisations and I have seen this  
7 personally in other companies and I never believed that  
8 this is an exact, you know, to the second, correct  
9 number.

10 Q. No, it is never going to be exact because some bottles  
11 are bigger than others and some are smaller than others,  
12 are thinner than others; but what it is seeking to  
13 communicate is the number of plastic bottles that have  
14 been recycled; correct?

15 A. Yes, the analogy is that they are made from plastic  
16 bottles.

17 Q. What is your basis for saying that consumers would not  
18 have understood this simply as referring to plastic  
19 bottles?

20 A. I believe that most consumers would have basic knowledge  
21 to believe that it could represent any sort of PET  
22 waste, and that there was nothing special, nothing  
23 uniquely, inherently special about a bottle, that it  
24 could also be a meat tray, if that was also made from  
25 plastic.



1 Q. Now, can we go to your statement at page 6, paragraph 26  
2 {D2/3/6}. About six lines down, you say:

3 "... I came across a company in the US (called  
4 Oak Hall) that made their gowns from 100% recycled  
5 polyester."

6 Do you see that?

7 A. Yes.

8 Q. Could you be shown {F3/2319}.

9 Now, this is an internal Slack chain of chats  
10 between you and Mr Ramsey and Mr Adkins; correct?

11 A. Yes, correct.

12 Q. We can see the date is 1 August 2016; do you see that at  
13 the top?

14 A. Yes, I do.

15 Q. Mr Ramsey provides a link to Oak Hall's website; do you  
16 see that?

17 A. Yes.

18 Q. This is the day that you discovered Oak Hall in  
19 the United States; correct?

20 A. It is possible, yes.

21 Q. Mr Ramsey says:

22 "This is a company in the US that uses 100% recycled  
23 plastic bottles to make all their gowns.

24 "Here's the list of unis they supply in  
25 the states~...

1           "They're killing it.

2           "Stefan and I are going to make it high priority to  
3 see if our supplier can use the same technique, or see  
4 if we can find an alternate supplier that can use this."

5           That was something you discussed with Mr Ramsey;  
6 correct?

7           A. That is correct.

8           Q. Then Mr Ramsey says:

9           "I think it's an absolutely fantastic idea in its  
10 own right, and I think it would provide us with such  
11 a fantastic edge to destroy E&R in the UK."

12           Mr Ramsey's view was that recycled plastic bottles  
13 would provide a fantastic edge to destroy  
14 Ede & Ravenscroft. That is what he was saying, yes?

15           A. Yes, that is his opinion.

16           Q. Did you share his opinion?

17           A. Yes, I believe that sustainability is very important to  
18 a number of people and that this would provide us an  
19 additional USP that we could leverage.

20           Q. And a fantastic edge to destroy Ede & Ravenscroft, yes?

21           A. Those are his words, sir.

22           Q. Do you disagree with those words?

23           A. I believe that it adds another, you know, quiver in our  
24 bow, so to speak, for our USPs, of which we have many;  
25 but, yes, I agree with the sentiment that sustainability

- 1           would provide us with an edge.
- 2       Q.   Possibly a killer edge?
- 3       A.   Those are his words, sir, not mine.
- 4       Q.   But do you agree that you regarded it as possibly being
- 5           a killer edge?
- 6       A.   I never said that.  I believe it is an edge.  I do not
- 7           believe it is a -- I have no reason to say it is
- 8           a "killer" edge.
- 9       Q.   It could be key to the winning strategy?
- 10      A.   It is one component of our business strategy.
- 11      Q.   Could you be shown {F3/2141}.  Now, these documents are
- 12           completely out of sequence in the bundles, but I am
- 13           going to suggest to you -- have you seen this document
- 14           recently?
- 15      A.   Not recently, no, sir.
- 16      Q.   Well, I am going to suggest to you that it is
- 17           a continuation of the discussion that we were just
- 18           looking at, but let us read it.  It does not actually --
- 19           sorry?
- 20      A.   Sir, does it come chronologically later or
- 21           chronologically earlier?
- 22      Q.   So, my understanding, but you can tell me if I am wrong,
- 23           is that this continues after, immediately after
- 24           the discussion we have just looked at.
- 25      A.   Okay.

1 Q. That is really based on what it says, but I will read it  
2 to you and I will ask you some questions.

3 So, what it says is:

4 "'Did you have any issues sourcing the fabric? You  
5 mentioned the initial GreenWeaver fabric was too shiny -  
6 was it hard to match the quality with your range of  
7 non-recyclable fabrics? Do you source the fabric  
8 internationally and if so, have you had any difficulties  
9 overcoming issues with an expanding international supply  
10 chain? Have universities gone to great lengths to  
11 perform due diligence in your new manufacturing  
12 processes?'

13 "If he responds and you can earn his trust, in a few  
14 emails from now try telling him you'd like to do  
15 a section specifically on the manufacturing process, as  
16 an example of how other industries should follow suite  
17 and go more green. Tell him you completely understand  
18 the importance of protecting the business processes, and  
19 that you won't mention the name of the fabric  
20 manufacturer in the article, but that you want to get  
21 candid photos of the factory et cetera and ask them some  
22 details regarding the manufacturing process, where  
23 bottles are sourced from, what other garments can be  
24 made from this process for other industries et cetera.  
25 Point him to the Everlane site as an example of how

1           you'd like to present this to legitimise, and ask for  
2           the fabric manufacturer's contact details."

3           Does that ring any bells, that message?

4       A. I believe that was a message written by Alec, I do not  
5       recall to who, but it appears to be an  
6       information-gathering exercise to try and find out  
7       the supplier information so that we too could source  
8       recycled polyester.

9       Q. It is likely to have been from Mr Ramsey to Mr Adkins;  
10       correct?

11      A. It reads that way.

12      Q. Now if we can just read on, and I think, again,  
13      completely out of sequence, but if we can look at  
14      {F3/2134}.

15           If you just note, before we leave that document, if  
16      you note that the last words of {F3/2141}, which is on  
17      the screen, are:

18           "I feel like if we make the story you're  
19      writing ..."

20           Do you see that?

21      A. Yes.

22      Q. Then if we go to {F3/2134}. If you look right at  
23      the top, it is cut off, but can you make out that  
24      the cut-off sentence is:

25           "I feel like if we make ..."

1                   Yes; do you see that?

2           A.   Yes.

3           Q.   It is a continuation of -- yes, okay, thank you.

4                   So what he says is:

5                   "I feel like if we make the story you're writing  
6                   coherent and in-depth enough, and point out that you  
7                   would like to use it to highlight their positive  
8                   approach, he would be likely to give you the fabric  
9                   manufacturer's details for due diligence purposes in  
10                  publishing the article.  Thoughts?"

11                  Now, can we just establish what was going on here.  
12                  Mr Ramsey was proposing that Mr Adkins should pose to  
13                  Oak Hall as a journalist; correct?

14           A.   It reads that way, yes.

15           Q.   He should suggest -- Mr Adkins was to pretend that he  
16                  was writing a story for a publication in a newspaper or  
17                  a magazine; yes?

18           A.   Yes.

19           Q.   The thinking was that Oak Hall might trust a  
20                  journalist --

21           THE CHAIRMAN:  There is some echo appearing.  I am not sure  
22                  where that is coming from.  Has anybody changed anything  
23                  in the last few minutes?  No?

24                  Mr Muff, can you hear clearly without an echo?

25           A.   I can.  There is no echo on my side.

1 THE CHAIRMAN: Right, well, we will carry on for now.

2 MR PATTON: I am grateful.

3 Now, the thinking was that Oak Hall might trust  
4 a journalist by providing confidential business sequence  
5 concerning its manufacturing process; correct?

6 A. Yes.

7 Q. You were copied in on these exchanges?

8 A. I was.

9 Q. You did not take issue with Mr Ramsey's proposal, did  
10 you.

11 A. It appears I did not.

12 Q. You knew that the information that Mr Ramsey was trying  
13 to get Mr Adkins to elicit, you knew that that was not  
14 information that Oak Hall would provide to someone who  
15 was engaged in your line of business; correct?

16 A. It is possible, although I am not -- I am not certain  
17 that they would not, given that we are in a different  
18 market.

19 Q. I see. You are not sure that they would not, but you  
20 did not want to take that risk, hence Mr Adkins posing  
21 as a journalist; correct?

22 A. That was Mr Ramsey's opinion, yes.

23 Q. This was thoroughly dishonest, was it not?

24 A. I believe it is -- it is dishonest, yes.

25 Q. It is not an ethical way to behave; do you agree?

1 A. Yes, I agree.

2 Q. At the foot of 2134, we see a response from Mr Adkins.

3 Do you have that?

4 A. Yes, I can see that.

5 Q. He says:

6 "The line of questions is similar to the ones I used

7 with oak hall."

8 So, so far as you understood, Mr Adkins did indeed

9 pose as a journalist and ask some questions of Oak Hall,

10 yes?

11 A. Yes.

12 Q. He says:

13 "I [feel] like Iv created a strong narrative.

14 I haven't received his [reply] email, but when I do

15 I will try to continue the dialog. He said around 40%

16 of unis they supply use the new gowns. In my email

17 iv asked for more info regarding their suppliers."

18 The reason you were interested in the suppliers was

19 you wanted to find out, where are they getting their

20 recycled polyester from; correct?

21 A. Yes, that is correct.

22 Q. Could we now go to {F3/1599}. Now, this, unfortunately,

23 we do not have a date for. Presumably, do you still

24 have access to this Slack account?

25 A. Yes, we do.



1 Q. So, it is very easy for you to find out what the dates  
2 of these conversations are, presumably?

3 A. It should be fairly straightforward, yes.

4 Q. Okay.

5 We see at the top of the page you say:

6 "All good. Free for a quick chat?"

7 The others respond to you.

8 Then at the foot of the page, Mr Adkins says:

9 "Had a very insightful conversation with the head of  
10 marketing and sales at Oakhill. Firstly they are an old  
11 company with over 100 years experience supplying gowns.  
12 They have two suppliers one in North Carolina one in  
13 Pennsylvania. They started with a fabric called green  
14 Weaver that was too shiny so they moved on to dull Matt.  
15 Lee is going to email me with some more information.  
16 He's also sending me some fabric samples. As a side  
17 note they are very interested in international expansion  
18 but want to use partnerships to do so."

19 Your understanding was this was information that  
20 Mr Adkins had elicited through deceiving Oak Hall about  
21 who he was; correct?

22 A. It is possible. I do not specifically remember that  
23 conversation or any conversation that might have come in  
24 between, or ...

25 Q. But do you accept that this is information that he



1                   Do you see that?

2       A.   I do.

3       Q.   So you knew, did you not, that Mr Adkins was going to be

4           lying about who he was?

5       A.   Based on the previous Slack conversations, it appeared

6           that that was the -- although the previous Slack

7           conversation was about being a journalist, so I am not

8           sure --

9       Q.   Might it have been a student journalist?

10      A.   I am not sure, I do not recall.

11      Q.   You do not know.

12                   Then Mr Ramsey says:

13                   "Interesting indeed.  I'm guessing however that he

14                   didn't tell you exactly where the fabric comes from?"

15                   That was an issue because that was what you wanted

16                   to elicit from Oak Hall, was it not?

17      A.   I believe at the time we did not know how easy or hard

18           it would be to source recycled polyester.  In hindsight,

19           it is quite easy, so this was all unnecessary.

20      Q.   Then Mr Ramsey says:

21                   "Hopefully the samples will have some hints."

22                   Then he says this:

23                   "Maybe you could ask for some more candid photos of

24                   the factory where the gowns are made?  If we could

25                   convince him we were doing a long piece in the student

1 paper, we could try for an opening shot of the staff  
2 outside the factory, then match the image through that  
3 Google maps program that will tell us where it is."

4 Do you see that?

5 A. Yes.

6 Q. Do you now recall that Mr Adkins was to pose as  
7 a student journalist?

8 A. I am sorry, I do not recall these specific  
9 conversations, but based on the context of this Slack  
10 message, that seems possible.

11 Q. Mr Ramsey's suggestion was that Mr Adkins would ask  
12 Oak Hall for a photograph of the staff outside  
13 the factory where their gowns are manufactured; correct?

14 A. That is what it says, yes.

15 Q. The thinking was that Oak Hall might give that  
16 photograph to Mr Adkins because it was needed for  
17 journalistic purposes; correct?

18 A. Yes, sir.

19 Q. Then Mr Ramsey's plan was to seek to match that  
20 photograph with Google Maps to work out where  
21 the factory was; correct?

22 A. Yes, sir.

23 Q. You did not disagree with that proposal, did you?

24 A. I do not recall having any input into this discussion.

25 Q. You saw this message, did you not?

1 A. Yes, it is likely.

2 Q. You never suggested that this was a bad idea and  
3 something that would not be proper to do?

4 A. I do not recall my answer. I am very sorry.

5 Q. Do you recall intervening to say, "This is improper, we  
6 should not be doing this"?

7 A. No, I do not.

8 Q. Do you accept that what Mr Ramsey was proposing was  
9 thoroughly dishonest?

10 A. Yes, I do.

11 Q. Could we go to {F3/72} and could we start at page 4,  
12 please {F3/72/4}. Now, can you see at the foot of  
13 the page an email from you dated 1 August 2016?

14 A. Yes, sir.

15 Q. It is addressed to Canna and that is Canna Yang who was  
16 the VP of operations at the Ling Feng factory; correct?

17 A. Yes, that is correct.

18 Q. In your email you say:

19 "We have seen that there is a gown supplier in  
20 America who is supplying gowns which are made from  
21 recycled material. I have attached a document which  
22 shows how they are made.

23 "Caring about the environment is becoming very  
24 important and many universities in Australia and UK are  
25 trying very hard to show that they care about

1 the environment.

2 "We think that gowns made from recycled material  
3 will sell very, very well.

4 "Do you think you would be able to find suppliers  
5 who sell fabric made from recycled material?"

6 Do you have that, Mr Muff, the next page? {F3/72/5}

7 A. Yes, I do.

8 Q. I am grateful:

9 "We are making this our main priority because we  
10 think this can totally change the gown market in  
11 Australia and the UK."

12 Now, it was your opinion, was it not, that gowns  
13 made from recycled material would sell "very, very  
14 well", yes?

15 A. Yes, this is our opinion, and might I add that there is  
16 definitely a sales element of trying to get our supplier  
17 excited about this proposition as well, to try and get  
18 them interested in sourcing this fabric for us, putting  
19 the effort in to find the right fabric.

20 Q. This was your genuine view, was it not?

21 A. Yes, otherwise we would not have pursued the initiative.

22 Q. You thought, did you not, that offering recycled gowns  
23 could totally change the gown market?

24 A. I do not know if those views were shared widely, or I do  
25 not know if we made those comments anywhere else or if

1           they were just specifically to Canna at this time.

2           Q. Was that your view or was it not?

3           A. It is my view that the material would sell well. I do  
4           not believe it is my view that they would sell -- that  
5           they would totally change the market.

6           Q. That is not your view?

7           A. No.

8           Q. That was not your view in 2016?

9           A. I do not believe so.

10          Q. Now then, if we go back to page 4, please {F3/72/4}, you  
11          can see at the top of the page Canna replies:

12                 "Dear Stefan,

13                 "I have the material supplier, what's the next  
14                 step?"

15                 Do you see that?

16          A. Yes.

17          Q. Then if we go to the foot of page 3 {F3/72/3}, do you  
18          see your email back to her:

19                 "Hi Canna.

20                 "That's fantastic news!"

21                 Do you see that?

22          A. Yes.

23          Q. You say:

24                 "Can you please give me some more details about its  
25                 material. For example, it's GSM and cost. Also, how

1 is it made and is there environmental certification.  
2 Are you able to get a sample so that you can tell us if  
3 it is good to make a gown from this material? Thank you  
4 very much!"

5 You appreciated, did you not, that environmental  
6 certification would be important if you were going to  
7 make claims about the composition of your gowns?

8 A. Yes, sir.

9 Q. Then she replies at the top of the page:

10 "I can ask them for some samples, but i am not sure  
11 that they will give us the details of how they make  
12 the material as it's complex to explain.

13 "We can have the explanation of the details from  
14 the internet. How do you think?"

15 That was her reply, yes?

16 A. Yes.

17 Q. Then if you could look at the bottom of page 2  
18 {F3/72/2}, do you see your email of 2 August:

19 "Hi Canna,

20 "Thank you for arranging samples for us!"

21 Do you see that?

22 A. Yes.

23 Q. You say:

24 "The only issue is that if we buy the fabric made  
25 from recycled material, we need some assurance that



1 the material is actually made from recycled products.

2 "For example, the fabric supplier might say that the  
3 material is recycled but actually it is not recycled.  
4 Then we are cheating our customers and we could get into  
5 trouble from the government.

6 "What do you think?"

7 Now, you realised in August 2016 that you could not  
8 simply rely on the word of the supplier for it being  
9 recycled; yes?

10 A. Yes, that is correct.

11 Q. You also realised that if you made false claims about  
12 the composition of your gowns, you could get into  
13 trouble from the government?

14 A. That is correct.

15 Q. You realised it was not lawful to make false claims  
16 about the composition of the gowns; yes?

17 A. Yes, that is correct.

18 Q. Could we go to {F3/94}. The bottom email is from you  
19 dated 14 November 2016 and it is addressed to Summer,  
20 and she was a colleague of Canna; is that correct?

21 A. That is correct.

22 Q. You say:

23 "Thank you for sending the recycled gowns so  
24 quickly. They are looking good and the fabric is very  
25 nice :)"

1           So as at 14 November you had now received some  
2           sample gowns which were said to be made from  
3           the recycled fabric; correct?

4           A. That is correct.

5           Q. The next paragraph you say:

6                     "Only [thing] is you did not sew our logo onto  
7           the gowns. When we send them as samples we obviously  
8           want people to recognise that they come from us."

9           So that was something you noticed about the samples  
10          you had got on 14 November, yes?

11          A. Yes, there was an error, an error made in  
12          the manufacturing.

13          Q. Then you say:

14                     "Also, can you please send me some more information  
15          about the fabric from your fabric supplier? We just  
16          need to make sure that the polyester is actually 100%  
17          recycled. If not then we can get into big trouble from  
18          the government."

19          So you were re-emphasising that same point, that you  
20          needed proof that it was actually recycled; yes?

21          A. Yes, sir.

22          Q. Then if we go to {F3/97}, this is an email on  
23          the 15th -- have you got it, Mr Muff?

24          A. I do.

25          Q. This is an email on 15 November 2016 from Summer and she

1           says:

2           "Pls help to find the attached certificate, it can  
3           confirm the fabric is 100% recycled!"

4           Given the concern you had about getting into trouble  
5           with the government for making false claims, you would  
6           have looked carefully at the documents that she sent  
7           you, would you not?

8           A. Yes.

9           Q. We can see those at {F3/98}. This is a document headed,  
10          "Shanghai PET Recycling Textile Co Ltd."

11          Then do you see at the bottom it is signed on behalf  
12          of Shanghai PET Recycling?

13          A. Yes.

14          Q. Who did you understand Shanghai PET Recycling to be when  
15          you saw this?

16          A. I assumed this was a supplier that Ling Feng had  
17          procured the fabric from.

18          Q. Did you say you assumed that?

19          A. Yes.

20          Q. Did you check at that any stage?

21          A. I do not believe that I asked specifically about that,  
22          no.

23          Q. Given that you were concerned about getting into trouble  
24          with the government, was that not quite an important  
25          point to check?

1 A. I looked at the certificate and believed it to be  
2 genuine. For example, the quantity of fabric that is  
3 listed there lines up with the stock that -- lines up  
4 with the samples that were ordered. The date was  
5 correct, there was a registration number, a certificate  
6 number. Everything looked very legitimate to me, and  
7 not coming from a textile background, not having done  
8 this exercise before, I believed this to be genuine and  
9 I believed that our suppliers would not supply us with  
10 a fraudulent certificate.

11 Q. So, did you understand, first of all, that this was  
12 a certificate issued by the supplier itself and signed  
13 by the supplier?

14 A. Do you mean Ling Feng?

15 Q. No, I mean Shanghai PET.

16 A. Sorry, sir, can you repeat the question?

17 Q. This certificate is signed on behalf of Shanghai PET;  
18 correct?

19 A. Yes.

20 Q. It is not coming from any independent agency?

21 A. That appears -- yes, correct.

22 Q. Did you appreciate that when you looked at it?

23 A. We had never -- we had never had any experience with how  
24 a quote/unquote "proper" official certificate, if such  
25 a thing exists, should look like, so we were confident

1           that this document that they provided us contained all  
2           the information that kind of confirmed the authenticity  
3           of the fabric.

4       Q.   You had no experience, but nevertheless you were  
5           confident that this gave everything that was needed; is  
6           that your evidence?

7       A.   We had no reason to believe otherwise.

8       Q.   You had no positive reason also?

9       A.   Well, the certificate had information on it which lent  
10          us to believe that this was a genuine certificate, and  
11          we now understand, for example, that Shanghai PET was  
12          indeed certified by Control Union at the time.

13      Q.   Just to get an answer to my question, did you  
14          appreciated that this was simply a certificate issued by  
15          the supplier itself?

16      A.   I do not believe we understood how a certificate should  
17          look like.  So this was a fantastic looking certificate  
18          in our eyes, so we had no reason to doubt its  
19          authenticity.

20      Q.   Who did you think had issued this certificate?

21      A.   I believe it came from Shanghai PET.

22      Q.   So you did appreciate that it was simply issued by  
23          the supplier?

24      A.   Yes.

25      Q.   So, it is a piece of paper signed by the supplier

- 1           saying, "We certify that our own products are recycled".
- 2           Did you understand that?
- 3           A. It then has the certificate number and the registration
- 4           number for Control Union along with information of
- 5           the buyer and specification and the quantity.
- 6           Q. Did you check anything with Control Union?
- 7           A. We did not.
- 8           Q. You did not take any steps to establish whether Shanghai
- 9           PET was entitled to issue this certificate, did you?
- 10          A. We did not.
- 11          Q. Now, looking at the details of the shipment you have
- 12          just referred to, there is a reference to the name of
- 13          a buyer. Did you know who that was?
- 14          A. No, we did not.
- 15          Q. A quantity is specified. Are you saying that quantity
- 16          reflects the size of the samples that you had received?
- 17          A. I believe that that makes sense, yes.
- 18          Q. Do you see the date of dispatch: 15 November 2016?
- 19          A. Yes, sir.
- 20          Q. Now, you had received the gowns on 14 November 2016 at
- 21          the latest, had you not?
- 22          A. Yes.
- 23          Q. So what was your understanding as to what the date of
- 24          dispatch of 15 November was referring to?
- 25          A. I am not certain we questioned that at the time.

1 Q. I think you said just a few moments ago that you thought  
2 that the date made sense?

3 A. Yes.

4 Q. Can you explain now why the date made sense?

5 A. Well, it is contemporary to the time when we received  
6 the samples. Certificates in many cases could be issued  
7 retroactively.

8 Q. But it is not the date of the certificate; it is  
9 the date of dispatch.

10 A. I am sorry, I do not have a -- I do not recall,  
11 you know, making -- understanding -- I do not recall  
12 questioning that at the time.

13 Q. Right.

14 Are you saying now that you believed that this  
15 certificate related specifically to the fabric used to  
16 manufacture the samples that you had received?

17 A. It appears that way.

18 Q. No, I am sorry: was that your belief when you received  
19 this certificate?

20 A. It is possible that it was.

21 Q. Well, do you recall or do you not recall? If you do not  
22 recall, say so.

23 A. I do not specifically recall.

24 Q. If you look at {F3/99}, that is just a hangtag, is it  
25 not?

1 A. Yes, sir.

2 Q. Do you see a reference to "SCS" on it?

3 A. I do, yes.

4 Q. That is a different agency from Control Union?

5 A. I am not familiar with that, no. I am not familiar.

6 Q. You do not know?

7 A. I do not know, no.

8 Q. Did you notice that at the time?

9 A. I do not believe I did.

10 Q. You did not ask any questions about how this could

11 possibly demonstrate that your gowns were made from

12 recycled polyester?

13 A. I do not believe that we ever used these hangtags or

14 placed value in these hangtags.

15 Q. But these attachments were being sent to you in response

16 to your concern that you should not get in trouble with

17 the government. What did you make of this attachment?

18 A. We as a company could attach to our gowns, should we so

19 choose.

20 Q. What did you understand, you personally, what did you

21 understand was the relevance of this attachment to

22 whether your gowns were made from recycled polyester?

23 A. I believed that the -- I looked at the certificate and

24 believed that to be genuine, and then I understood that

25 these hangtags were to be extras that we could attach to



1           our gowns to identify to consumers that they were made  
2           from recycled polyester.

3       Q. I see, so you did not regard the hangtags as proof of  
4           anything?

5       A. Yes, correct.

6       Q. Now could you look in your witness statement at page 9,  
7           paragraph 40 {D2/3/9}. You say:

8                 "The certificate was received a couple of days after  
9           we received the sample gowns from Lingfeng. It was not  
10          contained within the sample gowns package, but sent  
11          separately by email. I understood it to relate to  
12          the yarn that would be used to produce a first batch of  
13          gowns."

14                Now, what was the basis for that understanding?

15       A. That if we would proceed with purchasing gowns from  
16          Ling Feng with this fabric, that they would use -- that  
17          they would continue to use the same fabric.

18       Q. No one ever said that to you, did they?

19       A. In all my communication, we have always specified  
20          the level of, like, recycled polyester, so there was  
21          never any cause to believe that the fabric had changed,  
22          and nor did we ever realise that the composition of  
23          the fabric had changed.

24       Q. No one said to you that this certificate related to  
25          the yarn that would be used to produce a first batch of

1 gowns, did they?

2 A. No, not specifically.

3 Q. You then say:

4 "In the event, those gowns were manufactured but not  
5 delivered to us in UK until May 2017."

6 Now, one might get the impression from that that you  
7 ordered the gowns at the time of the certificate but  
8 they were not delivered until May 2017. Is that  
9 the impression you were intending to give?

10 A. No, sir.

11 Q. Well, when did you actually order the first batch of  
12 gowns?

13 A. It would have been around March 2017.

14 Q. So there is a five-month gap between you getting  
15 the certificate and you placing the order; yes?

16 A. Yes, sir.

17 Q. You could not have understood that a certificate you got  
18 in November 2016, relating to a specific dispatch of  
19 material, you could not have thought that that  
20 certificate was in relation to an order that you had not  
21 even placed at this time, had you?

22 A. Correct.

23 Q. In relation to the certificate, you say you believed it  
24 was genuine. What exactly do you mean by "genuine"?

25 A. Well, we had no reason to believe that anyone would

1 attempt to defraud us.

2 Q. But you do not believe now, do you, that this is  
3 a certificate in respect of the fabric actually used for  
4 the first batch of gowns, do you?

5 A. I now understand that the GRS certificates look  
6 different. The kind of GRS certificates that we have  
7 seen appear to be different. I, however, do not know  
8 how GRS certificates looked like back in 2016.

9 Q. So you do not say now that this certificate proves  
10 anything about the composition of the first batch of  
11 gowns; correct?

12 A. At the time, we believed that -- sorry, sir.

13 Q. No, no.

14 A. Apologies.

15 Q. That is fine.

16 A. Could you repeat the question, please?

17 Q. Yes.

18 Sitting here today, you do not say that this  
19 certificate, with a date of dispatch of  
20 15 November 2016, you do not say that this certificate  
21 proves anything about the composition of the gowns,  
22 the first batch of gowns that you ordered in March 2017?

23 A. I believe the certificate still shows significant  
24 evidence that the fabric supplied was recycled material.

25 Q. Why is that?

1       A. Because there is information such as the -- there is  
2       information such as, you know, the certificate number  
3       and the Control Union number, and we now know that  
4       Shanghai PET was a member of Control Union at the time,  
5       and the Anthesis report that was commissioned, some of  
6       the findings from that report state that, yes, our level  
7       of due diligence at the time was in line with companies  
8       of our size.

9       Q. I am not asking you whether your due diligence was in  
10      line with other companies. You are not suggesting now  
11      that the certificate proves that the material used --  
12      that the gowns that you only ordered in March were made  
13      from recycled fabric?

14     A. At the time we did not understand the kind of chain of  
15     custody as we do today. So I was unaware that we would  
16     need a separate certificate, a transaction certificate,  
17     and the company to have a scope certificate for each  
18     batch of gowns. This was not something that we were  
19     familiar with or had any idea existed.

20     Q. You understand that today and therefore you do not  
21     regard this as a certificate in respect of the fabric  
22     used for the first batch; correct?

23     A. We now understand that if we were to go back in time  
24     I would ask for a transaction certificate, as we do  
25     today.

1 Q. Could you go to {F3/2186}.

2 So, this is a chat between you and Mr Ramsey on  
3 21 November 2016; do you see that?

4 A. Yes, sir.

5 Q. You say at the top:

6 "Apparently making fabric from recycled polyester is  
7 exactly the same as non-recycled polyester, ie 100%  
8 identical. Basically once it's melted down and re-spun  
9 its indistinguishable."

10 Do you see that?

11 A. Yes, sir.

12 Q. Was your thinking that Churchill would be free to make  
13 claims about recycled fabric which no one would be able  
14 to test?

15 A. No, sir. This is in -- I wrote that statement because  
16 I believed it was important for consumers to have  
17 a fantastic product and that if consumers believed that  
18 recycled polyester was a lower quality product, then  
19 that could impact sales.

20 Q. You go on to say:

21 "Even the testing laboratories can't tell it apart."

22 Was it not the point that whatever claims you made,  
23 no one would be able to test whether they were true or  
24 not?

25 A. No, sir, that is again to say that the quality is so

1 high that there is no qualitative -- quantitative,  
2 rather, test to tell them apart.

3 Q. You go on to say:

4 "The only way to verify that it's recycled is to  
5 trace the source."

6 You understood that in November 2016, did you not?

7 A. Yes. That is why I asked for a certificate.

8 Q. Tracing the source would obviously involve tracing  
9 the specific gowns to the specific batch of fabric used  
10 to manufacture it, would it not?

11 A. At the time we were unaware of the complexities involved  
12 in that supply chain.

13 Q. Well, that is not particularly complex, is it? You have  
14 to identify the gowns that you are selling, identify  
15 the fabric that it was made from and establish that that  
16 fabric is recycled. It is not complex.

17 A. Well, we were unaware of the numerous companies that  
18 were involved in that chain.

19 Q. This is in your own supply chain; is that what you are  
20 saying?

21 A. In our own supply chain and in the recycled supply chain  
22 at large.

23 Q. You said here in November 2016:

24 "The only way to verify that it's recycled is to  
25 trace the source."

1           So what did you mean by that if not to identify  
2           the specific gowns and then identify the specific batch  
3           of fabric? What else could that mean?

4       A. I did not understand that there would be multiple  
5           certificates involved. I believed that -- genuinely  
6           believed that one certificate was enough, or that there  
7           could not be more than one certificate.

8       Q. You understood that the certificate would have to relate  
9           to the fabric actually used in the gowns that you were  
10          selling?

11      A. I do not specifically recall thinking about that.

12      Q. It is obvious, is it not, and it would have been obvious  
13          to you at the time?

14      A. It is definitely obvious in hindsight, and regrettably,  
15          we -- this did not come to light. We were not aware of  
16          this at the time.

17      Q. Then in the next paragraph you say:

18                 "In the short-run (ie this production run) it's  
19                 probable that we'll use normal polyester fabric as  
20                 that's what most factories have sitting in stock. They  
21                 can easily source rpet but will take some time which we  
22                 don't have."

23                 Mr Ramsey says:

24                 "No problems. We'll have plenty of other chances to  
25                 use recyclable materials."

1           So was it the plan as at November 2016 to use  
2           non-recycled polyester?

3       A. I believed the intention is to use it as soon as  
4           possible. Given time constraints, we had to use  
5           the standard polyester in the interim.

6       Q. Did you do that?

7       A. Yes, it looks -- it appears that way.

8       Q. So did you order gowns for sale in the UK that were made  
9           from normal polyester?

10      A. No, sir. This conversation would likely have  
11         regarded -- revolved around purchases for Australia.

12      Q. Why do you say that?

13      A. Because we were, you know, we were buying gowns at the  
14         time for Australia, so -- and we were not buying stock  
15         for the UK.

16      Q. Now, you say, if we can look in your witness statement  
17         at paragraph 39 --

18      A. Yes.

19      Q. -- you say, about six lines down: {D2/1/9}

20                 "Having an established relationship with Lingfeng,  
21                 we trusted that they would flag any problems or  
22                 inconsistencies should they arise - whether with  
23                 themselves or with anyone else in the supply chain.  
24                 Although the certificate was issued by the yarn  
25                 supplier, it had been provided to us by Lingfeng."



- 1                   Do you see that?
- 2       A.   Yes, sir.
- 3       Q.   Can we go to {F3/103}. Do you have that?
- 4       A.   I do.
- 5       Q.   This is your email of 23 September 2016 to Canna and  
6           the subject is "Gown tags", and that was a point we saw  
7           that you had mentioned in a previous email; do you  
8           recall that? That the labels were missing?
- 9       A.   Yes. Yes, possibly.
- 10      Q.   You say:
- 11                "I hope you and the baby are doing well!"
- 12                "Soon I think we will be getting some wholesale  
13                contracts to supply the recycled gowns. I think  
14                customers really like them.
- 15                "We need to be ready when this happens. We have  
16                designed a new label which we would like to sew onto the  
17                recycled gowns. This label is only for recycled  
18                polyester gowns. Not normal gowns."
- 19                Why did you have to draw that distinction between  
20                the recycled gowns and the normal gowns?
- 21      A.   Well, we wanted to make sure that we were not deceiving  
22           any customers.
- 23      Q.   What were the normal gowns going to be ordered for?
- 24      A.   These were likely the existing stock that had been  
25           ordered.

- 1 Q. Are you saying that is just for Australia?
- 2 A. Yes, sir.
- 3 Q. Just pausing there, if we go to {F3/104}, this is  
4 the design that you had drawn up for the label, is it  
5 not?
- 6 A. Yes, sir.
- 7 Q. Do you see that it has the recycled symbol and  
8 the number 1 on the left-hand corner?
- 9 A. Yes, sir.
- 10 Q. Yes?
- 11 Then it says:  
12 "Made From 28 Recycled Plastic Bottles."  
13 Yes?
- 14 A. Yes.
- 15 Q. You wanted every gown that you sold in the UK to have  
16 this label on it, saying that it was made from  
17 28 recycled plastic bottles; correct?
- 18 A. Every gown that we sold from recycled material.
- 19 Q. Were you going to sell some gowns in the UK not from  
20 recycled material?
- 21 A. No, we had no intention to do so.
- 22 Q. Did that ever change?
- 23 A. No.
- 24 Q. If you go back to {F3/103} again, so this was the email  
25 we were just looking at, just reading on, you say:

1           "Also, we need to start sewing onto our gowns two  
2 other little tags.

3           "1. 'Polyester Dry Clean Only' tag.

4           "2. 'Made in China' tag.

5           "Actually the government requires that we have these  
6 tags. We are lucky that no government official has  
7 checked yet. If they check and these tags are missing  
8 then we can get into big trouble."

9           So you were bringing home to Ling Feng  
10 the importance of having these labels, particularly  
11 the origin label, correctly sewn in; yes?

12       A. Yes, correct.

13       Q. If we go to {F3/105}, this is an email from Summer to  
14 you on 28 November, subject "Labels". She says:

15           "How are you? Pls help to find the attached pic, we  
16 have finished label samples for you! One little mistake  
17 is the factory made the 'made in china' tag into 'made  
18 in india', I think maybe they forget what i said and to  
19 do according to your pic directly! But its no problem,  
20 when we make the bulk production, i will ask them to  
21 change into 'made in china'.

22           "What do you think of the labels?"

23           If we could just look at that at {F3/106}, can you  
24 see, this is the image of what you were sent, was  
25 actually a "Made in India" label; do you see that?

- 1 A. Yes.
- 2 Q. Now, was it not a bit alarming that a factory in China  
3 might be using labels that said, "Made in India"?
- 4 A. I do not believe so. I think this was a mistake. This  
5 was -- I am not sure. I am not sure why those tags on  
6 the left may have been sourced from -- they were not  
7 made themselves, they were just sourced from another  
8 supplier, I presume, and presumably they sourced  
9 the wrong labels and then the mistake was corrected and  
10 it has never happened again.
- 11 Q. Would this not have brought home to you that you cannot  
12 rely on the factory to give you a reliable indication of  
13 what the gowns are made from?
- 14 A. Our factory did notice the error, apologised for  
15 the error and corrected the error. So it just reaffirms  
16 to us that the factory had our best interests at heart  
17 and were not seeking to do anything dishonest.
- 18 Q. When the first batch of gowns were delivered to you --  
19 and I think you said that was in May 2017, yes?
- 20 A. To the UK, yes.
- 21 Q. To the UK. You did not ask for any certificate  
22 concerning their composition, did you?
- 23 A. That is correct, yes.
- 24 Q. Yet you made claims in your marketing that the gowns  
25 were made from 100% recycled plastic bottles, did you

1 not?

2 A. Yes, that was our genuine belief, that the gowns were  
3 made from recycled polyester.

4 Q. Do you accept that you did not have a proper basis to  
5 make those claims in respect of the first batch?

6 A. I believe we undertook a level of due diligence that is  
7 in line with the resources that we had available at the  
8 time. So I believe we were -- it was fair to say that  
9 we could make those claims.

10 Q. Do you accept sitting here today that you did not have  
11 a proper basis to make those claims?

12 A. In hindsight, I believe we could have made -- we could  
13 have undertaken -- I would now undertake more due  
14 diligence, knowing what we know now.

15 Q. So you would not make those claims today on the basis of  
16 the material you had in 2017; correct?

17 A. I do not believe so, but back in 2017, with our level of  
18 due diligence -- and I believe that it is fair, given  
19 the resources we had available at the time.

20 MR PATTON: Sir, I am about to start a new topic and I think  
21 it may make more sense to start that clean tomorrow,  
22 rather than start it and not get very far.

23 THE CHAIRMAN: Yes, in terms of timing, will you be through  
24 within two hours tomorrow?

25 MR PATTON: Yes.

1 THE CHAIRMAN: Yes; in which case we will pause there.

2 Mr Muff, thank you very much for attending today.

3 We will call a halt there for today. I need to remind

4 you that you are in the middle of your evidence and

5 therefore you are not allowed to speak about

6 your evidence or the case to anyone until we resume

7 tomorrow. You understand?

8 WITNESS: I understand.

9 THE CHAIRMAN: Thank you very much. Good evening, Mr Muff.

10 WITNESS: Thank you, sir.

11 THE CHAIRMAN: Right.

12 WITNESS: Do I ...?

13 THE CHAIRMAN: Yes, you can leave now, Mr Muff, yes.

14 WITNESS: Goodbye.

15 THE CHAIRMAN: We are going to carry on talking, but you can

16 leave us.

17 (The witness withdrew)

18 THE CHAIRMAN: I suggest we take a 25-minute break now and

19 recommence at 11.15.

20 MR PATTON: I am grateful.

21 THE CHAIRMAN: Thank you very much.

22 (10.51 am)

23 (A short break)

24 (11.15 am)

25 MR RANDOLPH: Could I ask Ms Nicholls to come back in.

1 THE CHAIRMAN: Yes, please.

2 MR RANDOLPH: Thank you so much.

3 MS RUTH NICHOLLS (continued)

4 Cross-examination by MR PATTON (continued)

5 MR PATTON: Ms Nicholls, you have a hard copy of your ...?

6 A. Yes, I was just familiarising myself with it; thank you.

7 Q. Very good. So the bundle is everyone's hard copies, are  
8 they, or ...?

9 A. I believe it is mine and Oliver's, based on the tabs.

10 Q. That is fine.

11 Now, when we broke yesterday, I was asking you about  
12 the exchanges between you and Alison in November 2020.

13 You recall that?

14 A. Yes, I do.

15 Q. Can we look at your first witness statement at page 19  
16 {D2/1/19}.

17 A. Yes.

18 Q. You say in paragraph 83:

19 "It since transpired that the documents I shared  
20 with Alison were not our up-to-date documents ..."

21 Do you see that?

22 A. Yes.

23 Q. What do you say were the up-to-date documents?

24 A. So, it would either have been the Shanghai PET  
25 certificate that Stefan had in his possession relating

1 to that batch of fabric, or what I was not aware of at  
2 the time was that our fabric supplier had changed since  
3 then, so depending on which batch of fabrics she had  
4 bought from, which we did not know, there would have  
5 been more up-to-date information, as it were.

6 Q. So the first document you mentioned, that is  
7 the certificate.

8 Were you able to watch Mr Muff's evidence while you  
9 were waiting?

10 A. I did, yes.

11 Q. Yes. So the first document you are referring to, that  
12 is the document dated November 2016 we were looking at  
13 with Mr Muff?

14 A. Yes, yes.

15 Q. Then please explain what the other documents are that  
16 you have in mind.

17 A. So, what I had not appreciated at the time is that we  
18 had in fact had two suppliers for recycled fabric,  
19 mostly because the procurement of the recycled fabric  
20 and the changeover happened before I joined the company.

21 So when Ling Feng sent me the documentation relating  
22 to Shanghai PET, because I had requested the documents  
23 relating to our recycled materials, I had assumed that  
24 that would be documents relating to the materials that  
25 were currently in use.



1           As it subsequently transpired, we had actually  
2           changed supplier, so were no longer supplied by Shanghai  
3           PET, so more up-to-date documents may have related to  
4           a different supplier.

5       Q.   So, the first point is that even the certificate dated  
6           November 2016, because that was from Shanghai PET and  
7           you were not now using Shanghai PET, that was not likely  
8           to be relevant to the gowns that you were currently  
9           selling in 2020; correct?

10      A.   Yes, I would say it was unlikely.  It would be hard to  
11           know specifically whether some of those gowns might  
12           still have been in our warehouse, but given the length  
13           of time, I would say it is probably unlikely.

14      Q.   Then you refer to documents relating to the new  
15           supplier.  What documents do you have in mind?

16      A.   Well, at this point, I did not know what documents we  
17           had available, hence why I had asked our suppliers to  
18           send me the documents.  So, because this had all  
19           happened before I joined Churchill Gowns, I did not  
20           really have an awareness of what documents we had that  
21           were related to suppliers or who the suppliers of  
22           the gown fabric were.  I simply put in orders to  
23           Ling Feng for gowns made from recycled polyester and was  
24           provided with those gowns.

25      Q.   Are you now aware of up-to-date documents that you had

1 available in November 2020 relating to the second  
2 supplier?

3 A. I do not believe, in November 2020, that we had  
4 up-to-date documents from the second supplier in our  
5 possession. I think we requested them from the supplier  
6 when it became apparent that the customer that I had  
7 been speaking to was not in fact Alison, or was  
8 a representative of Ede & Ravenscroft.

9 Q. So when you say in 83:

10 "It since transpired that the documents I shared  
11 with Alison were not our up-to-date documents ..."

12 "Our up-to-date documents", you did not actually  
13 have any up-to-date documents; is that correct?

14 A. I was not aware at the time what Stefan or the suppliers  
15 had in their possession, hence why I asked them for  
16 the documents. Obviously, when I wrote this, what I was  
17 referring to was more up-to-date certification from  
18 the second supplier, which we do now have.

19 Q. But which you did not have in November 2020?

20 A. I did not have that, no.

21 Q. As far as you are aware, no one in the company had that  
22 in November 2020?

23 A. I now know that to be the case. I did not know that to  
24 be the case at the time.

25 Q. Just to be clear, when you say "were not our up-to-date

1 documents", you accept today that in November 2020 you  
2 did not have any up-to-date documents, yes?

3 A. I now know that to be true, yes.

4 Q. Thank you.

5 Now, in paragraph 85, just over the page  
6 {D2/1/20} --

7 A. Yes.

8 Q. -- you say -- just give me one second. I am sorry. It  
9 is page 19 {D2/1/19}, paragraph 84 at the foot of  
10 the page. So sorry, page 19.

11 84:

12 "The reason for the documents provided being out of  
13 date were that Cathy had not worked at Ling Feng when  
14 Stefan was procuring the gown fabric, and she took over  
15 as our main point of contact in 2019. When I asked  
16 the certification documents she did a search on their  
17 computer system and found a file attached to our account  
18 with these certification documents in. As she had found  
19 these documents she did not think to check with her  
20 predecessor or managers that these were in fact up to  
21 date and related to our existing supplier."

22 Are you telling us what she was thinking and not  
23 thinking in this paragraph?

24 A. She told me that she had searched -- essentially, when  
25 I went back to her and said, you know, do these -- when

1 we made further enquiries essentially I went back to her  
2 and she apologised and said when I had requested  
3 the documents, she had simply searched their computer  
4 system and these were the documents that were contained  
5 in a file labelled as Churchill Gowns' documents and  
6 therefore she made the assumption that they related to  
7 our fabrics based on that.

8 Q. Just looking at that explanation, if you look at  
9 the start of 84:

10 "The reason for the documents provided being out of  
11 date were that Cathy had not worked at Ling Feng when  
12 Stefan was procuring the gown fabric ..."

13 A. Yes.

14 Q. Can you just explain that point?

15 A. So I believe Stefan initially dealt with Canna mostly at  
16 Ling Feng, and then when I joined, I mostly dealt with  
17 Summer, who was our kind of sales manager, and then at  
18 some point in 2019, Cathy -- I think Summer got  
19 a promotion and so Cathy sort of took over as our main  
20 point of contact. So we do sometimes still speak to  
21 Summer and Canna, but Cathy is my kind of go-to person  
22 at the factory.

23 Q. Suppose the person to whom you had spoken at the factory  
24 had been working there when Mr Muff was procuring  
25 the gown fabric, what difference would that have made,

1 do you say?

2 A. Well, I imagine that they would have probably flagged  
3 the fact that Shanghai PET were no longer the supplier  
4 of our gown fabric and/or they may have provided  
5 the 2016 certificate that they originally sent to  
6 Stefan. To be honest, I do not know why there was  
7 a 2012 certificate in the file, given that that was not  
8 the one that they had initially provided to Stefan when  
9 we placed the first order.

10 Q. Is there a document that you say that that person would  
11 have found that would relate to the gowns that you were  
12 getting manufactured in 2018 and 2019?

13 A. Do you mean related to the second --

14 Q. Yes.

15 A. -- supplier of fabric?

16 So, I imagine there may not have been any documents  
17 on file for them, but what Ling Feng may have done is  
18 made enquiries with the fabric supplier to get those  
19 documents for us. I imagine that would have been  
20 the step they would have taken, similarly to when Stefan  
21 initially asked them for certification, they went to  
22 Shanghai PET and got that certification. I imagine if  
23 I had spoken to someone other than Cathy, for example  
24 Canna or Summer, who was aware of the fact that we had  
25 changed fabric suppliers, they might then have reached

- 1 out to the current supplier for their certification.
- 2 Q. You have not produced, have you, any certification in  
3 respect of fabric used to manufacture gowns in 2018?
- 4 A. I believe that the scope certificates that the new gown  
5 supplier were able to provide us date back to 2020.  
6 However, if I recall, I think our lawyers checked with  
7 Control Union that they had been certified since --  
8 prior to that.
- 9 Q. Have you identified any certificate in respect of fabric  
10 used to manufacture gowns in 2018?
- 11 A. No, we have not identified a certificate.
- 12 Q. Or in 2019?
- 13 A. No. I believe the first scope certificate dates from  
14 2020, but it is my understanding that Control Union have  
15 verified that they did have scope certification and  
16 then -- so presumably those certificates did exist at  
17 some point, but we have not had sight of them.
- 18 Q. But you are speculating, because you have not seen those  
19 certificates?
- 20 A. No.
- 21 Q. No one has told you that those certificates exist?
- 22 A. It is my understanding that Control Union have confirmed  
23 that those certificates exist.
- 24 Q. What is the evidence for that?
- 25 A. I think that is what our enquiries that were made by our

1 lawyers turned up.

2 Q. Well, I cannot comment on what your lawyers may have  
3 been told.

4 Can you look at paragraph 85 on page {D2/1/20}. You  
5 say, three lines down:

6 "At this stage it was my genuine belief that  
7 the gowns were made from 100% recycled polyester ... as  
8 this is what I had been told when I joined SGL in  
9 March 2018."

10 So when you say "at this stage", are you saying just  
11 before you get the letter from Alius Law in  
12 January 2021?

13 A. Sorry, what was the question? Was it my belief up until  
14 that point?

15 Q. Yes.

16 A. Yes.

17 Q. That is what you are referring to?

18 A. Yes.

19 Q. You say, "this is what I had been told". Who told you  
20 that?

21 A. You mean when I joined the company?

22 Q. Yes.

23 A. It was kind of like a common understanding. So I think  
24 it would have been mentioned multiple times by all of my  
25 colleagues.

1 Q. So it would have been mentioned to you by Mr Muff, for  
2 example?

3 A. Yes.

4 Q. By Mr Ramsey?

5 A. Yes.

6 Q. Also by Mr Adkins?

7 A. Yes.

8 Q. Do you recall what Mr Muff told you?

9 A. I do not recall specific conversations, but I do recall  
10 from very early on, probably before I applied for  
11 the job or during the interview process, that  
12 the recycled content of the gowns was discussed.

13 Q. Now, you say a couple of lines below that the:

14 "... the purchase invoices state that we are  
15 receiving gowns made from recycled fabric."

16 Do you see that?

17 A. Sorry, is that in paragraph 85?

18 Q. Yes, it is in the seventh line.

19 A. Oh yes, I can see that. Yes, that is correct.

20 Q. Could you be shown {F3/1}. This is an invoice from  
21 Ling Feng dated 22 May 2018; do you see that?

22 A. I do, yes.

23 Q. So that is after you joined the company, is it not?

24 A. It is, although I did not do the gown procurement at  
25 this stage. Stefan placed the first order, after



- 1 I joined.
- 2 Q. Sorry?
- 3 A. Stefan placed the first order when I joined.
- 4 Q. Do you see "Quantities and Descriptions", and it just  
5 says "Matte Gown, 1067"; do you see that?
- 6 A. Yes, I can see that.
- 7 Q. There is no reference in this invoice to be it being  
8 recycled; do you see that?
- 9 A. That is correct.
- 10 Q. Do you have any basis to establish that these gowns were  
11 in fact made from recycled fabric?
- 12 A. As I said, Stefan was doing the procurement of the gowns  
13 at this point, so this is not an invoice that I saw.  
14 I can obviously appreciate, looking at it now, that it  
15 does not say "recycled fabric", although the unit price  
16 quoted is in line with the recycled gowns that we buy.
- 17 Q. Now, at page 21 of your statement {D2/1/21}, at  
18 paragraph 89 you say:  
19 "Similarly, I was told before I joined SGL that  
20 the recycled PET content of the gowns was equivalent to  
21 around 28 plastic bottles ..."
- 22 Who told you that?
- 23 A. Again, I would not say specifically, but it was kind of  
24 a common understanding shared between everyone, so  
25 I would say everybody probably said that to me at some

1 stage.

2 Q. Including Mr Muff?

3 A. Including Stefan, I would have thought so, yes.

4 Q. If you read on, in the third line you say:

5 "I recall asking Alec and Stefan how they came to  
6 this figure and they said it was based [on]  
7 a calculation they did of the weight of the gowns  
8 compared to the weight of plastic bottles."

9 So it was certainly something you discussed with  
10 Mr Muff, the 28 plastic bottles point?

11 A. It was, yes.

12 Q. It is right, is it not, that you did not take any steps  
13 between joining the company and getting the letter from  
14 Alius Law in January 2021 to satisfy yourself that  
15 the claims the company was making about the composition  
16 of the gowns were true?

17 A. I did not, no, aside from ordering recycled gowns from  
18 our supplier.

19 Q. So, apart from placing the order and stating in  
20 the order that it should be recycled --

21 A. Yes.

22 Q. -- you did not take any steps to satisfy yourself that  
23 the claims were true?

24 A. I did not, no.

25 Q. Just going back again on page 20, paragraph 85

1 {D2/1/20}, you say:

2 "Following the correspondence from E&R in  
3 January 2021 regarding the composition of our gowns ..."

4 That is a reference to the letter which enclosed  
5 the Intertek tests?

6 A. That is correct, yes.

7 Q. Do you accept that the Intertek tests suggest that  
8 plastic bottles are not used in the gown fabric?

9 A. I believe there is a tolerance of 10%, so they indicate  
10 that up to that point there is no plastic bottles in  
11 the gowns.

12 Q. So, subject to the fact that the test has a threshold of  
13 10%, do you accept that the tests suggest that  
14 plastic bottles are not used?

15 A. I believe the Anthesis report also flagged some types of  
16 plastic bottles, but in the main, yes, it would seem  
17 unlikely that up to 10% they used.

18 Q. The point you are making there is a point about whether  
19 they are coloured or clear plastic bottles?

20 A. Exactly.

21 Q. So, leaving that point on one side, do you accept that  
22 the tests suggest that plastic bottles are not used in  
23 the gown fabric of the gowns sold by Churchill?

24 A. I am not sure what you mean by "leaving that point to  
25 one side", as in, they could fall under that category;

- 1 I do not know.
- 2 Q. You do not know either way --
- 3 A. No, I do not.
- 4 Q. -- about that?
- 5 A. No.
- 6 Q. So if you leave that point on one side, do you accept  
7 that the tests suggest that plastic bottles are not  
8 used?
- 9 A. Yes, I would say the tests suggest that there is no more  
10 than 10% clear plastic bottles used.
- 11 Q. Why does it suggest that? Does it not suggest that  
12 there are no plastic bottles but you cannot be sure  
13 about the 10%?
- 14 A. Yes, I cannot be sure about the 10%.
- 15 Q. Subject to the uncertainty about the 10%, it suggests  
16 that there are no clear plastic bottles in the gowns;  
17 agreed?
- 18 A. Yes -- sorry, I do not really -- subject to the 10%,  
19 what I am saying is the tests cannot be sure that there  
20 is fewer than -- if there is fewer than 10%, then  
21 I cannot be sure of that either.
- 22 Q. Okay, but you feel content, you feel satisfied that 90%  
23 of it is not made from plastic bottles?
- 24 A. Clear plastic bottles, yes.
- 25 Q. Clear plastic bottles?

- 1 A. Yes.
- 2 Q. You accept that?
- 3 A. Yes.
- 4 Q. Now, if you look back to page 21 at paragraph 90  
5 {D2/1/21}, you say:  
6 "In early 2021, once we became aware that  
7 the RPET content of most of our gowns was 70% ..."  
8 So that is a reference to the new supplier?
- 9 A. That is correct, yes.
- 10 Q. "... I conducted my own experiment in order to verify  
11 the statements regarding the amount of PET waste in each  
12 gown."  
13 You describe that experiment. That was just an  
14 experiment that you devised for yourself, was it?
- 15 A. Yes, it was based on the way that Alec and Stefan had  
16 said they calculated the figure to begin with, so  
17 I essentially repeated the experiment.
- 18 Q. You did not ask anyone with expertise whether that was  
19 a valid way of going about it, did you?
- 20 A. I think I may have done some research online when I was  
21 conducting this experiment, but I do not recall what  
22 resources I looked at particularly.
- 23 Q. So you are not suggesting this was based on something  
24 that was demonstrated online to be a valid approach?
- 25 A. I do recall researching how to quantify, and that is

1           where I found the sort of estimates, for example,  
2           the plastic bottle weights that I have quoted there.  
3           I cannot recall what specific sources I looked at, but  
4           I did do some research.

5       Q.   So the research is in relation to the figures, but in  
6           relation to the methodology you are not suggesting there  
7           is something out there that says this is a good way of  
8           doing it?

9       A.   I think the resources I was looking at in relation to  
10          the figures essentially related to calculating, how to  
11          calculate the quantity.

12      Q.   As you say, I think, you do not recall what that --

13      A.   No, I do not recall the specifics.

14      Q.   Now, in about the middle of this paragraph you say:

15                 "We used the plastic bottles count as an  
16                 illustration of the amount of recycled plastic contained  
17                 in an average gown as this is common practice in  
18                 the fashion industry to illustrate to customers  
19                 the amount of recycled plastic in garments (eg Nike have  
20                 a total recycled bottle count on their website)."

21                 Now, you do not know what fabric Nike uses, do you?

22      A.   No.

23      Q.   You do not know what certifications Nike has?

24      A.   No.

25      Q.   You do not know what Nike has been able to satisfy

- 1           itself about what its fabric is made from?
- 2       A. No, although I do recall that when I was doing this  
3           research they -- in longer-form articles they talk about  
4           plastic waste, not specifically bottles. I recall that  
5           when I was doing this research, other companies, when  
6           you kind of delve into it, they talk about recycled  
7           plastic waste, not specifically bottles, so I think it  
8           is quite a common practice that bottles are used as  
9           a kind of visual indicator of the amount of plastic  
10          waste, but when you drill down, often they are talking  
11          about recycling plastic waste.
- 12       Q. This is what you have discerned from looking at some  
13          websites, is it?
- 14       A. Yes.
- 15       Q. You say that because sometimes they use the expression  
16          "plastic waste", you infer from that that even when they  
17          said it is made from plastic bottles, they do not  
18          actually mean plastic bottles?
- 19       A. I suppose so, yes.
- 20       Q. Do you accept that is not a reasonable inference to draw  
21          from those websites?
- 22       A. I guess that, combined with the fact that it would be  
23          impossible to know the precise number of bottles used,  
24          leads to a reasonable inference that if the company  
25          says, "We have recycled X number of plastic bottles",

1           that is indicative, because they could not possibly know  
2           that.

3       Q. Well, it is always going to be an estimate because  
4           bottles may be larger or smaller; that is the point you  
5           are making?

6       A. Yes, and the size of the garments, for example, could be  
7           different, so ...

8       Q. Absolutely, but that is a separate point from whether  
9           they are using plastic bottles in their recycled  
10          polyester or whether they are using something else; do  
11          you agree?

12      A. I agree it is a separate point, but I suppose what I am  
13          saying is that when companies are advertising  
14          the content of their garments being made from recycled  
15          plastic, it is common parlance to use plastic bottles as  
16          a quantifier for that.

17      Q. That may be because their garments are actually made  
18          from plastic bottles; do you agree?

19      A. It may be, yes.

20      Q. You do not know one way or the other?

21      A. I do not.

22      Q. So the fact that Nike may think it is appropriate to  
23          identify the number of bottles in its products, that  
24          does not justify you identifying a number of  
25          plastic bottles in your products, does it?



1 A. I suppose not. I guess what I would say is that because  
2 we saw that as the common industry standard, we did not  
3 think that there was a problem with that at the time.

4 Q. Once you saw the Intertek test, which I think you  
5 confirmed suggested that at least 90% of the gowns were  
6 not made from clear plastic bottles, then you recognised  
7 that you should not continue advertising a number of  
8 plastic bottles; do you agree?

9 A. I did not think that we should advertise that our gowns  
10 were made from plastic bottles, but I did not see  
11 a problem with, and I still do not see a problem with  
12 illustrating the quantity of plastic bottles -- of  
13 plastic used by making reference to plastic bottles, so  
14 that customers can envisage how much plastic is used, if  
15 that makes sense.

16 Q. If we go to {F3/1517}. This is an extract from your  
17 website and this is the updated version of the website  
18 after you had received the Intertek tests; correct?

19 A. That is correct, yes.

20 Q. If we look at the bottom paragraph, it says:

21 "As a textile manufacturer, we are also very aware  
22 of the environmental impact that has plagued our  
23 industry. Each graduation gown we make is made from 70%  
24 recycled polyester which is manufactured from recycled  
25 plastic waste. This is then blended with 30% viscose

1 for a soft finish. Every graduation gown contains  
2 a minimum of 550g of recycled plastic waste, which  
3 equates to at least 28 500ml plastic bottles. We have  
4 spent years developing a material ..."

5 Et cetera.

6 A. That is correct.

7 Q. Now, do you accept that the obvious implication of this  
8 is that your gowns are, or at least may well be made  
9 from plastic bottles?

10 A. I do not think that is the implication that I would  
11 obviously draw from that, no.

12 Q. Are you suggesting someone who read this would  
13 appreciate that you did not actually have any evidence  
14 that your gowns contain any plastic bottles?

15 A. If I was to speculate what someone reading this would  
16 think, then I would assume that they would see that  
17 twice we have made reference to plastic waste, we have  
18 given an amount of plastic waste, and then to help them  
19 visualise what 550 grams of plastic waste looks like, we  
20 have said that that equates to at least 28 500ml  
21 plastic bottles, and I think the use of "equates to"  
22 makes it pretty clear that that is an illustrative  
23 measure.

24 Q. Why mention plastic bottles at all? Those were  
25 the thing that had actually been tested for and

1 the tests suggested that the gowns did not contain -- at  
2 least 90% of it was not made from plastic bottles at  
3 all?

4 A. Well, it would be difficult to come up with a different  
5 visual metaphor that would work to illustrate it to  
6 the customer, because we do not know what the plastic  
7 waste consists of. So, you know, we could have said  
8 30 plastic meat trays, for example, but we do not know  
9 whether that would be any more or less indicative of  
10 the content. So I think that is why I have been quite  
11 clear to say plastic waste is the content and then use  
12 the bottles as an illustrator of how much 550 grams of  
13 plastic waste is.

14 Q. Do you agree the students who come to this website, they  
15 will not know anything about the Intertek tests, will  
16 they?

17 A. I would not have thought so, no.

18 Q. They will not know that these gowns have actually been  
19 specifically tested for plastic bottle fibres and that  
20 nothing has been found?

21 A. I would not have thought they would know that, no.

22 Q. So when they see here that you are saying that there is  
23 "a minimum of 550g of recycled plastic waste, which  
24 equates to at least 28 500ml plastic bottles", do you  
25 not accept that that is going to give them

1 the impression that plastic bottles are part of  
2 the gowns that you are selling?

3 A. It may give them the impression that -- I mean, I think  
4 you might assume that when we say "plastic waste",  
5 plastic bottles could be a part of that, but I would not  
6 say that giving -- equating it to 28 plastic bottles  
7 makes that any more or less of an inference.  
8 The "equates to 28 plastic bottles" is illustrative.

9 Q. You accept it at least gives the impression that  
10 plastic bottles could be part of it?

11 A. I do not think that sentence gives that impression.  
12 I think that is the impression one might have if  
13 I referred to plastic waste, more as a general  
14 impression, but I do not think that sentence  
15 specifically indicates that there are plastic bottles in  
16 the gowns, and indeed we would have no reason to try and  
17 persuade customers of that, because I do not think  
18 customers would necessarily care whether the waste was  
19 from bottles or other sources.

20 Q. The only example you give of plastic waste from which  
21 the gowns are made are plastic bottles.

22 A. Well, that is the case in this instance, but in other  
23 long-form articles, when we have been asked about  
24 the recycling process, we have said it is recycled PET  
25 plastic, it can come from plastic bottles, it can come

1 from other sources such as meat trays, et cetera. So,  
2 that is the reference I have made here to illustrate it,  
3 but it has certainly not been something -- we are not  
4 trying to hide the fact that there could be other forms  
5 of plastic waste in the gowns. That is something that  
6 we have expressed very freely elsewhere.

7 Q. The person who comes to your website, this is the "About  
8 Us" page, so this is where they go to find out: what is  
9 this company all about; yes?

10 A. I suppose so, although I would probably anticipate that  
11 more students have come across us from other sources  
12 than from looking at our "About Us" page.

13 Q. But they would be looking at your website?

14 A. Yes, that is fair.

15 Q. There is nowhere on the website, is there, that says,  
16 "So far as we are aware, there is not a single  
17 plastic bottle in the gowns that we are selling"?

18 A. No, not --

19 Q. Please do not shake your head if you --

20 A. That is not -- no, we have not published that on  
21 the website, no.

22 Q. No.

23 You say you had no particular reason to highlight  
24 plastic bottles. That was the whole theme of  
25 the website up to this point, was it not, plastic

1 bottles? You saw this with Mr Muff: the plastic bottle  
2 counter; the animation with the plastic bottles;  
3 the turtle with the plastic bottle on its head;  
4 the constant reference to "28 plastic bottles"; the  
5 28 plastic bottles label sewn into the gown.

6 The whole theme of your marketing up to this point  
7 was that it was about plastic bottles, was it not?

8 A. I would say the emphasis was on recycled plastic, not  
9 bottles, and bottles were used to illustrate recycled  
10 plastic; but again, I have no reason to believe that  
11 customers would care more about bottles than any other  
12 form of plastic waste. So the bottles were just  
13 a convenient illustration.

14 Q. You were not willing to give up on that theme that these  
15 gowns were recycled plastic bottles?

16 A. It is not that I was not willing to give up on that  
17 theme; it just -- in order to illustrate the amount of  
18 plastic waste used in the gowns, that seemed like  
19 the most widely understood illustration of the amount of  
20 plastic.

21 Q. Even though it was the one thing that had been tested  
22 for and the test had not found any plastic bottles?

23 A. Well, up to 10%. There is still a chance that there are  
24 plastic bottles in the gowns.

25 Q. There is also a chance that there are not any?

- 1 A. That is correct.
- 2 Q. The 10% threshold does not suggest that there are,  
3 does it?
- 4 A. No, that is true, but as I said, the "equates to at  
5 least 28 plastic bottles" was not intended and I do not  
6 think it suggests to customers that that is the literal  
7 composition of the gowns. It is an illustration, which  
8 is why I have used the word "equates", and I have also  
9 said it is made from 550 grams of recycled plastic  
10 waste.
- 11 Q. The reason you wanted to focus on plastic bottles is  
12 that that is something that is going to resonate with  
13 students, is it not? Plastic bottles are something they  
14 use.
- 15 A. I suppose students do use plastic bottles, but I would  
16 not -- I suspect they also use other forms of PET  
17 plastic, for example food packaging.
- 18 Q. Plastic bottles has been a matter of concern for young  
19 people, has it not, the environmental impact of  
20 plastic bottles?
- 21 A. I would not say the environmental impact of  
22 plastic bottles compared to many other forms of plastic,  
23 for example plastic straws.
- 24 Q. Well, they are illegal, I believe.
- 25 A. Probably after lots of campaigning though.

1 Q. But plastic bottles, that is something that people feel  
2 bad about, is it not? That is why it is such a resonant  
3 message for students?

4 A. I do not think plastic bottles is more of a resonant  
5 message for students than plastic waste, to be honest  
6 with you.

7 Q. But you nevertheless chose to refer specifically to  
8 them. You did not simply leave it at a reference to  
9 plastic waste. Do you agree that would have been more  
10 accurate?

11 A. I do not know. I think this statement is very clear  
12 that the gown contains 550 grams of recycled plastic  
13 waste and that, if someone cannot visualise what that  
14 looks like, which I would say most people probably  
15 cannot, then we have provided them with a visual  
16 reference, which is 28 plastic bottles. But if I had  
17 wanted to give the impression that the gown was actually  
18 made of plastic bottles, then I would have just said,  
19 "Every graduation gown contains a minimum of 550 grams  
20 of recycled plastic bottles".

21 Q. That would have been a flat-out lie, would it not?

22 A. That is correct. That is why I did not say it.

23 Q. So you did not say that. What I suggest you did is you  
24 found a form of words which you thought you could say  
25 was literally true if you read it very closely and



1           literally, but which you knew would create a misleading  
2           impression.

3           A. I would disagree with that.

4           Q. Going back to your witness statement at page 22  
5           {D2/1/22}, four lines from the bottom, you say:

6                       "Since making these changes we have not received any  
7           indication from any customer that they felt they were  
8           misled or confused so I have no reason to believe that  
9           any of our customers were under the same misapprehension  
10          as E&R."

11                      Now, I think you accepted a moment ago,  
12          the customers do not know about the Intertek tests, do  
13          they?

14          A. No, they do not.

15          Q. So how would they know whether they have been misled or  
16          confused about the claims?

17          A. Because of the changes that we have made to the website.

18          Q. So are you contemplating a student who is monitoring  
19          your website and tracking the changes and wording on it?

20          A. Not necessarily, but they may notice some difference.

21          Q. What, because they track, what, the changes on  
22          your "About Us" page, for example?

23          A. Well, I think on the home page it initially said "made  
24          entirely from recycled polyester" and then we changed it  
25          to reflect the fact that it is 70% recycled polyester.

1           So someone might have noticed that change, for example.

2       Q. You have no reason to think that there is anyone out  
3           there who is monitoring the wording on your website as  
4           it changes over time, do you?

5       A. No. I mean, we may have repeat customers and they may  
6           have noticed the change. I do not know. That would be  
7           to speculate.

8       Q. That would be speculating?

9       A. Yes.

10      Q. A student who ordered last year, for example, when  
11           the website said one thing, it is inherently unlikely  
12           they are going to check back on the website a year later  
13           after they have graduated just to see whether it has  
14           stayed the same or changed; do you agree?

15      A. I mean, they might check back to place another order and  
16           therefore see the information again, but I would agree  
17           with you that it is unlikely they would check back  
18           purely to look at that information.

19      Q. So do you accept that the point you are making here is  
20           not a good one?

21      A. I suppose it is somewhat speculative, but I suppose what  
22           I have said is that we have no reason to believe that  
23           our customers were under the same misapprehension. I am  
24           not saying they definitely were not; I am just saying we  
25           have not been given a reason to believe that. No

1 customer has contacted us to say that.

2 Q. You have not contacted them to say, "We have been told  
3 our gowns do not have -- that not a single  
4 plastic bottle fibre has been found in our gowns; how do  
5 you feel about that"? You have not asked them that  
6 question, have you?

7 A. No, we have not, but also, since updating the website,  
8 our performance has actually improved, so we have no  
9 reason to believe that the difference between, for  
10 example, 70% and 100%, made from bottles, not made  
11 from -- or made from plastic waste, has impacted in any  
12 way on customers' willingness or interest in purchasing  
13 from us.

14 Q. That could be for any number of reasons. You are not  
15 suggesting that you can infer from that that no one  
16 cared about the claims you were previously making on  
17 the website?

18 A. I would not infer from it that no one cared about the  
19 claims we were making from the website, but I would  
20 infer from it that the difference between the claims  
21 made before and the updated version of the website,  
22 the fact that we have not seen a drop-off in interest  
23 indicates that customers do not perceive a big  
24 difference in terms of 70% recycled plastic or 100%  
25 recycled plastic, for example.

- 1 Q. Now, you refer at paragraph 95 to Anthesis. You say:
- 2 "To take these investigations further we ...
- 3 contacted Anthesis who are a global consultancy firm
- 4 specialising in all aspects of sustainable business
- 5 practices, including sustainable supply chains."
- 6 A. That is correct.
- 7 Q. You have exhibited their report to your second
- 8 statement; yes?
- 9 A. I did.
- 10 Q. Now, you are aware, are you not, that the claimants
- 11 sought permission to put in expert evidence on supply
- 12 chain compliance in this case?
- 13 A. Do you mean that we sought to put that in?
- 14 Q. Yes.
- 15 A. I do not remember that conversation specifically, but
- 16 I would assume so, yes.
- 17 Q. That was to be a report from Anthesis, was it not?
- 18 A. Yes, I believe so.
- 19 Q. You are aware, are you not, that the tribunal refused
- 20 you permission to put in that report?
- 21 A. I was not aware of that, no.
- 22 Q. So when you put this report in with your second
- 23 statement, you were not aware that permission had been
- 24 refused for that to be given as expert evidence?
- 25 A. No, I was not aware of that, no.

1 Q. Now, in relation to the report, it is at {F4/370}, so  
2 you have exhibited this document. This is the final  
3 version of the report, is it?

4 A. I believe so, yes.

5 Q. Have there been a number of drafts of this?

6 A. Not that I recall.

7 Q. You think you got the report. Were there any earlier  
8 drafts?

9 A. I remember having a call with Anthesis, but I cannot  
10 remember whether they sent us a report and then we had  
11 a call and then they sent us an updated report, or we  
12 just had a call and then they sent us the report. I do  
13 not recall, I am sorry.

14 Q. You do not recall, but it is possible there was an  
15 earlier draft; do you agree?

16 A. It is possible, yes.

17 Q. You have not produced a copy of that draft?

18 A. No, not to my knowledge.

19 Q. It is right, is it, that you had several remote meetings  
20 with the Anthesis team, did you not?

21 A. I believe it was two.

22 Q. Okay.

23 A. I do not know for certain, but I think it was two.

24 Q. I mean, the report says there were several meetings.  
25 Does that sound right or wrong to you?

- 1 A. Potentially. I do not know what they intended  
2 by "several", but there was definitely more than one.
- 3 Q. You have not produced any notes of what you discussed at  
4 those meetings with Anthesis, have you?
- 5 A. No.
- 6 Q. It is right, is it not, that separately from this report  
7 you have been receiving expert advice behind the scenes  
8 from Anthesis?
- 9 A. I believe in that call we discussed a number of things.  
10 Is that what you mean by "expert advice"?
- 11 Q. I am not asking about what the advice was; I am just  
12 asking: it is right, is it not, that they are providing  
13 advice to you in relation to these proceedings?
- 14 A. They are providing advice based on our supply chain, and  
15 I guess the calls that we had with them were designed to  
16 also give us some pointers as to how to proceed going  
17 forward and improve our supply chain.
- 18 Q. So do you say this report was produced for the purposes  
19 of this case or for the purpose of helping you in your  
20 business?
- 21 A. I would say both.
- 22 Q. Both. Both equally important?
- 23 A. I would say so, yes.
- 24 Q. Just looking at page 30 of the document, which are  
25 the only instructions we have, {F4/370/30}, can you just

1 see on the left-hand page, just above  
2 the heading, "Documents and Information for Review", it  
3 says:

4 "Please note that this is a separate instruction  
5 from that under which you provided expert advice to  
6 Tupper Law in relation to the claim we are making  
7 against Ede & Ravenscroft in the Competition Appeal  
8 Tribunal. All communications relating to that  
9 instruction remain privileged and confidential. Our  
10 communications under this retainer are confidential  
11 only."

12 Do you see that?

13 A. Yes, I can see that.

14 Q. Is that right, there is a separate instruction where  
15 Anthesis is providing expert advice in relation to this  
16 claim?

17 A. Yes, I believe that is right.

18 Q. Now, at paragraph -- just going back to your witness  
19 statement at page 23 {D2/1/23}, paragraph 96, you say:

20 "We have now implemented some changes in our supply  
21 chain to ensure that we are implementing very best  
22 industry practice when it comes to certifying our gown  
23 fabric. Previously ..."

24 So, just pausing there, you are talking about  
25 changes you have made in 2021?

1 A. That is correct, yes, since we became aware of the kind  
2 of -- we had spoken to Anthesis and were aware of  
3 the best practices there were.

4 Q. So after you had got the Anthesis report; is that right?

5 A. It was not -- it was probably before we got the report  
6 but potentially after we had --

7 Q. Spoken to them?

8 A. -- spoken to them, exactly.

9 Q. So from about September 2021 onwards?

10 A. I would say that sounds about right, yes.

11 Q. Then you say:

12 "Previously we had the Global Recycling  
13 Standard 'scope' certificate for the fabric manufacturer  
14 which certified that the factory was certified to  
15 produce recycled polyesters."

16 When you say "previously", what period of time are  
17 you referring to?

18 A. So, once we were alerted to the Intertek tests, we  
19 obviously made enquiries with our manufacturers and they  
20 sent us the scope certificates that dated back to 2020,  
21 which is the ones that they had available. So, in terms  
22 of when we had the scope certificates, that would have  
23 been the period of time probably between around  
24 January 2021 and when we then requested transaction  
25 certificates.



1 Q. You have said that you used the word "previously". It  
2 does not leap off the page that you are only saying,  
3 "From January 2021 onwards we have the Global Recycling  
4 Standard scope certificate"?

5 A. Yes, although I believe I have explained that we got  
6 those certificates after the report -- the Intertek  
7 tests were shown to us.

8 Q. Could we just look at that. It is {F4/370}. Yes, this  
9 is actually in the Anthesis report. {F4/370/20}. So is  
10 this the scope certificate you are talking about?

11 A. Yes. I believe that is the first one we were sent  
12 relating to the year 2020-2021.

13 Q. So you received that in this January 2021, yes?

14 A. There or thereabouts, yes.

15 Q. We can see -- just about -- that Anthesis say that it is  
16 actually dated 4 November 2020; do you see that? On  
17 the left-hand side in their text --

18 A. Oh yes, I can see that.

19 Q. -- they give that date.

20 A. Yes.

21 Q. So that is when it was apparently created,  
22 4 November 2020, this certificate?

23 A. Yes, that would -- that tallies with the information on  
24 the certificate, yes.

25 Q. Now, you say in your witness statement it is from

1 the fabric manufacturer, but is it not right that this  
2 is actually a certificate from the yarn manufacturer?

3 A. Yes. I believe what I meant was the fabric manufacturer  
4 sent it to us, but the certificate relates to  
5 the company that produces the recycled yarn.

6 Q. You do not have any certificate from the fabric  
7 manufacturer?

8 A. No, they do not have GRS certification.

9 Q. Could you look at page 23 of your witness statement,  
10 paragraph 97 {D2/1/23}. You say, and this is a point  
11 you made just a moment ago, that since clarifying the  
12 references to the website, "we have not seen any  
13 negative impact on sales", and I have asked you a bit  
14 about that.

15 Then in paragraph 99 you actually say in the third  
16 line:

17 "... it's quite possible that the marketing of the  
18 recycled gown content could equally have deterred some  
19 students from ordering from us."

20 Do you see that?

21 A. Yes, I can.

22 Q. Your view before 2021 was that making the claims about  
23 recycled materials was good marketing, was it not?

24 A. It was, yes. We had had the odd student say to us that  
25 the fact it was made from recycled materials made them

1           concerned that you would be able to distinguish  
2           a difference between our gowns and those provided by,  
3           for example, the defendants or other suppliers. So that  
4           was a concern that some potential customers had  
5           expressed, but it definitely was not the kind of overall  
6           impression.

7           Q. That was a minority, do you agree?

8           A. I would say that was a minority, yes.

9           Q. Many students expressed positive views about the fact  
10          that the gowns were made from 28 plastic bottles, did  
11          they not?

12          A. I do not recall whether their views were specifically  
13          about the plastic bottles, but the sustainability side  
14          of it and the recycled plastic content, then I would say  
15          yes, quite a few customers expressed positive feelings  
16          about that.

17          Q. That was the majority view, was it not?

18          A. To be honest, I would say the vast majority of our  
19          customers expressed no view to us either way, but if  
20          I had to compare those who expressed positive feelings  
21          about recycled materials against those who expressed  
22          negative feelings, I would say more had positive  
23          feelings.

24          Q. Significantly more; do you agree?

25          A. It is quite a small sample size in terms of people who

1           expressed feelings about it. I think I have given  
2           the example of our Trustpilot. There is not that many  
3           reviews that make any reference to the recycled plastic,  
4           so it is quite a small sample size, but I would say in  
5           the main, yes, more people felt positively about it than  
6           negatively.

7           Q. You thought it was a powerful marketing tool, did you  
8           not?

9           A. I would say that, yes, it was one of the selling points  
10          that we highlighted to potential customers.

11          Q. Your view was that it was positive for marketing to  
12          emphasise the recycled plastics element, was it not?

13          A. Yes, I would say so.

14          Q. Could we look at {F4/260}. This is the loan application  
15          we looked at yesterday. You remember that?

16          A. Yes.

17          Q. Then if we just look at page {F4/260/2} and at  
18          the bottom of the page do you see the question:

19                 "What is your Unique Selling Point (USP)? What  
20                 makes your business different from your competitors?"

21                 Do you see that?

22          A. Yes.

23          Q. Then point 1 is a point about cost?

24          A. Yes.

25          Q. Then point 2 is:

1            "All of our gowns are made from 100% recycled  
2 plastic, meaning that for every gown we manufacture we  
3 save the equivalent of 28 plastic bottles from ending up  
4 in landfill or the ocean."

5            A. Yes.

6            Q. You regarded that as a unique selling point for  
7 Churchill Gowns, did you not?

8            A. Yes, I would say that we regarded it as one of our  
9 selling points, yes.

10           Q. But as a unique selling point for Churchill?

11           A. Unique -- yes, I would say the selling point was unique  
12 as compared to other suppliers, but it was not our only  
13 selling point.

14           Q. I am not putting to you it is your only selling point.

15           A. Okay, yes.

16           Q. But it was something that you thought made Churchill  
17 different from your competitors?

18           A. Yes, that is fair.

19           Q. It was worth emphasising in this document in relation to  
20 your USPs?

21           A. Correct.

22           Q. Then could we go to {F3/2163}. This is a text message  
23 exchange which has been imaged from Mr Adkins' phone  
24 from the looks of it; do you see that?

25           A. Yes.

1 Q. If you just read to yourself the messages on the right.  
2 Do they look like they come from you?

3 A. I think that is -- yes, that is correct, yes.

4 Q. So this is from May -- I am sorry, it may be from  
5 February 2019. Is it right that you were gearing up to  
6 appear on a television programme called Dragons' Den at  
7 this point in time?

8 A. That is right, yes.

9 Q. You were doing some research in advance of going on the  
10 show and you were watching old episodes?

11 A. That is correct.

12 Q. What we see in the first message:

13 "Just watching the ep [that is 'episode'] with  
14 the recycled posh furniture."

15 Yes?

16 A. That is true, yes.

17 Q. You say:

18 "I def think we should put more emphasis on the  
19 recycled aspect."

20 Do you see that?

21 A. I can see, that, yes.

22 Q. You were saying that you definitely thought that when  
23 you went on the show you should put more emphasis on the  
24 fact that your gowns were recycled; agreed?

25 A. That is correct, yes.

1 Q. You thought, just looking at the next message, that that  
2 would give your pitch "more pizzazz"; yes?

3 A. Correct.

4 Q. You suggested doing:

5 "... the stat about how many bottles equivalent  
6 we've recycled to date."

7 A. Yes.

8 Q. When you went on the show, is it not right that you  
9 brought along 28 plastic bottles tied together as  
10 a prop?

11 A. We did, yes.

12 Q. That was to emphasise that your gowns were made from  
13 28 recycled plastic bottles?

14 A. No, it was to emphasise that the gowns were made from  
15 recycled plastic waste, which was equivalent to  
16 28 plastic bottles, which is what I said on the show.

17 Q. At any rate, you wanted to emphasise the recycled aspect  
18 because you thought that was going to be helpful in  
19 raising investment?

20 A. Yes, that is fair.

21 Q. It was going to be excellent marketing to the people  
22 watching the show?

23 A. Yes.

24 Q. If you look at {F3/2004}. This is a message from you  
25 dated 27 February 2019.

1 A. Yes.

2 Q. You are familiar with this?

3 A. Yes. I believe this was shared with our ambassadors.

4 Q. That is what I was going to ask.

5 A. Yes.

6 Q. You say:

7 "We've been reaching out to local radio stations and  
8 have had a really positive response from a few - so we  
9 may be asking some of you if you're up for going on air  
10 some time in the next month or two! We'd really  
11 encourage you to reach out to your uni radio stations  
12 too, as lots of them will be looking for original  
13 content."

14 Then you say:

15 "The fact that our gowns are made from recycled  
16 plastic is usually a really great angle for approaching  
17 the media!"

18 That was your view at the time, was it not?

19 A. It was, yes.

20 Q. That is because you thought emphasising the recycled  
21 aspect was excellent marketing for your gowns?

22 A. I think in relation to the media we felt that that was  
23 an angle more likely to attract media attention than,  
24 for example, other USPs like having the gowns  
25 home-delivered or them being cheaper. That would



1 generally not be so interesting to the media. So it is  
2 fair to say that we would place emphasis on  
3 the sustainability side of things if we were doing this  
4 type of outreach.

5 Q. If you interest the media in that way, then you get  
6 exposure to students?

7 A. That is fair, yes.

8 Q. Could you look at {F3/1056}. This is a letter dated  
9 24 November. So we were in February 2019. This is  
10 24 November 2020. So this is around the time, or just  
11 after you have had the exchanges with Alison?

12 A. Yes.

13 Q. It is before you have received the letter from Alius Law  
14 enclosing the Intertek results?

15 A. That is right, yes.

16 Q. You are writing to Pembroke College; Cambridge,  
17 presumably?

18 A. Yes, it was. I think so, yes.

19 Q. You say:

20 "I'm getting in touch on behalf of Churchill Gowns,  
21 as our mission is to offer students academic dress that  
22 is both affordable and sustainable. Churchill Gowns was  
23 founded in 2018 by Oliver and Ruth, two University of  
24 Cambridge alumni, and since then we have been renting  
25 and selling academic regalia to students at over 45 UK

1           universities. Every gown we manufacture is made  
2           entirely from recycled PET plastic, and to date we have  
3           transformed the equivalent of 130,000 plastic bottles  
4           into gowns, making us the most environmentally friendly  
5           gown supplier in the UK!"

6           A. Yes.

7           Q. You put that right in the first paragraph of your letter  
8           because you thought that was going to be an important  
9           selling point with the college?

10          A. Yes. I think what we considered is probably the two  
11          biggest selling points for a Cambridge college would be  
12          our status as alumni and the fact that our gowns are  
13          affordable and sustainable. So I think there are sort  
14          of three selling points we have highlighted in that  
15          first sentence.

16          Q. So still in November 2020 you thought that  
17          the sustainability or the recycled fabric point, that  
18          was a key message in terms of making sales?

19          A. I would say so, yes.

20          Q. I would suggest that the only reason -- when you go back  
21          to your witness statement where you now start  
22          suggesting, "Well, actually, maybe these recycled fabric  
23          points might have actually deterred people from buying  
24          from us", the only reason you now say that is because  
25          the claims that you made have been found to be untrue.

1 A. No, I did say that it is an occasional comment. I was  
2 not trying to give the impression that a large number of  
3 students would say that. I was merely trying to give as  
4 full a picture as possible.

5 Q. Just moving to a different topic, can we go to page 29  
6 of your statement {D2/1/29}. Now, you say:

7 "We think it is realistic to expect that, even as  
8 a new market entrant, we would have been able to attract  
9 1-2% of students at the universities we targeted to  
10 order from us. In reality, our market penetration was  
11 around 0.5%. We also would anticipate that after  
12 operating in the market for five years we would be able  
13 to capture around 12% of the market at universities  
14 where we had had a presence on campus for three years or  
15 more."

16 Now, we are not concerned in this trial with  
17 the figures in the sense of the quantification. You are  
18 aware of that?

19 A. Understood, yes.

20 Q. Can I just understand what you are saying here. Are you  
21 talking here about the market as it currently is, or  
22 the market as you would like it to be?

23 A. I guess what I was describing was our reasonable  
24 expectations that a market entrant offering something  
25 new to students would be able to achieve.

1 Q. In which market? In the market as it currently exists,  
2 or in a market that has been changed in some way?

3 A. Well, I would say that when we made -- had these  
4 expectations, we did not realise the extent to which  
5 students in the current market were prevented from  
6 choosing where to get their gown. So, these kind of  
7 forecasts were made on the basis that we understood that  
8 universities had an official supplier, as they do in  
9 the current market, but that a number of students may  
10 wish to shop elsewhere. So I suppose our forecasts were  
11 kind of based on the idea that, when we marketed this  
12 new product offering, roughly these kind of numbers of  
13 students may be interested in choosing us over an  
14 alternative supplier.

15 Q. What was the basis for thinking that that number of  
16 students would be interested?

17 A. I guess we were looking at kind of the network effect of  
18 reaching out to student societies, we were looking at  
19 the experience of -- in Australia, and sort of the size  
20 of different universities. So these were kind of  
21 aggregated over a large number of universities at  
22 different numbers -- with different numbers of students,  
23 and then these were the kind of numbers that I guess we  
24 kind of averaged out across all of them.

25 Q. You did not know anything about the figures in

- 1           Australia, did you?
- 2           A. I would say that when I joined the company, I had a kind  
3           of a general impression. I knew, for example, that they  
4           had been able to get some quite large groups of students  
5           to order from them, through approaching student  
6           societies. I think they mentioned one particular  
7           example of a medical society where they had had kind of  
8           40, 50 orders from one society. So I had anecdotal  
9           evidence like that, but I had not seen any kind of  
10          figures, shall we say.
- 11          Q. The source of what you were told would have been  
12          Mr Muff?
- 13          A. I would say it would be a combination of, yes, Mr Muff,  
14          Mr Ramsey, and also some of the forecasts that they had  
15          put together when raising money for the UK business,  
16          which was before I joined.
- 17          Q. Is it right that essentially you came to this projection  
18          by assuming that there would be exponential growth?
- 19          A. So, the way that we expected to grow our market share  
20          was, first of all, by expanding to new universities each  
21          year, so therefore increasing, as it were, the potential  
22          market size. Also increasing the number of hoods at  
23          specific universities, so for example, in our first year  
24          we might just target BA students if they had a different  
25          hood for BA and BSc. Then the next year we might do

1 the BA, the BSc and the BEng, and then the year after  
2 that we might do the masters regalia as well. Then also  
3 we felt that we could increase our market share at  
4 a given university, year on year, purely through  
5 increased brand awareness and hopefully kind of good  
6 positive word of mouth shared between students in  
7 different year groups.

8 Q. Do you accept that you assumed that there would be  
9 exponential growth in the business?

10 A. I would not say that an increase of sort of 1 to 2% to  
11 12% over five years is necessarily exponential growth,  
12 but we expected a steady rate of growth, yes.

13 Q. Do you accept that start-ups often think that is going  
14 to happen and those expectations are not materialised?

15 A. I would not want to speculate.

16 Q. I am still just trying to understand. If we look at  
17 page 31 of your statement {D2/1/31}, where from  
18 paragraph 135 onwards you set out various things you say  
19 should be the case. You recall that?

20 A. Yes. Is this the reference to the CCCP.

21 Q. There is that, then you go on to say bundling or tying  
22 should not be used; at 137, universities should not be  
23 entering into exclusive agreements; 139, they should  
24 publish the colours and so on. You recall you have put  
25 that in your witness statement?

- 1 A. Yes.
- 2 Q. What you say at 125, on page {D2/1/29}, does that relate  
3 in any way to those points?
- 4 A. I would say it relates to -- it may relate to some of  
5 them. So for example, one that I would say would apply  
6 is that we would expect to achieve these rates provided  
7 we were given the opportunity to advertise to students,  
8 and that is one of the things that I outline in 138 we  
9 have been prevented from doing.
- 10 Q. On campus?
- 11 A. Yes, yes, or for example, email marketing or that sort  
12 of thing.
- 13 Q. Social media marketing you already do.
- 14 A. Social media marketing we can do, yes.
- 15 Q. So it is if you are given the right to be physically on  
16 campus, or you get access to the university email  
17 accounts?
- 18 A. Yes. Some student unions have kind of mail-mailing  
19 services that you can pay for. I do not know whether  
20 that would be through the university account necessarily  
21 or the student union, but ...
- 22 Q. I see.
- 23 A. But then, for example, others, so these figures, growing  
24 our market share at different universities, was based  
25 very much on providing a full set of a gown, cap and

1 hood.

2 So, I would say that these figures represent an  
3 understanding of the obstacles that existed that we were  
4 aware of at the time, so for example the fact that we  
5 could not just sell a cap and gown, or we could not hire  
6 just a cap and gown to a student at a given uni, we had  
7 to do the whole set because of the bundling; but it did  
8 not reflect things that we did not have so much of an  
9 awareness, for example, the fact that student unions  
10 would not let us advertise to students.

11 Q. So if I can just look at the points. I think what you  
12 are saying is 136 does not have to be assumed for  
13 the purposes of what you say at 125; is that fair?  
14 Bundling can happen? In relation to --

15 A. Correct.

16 Q. Yes?

17 A. Yes, because we knew at the time that that was  
18 the set-up, so we kind of factored that in, I suppose.

19 Q. What about 139, publishing the dress requirements? Is  
20 that one of the assumptions?

21 A. No, that would not have been one of the assumptions,  
22 because we knew at the time that universities did not do  
23 that and that they were actively avoiding doing that.

24 Q. What about 137, "should not be entering into exclusive  
25 agreements"?



1 A. I suppose that is more of a kind of general point, so it  
2 is hard to say specifically what behaviours are  
3 envisaged under 137. I would say that 137 is kind of  
4 what underpins the other specific points --

5 Q. I see.

6 A. -- at 136, 138 and 139.

7 Q. At paragraph 127 on this page you say:

8 "Most obviously our products and services are  
9 cheaper than those offered by E&R. At the majority of  
10 universities E&R charge £45 for a bachelor's student to  
11 rent a gown set online or £46 over the phone ..."

12 A. I think that is actually incorrect, sorry. It should be  
13 50, I think, to order over the phone.

14 Q. Okay, well, I will ...

15 I am sorry, it is {D2/1/29}. Sorry.

16 I am grateful.

17 Then you say:

18 "We charge all students £39 (including postage and  
19 return postage) for our standard gown hire package,  
20 representing a saving of between £6 and £17."

21 So the saving between the 39 and the 45, that is  
22 the saving of £6?

23 A. Yes.

24 Q. Do you accept that the rental price paid to Churchill  
25 does not seek to cover the provision of any of

1 the services that are provided at the graduation  
2 ceremony?

3 A. Yes, I would say that is correct.

4 Q. So do you accept that these prices are not directly  
5 comparable?

6 A. Well, I would not say that they are not directly  
7 comparable, because obviously most students would  
8 understand that they are paying either £45 to hire  
9 a gown set from the defendants, or they are paying £39  
10 to hire a gown set from us. I do not think most  
11 students contemplate that they are paying to hire, for  
12 example, gowns for the staff of their university.

13 Q. But you know that that is part of what is covered by  
14 the E&R charge. So do you accept, never mind a student  
15 who does not know anything about the system, do you  
16 accept that the prices are not directly comparable?

17 A. I would say all businesses have different costs of  
18 business, and Ede & Ravenscroft's might be higher than  
19 ours in some areas and ours might be higher than theirs  
20 in other areas. For example, our £39 includes the cost  
21 of sending the products out in the post, whereas they  
22 drive the products and hand them out on campus.

23 So obviously there is different costs built into  
24 the pricing model, but I think you would say the same  
25 for all businesses.

1 Q. You are not providing any ticketing services, are you?

2 A. We do not provide that, no.

3 Q. You are not providing robing services?

4 A. Do you mean for staff or for students?

5 Q. For students or staff?

6 A. No, we are not.

7 MR LOMAS: Mr Patton, I wonder whether we are going to gain  
8 much from Ms Nicholls' views about something which is an  
9 objective question, is it not, really?

10 MR PATTON: That is true. That is true.

11 Now, the price that you give of £39, that is where  
12 the student hires the full set from you as a bundle,  
13 yes?

14 A. The £39, did you say?

15 Q. Yes.

16 A. Yes, that is right, yes.

17 Q. If they choose individual items, the pro rata price will  
18 be higher for those items?

19 A. So if they individually -- so essentially on our  
20 website, the way the website is structured, you can  
21 order a bundle, which is the gown, the cap and the hood,  
22 which costs £34 plus the £5 postage; or if you are only  
23 looking to order an individual item, for example you are  
24 just looking to purchase a hood or hire a hood, then you  
25 can do that and essentially an automatic discount is

- 1 applied. If you get either the gown, the cap and  
2 the hood altogether, or if you order a gown and a cap  
3 together, there's also a discount bundle price.
- 4 Q. If you were foolish enough to hire the gown on one day  
5 and then the hood on another day and the mortarboard on  
6 another day, the total price of that would be  
7 considerably more than £39?
- 8 A. Yes, that would be the case. I am not really aware of  
9 that happening, though.
- 10 Q. It is true, is it not, that when students find out about  
11 the postage charge -- because they only are told about  
12 the £5 for shipping at the end of the ordering process;  
13 is that correct?
- 14 A. I believe that is the case. I think there is other  
15 pages on the website where it might be explained, but in  
16 terms of the normal ordering funnel, I suppose you would  
17 call it, then yes, they would see that when they check  
18 out.
- 19 Q. They may not realise that until they reach the final  
20 stage of the process?
- 21 A. They may not, that is fair.
- 22 Q. In your experience, quite a lot of people give up when  
23 they see that charge; is that right?
- 24 A. I am not sure, to be honest with you.
- 25 Q. Well, can we have a look at {F3/2390}. This is a text

1 message, I think, from you; do you see that?

2 A. Yes.

3 Q. Unfortunately I do not know what the date is. There is  
4 a date at the bottom of 15 April but it does not have  
5 a year.

6 A. Yes.

7 Q. What it says is:

8 "Also we are toying with the concept of free  
9 shipping - ie increasing the price of the products by £5  
10 and offering free standard shipping.

11 "The reason for considering this is we're only  
12 currently converting about 50% of people who reach the  
13 checkout page so we're wondering if the shipping cost is  
14 putting them off."

15 Do you recall that now?

16 A. Yes, this has refreshed my memory, yes.

17 Q. You say:

18 "Obviously in practical terms the customer will be  
19 paying the same ... but we wonder if psychologically an  
20 unexpected cost in checkout is worse than a higher  
21 up front price."

22 So that was the thought process you went through?

23 A. Yes.

24 Q. You thought --

25 A. I do not think we actually did change it over in the

1 end, but it was something that we contemplated. We  
2 often assess the kind of conversion rates and the  
3 effectiveness of different pages of our website and may  
4 often follow that up with kind of experimenting with  
5 different options, but I think on this case we did not  
6 actually change the pricing.

7 Q. What you had noticed was that half the people gave up  
8 when they reached the checkout page?

9 A. Yes, it looks that way, yes.

10 Q. Your theory was that the shipping costs might be putting  
11 them off from completing the order?

12 A. Yes.

13 Q. Now, the figure you have given, the £5, that is for  
14 standard postage?

15 A. Yes.

16 Q. You refer at paragraph 128, three lines from the bottom,  
17 to "an express postage service that delivers regalia in  
18 1-2 working days"? {D2/1/29}

19 A. Yes.

20 Q. You say that:

21 "... should be an attractive option for students who  
22 miss the ordering deadline imposed by E&R."

23 A. Yes.

24 Q. So what is the cost of express postage service?

25 A. It was £8 and it is now £12.

- 1 Q. That is an extra £7 on top of the £39 that you have  
2 mentioned?
- 3 A. Correct, yes. So a student now would pay £46 for an  
4 express delivery.
- 5 Q. So they would pay more than they would be paying,  
6 the £45 they would pay E&R?
- 7 A. Well, no, because if a student wants to -- if a student  
8 misses the E&R ordering deadline, then their only option  
9 is to pick it up on the day, which costs more.
- 10 Q. Compared to someone who orders in time with E&R, they  
11 are paying more?
- 12 A. But I cannot see any reason why a student who had  
13 ordered in time with E&R, ie at least three weeks before  
14 their ceremony, would opt for an express postage system.
- 15 Q. I do not think you refer in your witness statement to  
16 late fees; is that right?
- 17 A. It is possible I did not mention that, yes.
- 18 Q. If a student is late returning regalia, then after  
19 the third day you will charge them £8 a day; is that  
20 right?
- 21 A. That is what we say on our website to encourage people  
22 to return their gowns in a timely manner. In reality,  
23 the system that we have is that if students -- if about  
24 a week after we are expecting a gown back a student has  
25 not returned it, then we would charge them the maximum

- 1 non-return fee.
- 2 Q. Is that, what, £42?
- 3 A. It is £42 for a full set, yes.
- 4 Q. So in other words, if they have not returned it within  
5 a week, you charge them the difference between the hire  
6 price and the purchase price?
- 7 A. Approximately. It equates to slightly less than  
8 the purchase price, but yes.
- 9 Q. But potentially double the sticker price in terms of  
10 the rental fee?
- 11 A. That is correct, yes. I believe, though, that all gown  
12 companies have the same policy for students who do not  
13 return hired regalia.
- 14 Q. Would you agree that where the gowns are handed out on  
15 the day, that is much less likely to be an issue,  
16 because the gowns will simply be returned to the same  
17 place?
- 18 A. I do not think it is that difficult for students to  
19 return our gowns. They have the option to either drop  
20 them at the post office now or book a Royal Mail  
21 collection from their house, so it is not a lot more  
22 inconvenient, I would not say.
- 23 Q. There are over 100 students that you have charged  
24 the late fees for this year, for example, are there  
25 not -- or in 2021?



- 1 A. I do not have those exact figures to hand so I am not  
2 too sure.
- 3 Q. If you look at paragraph 128, you say in the second line  
4 that:
- 5 "The deadlines [from E&R] tend to range from  
6 3-4 weeks for bachelors students, up to 6 weeks for  
7 masters students."
- 8 I would suggest you have that wrong. Is there  
9 anything you want to say about that?
- 10 A. My understanding is that the standard is 21 days.  
11 However, I believe when we were compiling our  
12 information we saw some examples that fell outside of  
13 that. I do not now recall which they were.
- 14 Q. Now, as we saw at page 31 at paragraph 135 {D2/1/31},  
15 you said that you:
- 16 "... feel that the decision given by the Irish  
17 competition authority ... sets out a good blueprint for  
18 a fair and competitive graduation industry ..."
- 19 So that is an industry where you presumably would  
20 say Churchill would be very well placed to compete?
- 21 A. I would say so, yes.
- 22 Q. You have not made any plans to compete in the Irish  
23 market, have you?
- 24 A. Oh, sorry, I thought you meant if that was implemented  
25 here.

- 1 Q. No, I meant --
- 2 A. Oh, you meant in Ireland.
- 3 Q. -- the Irish industry. You are right. The Irish  
4 industry would be one in which you would be very well  
5 placed to compete if you wanted to?
- 6 A. I suppose theoretically, but obviously from a logistics  
7 point of view it would be quite difficult for us to  
8 compete in that market. I imagine we would have to have  
9 some sort of set-up in the Republic of Ireland, which is  
10 obviously quite a big undertaking, so that is why we  
11 have not done it.
- 12 Q. Is that something you have looked into and made  
13 a decision against, or is it something you have not  
14 looked into?
- 15 A. I think we briefly looked into the possibility of  
16 whether we could just ship to Ireland from our UK base,  
17 but we certainly have not looked into the possibility of  
18 establishing a company in the Republic of Ireland.
- 19 MR PATTON: May I just have one moment.
- 20 Thank you very much. I do not have any further  
21 questions.
- 22 MR RANDOLPH: I am terribly sorry, sir.
- 23 THE CHAIRMAN: No, please, go ahead.
- 24 MR RANDOLPH: I will not be long.
- 25 Re-examination by MR RANDOLPH

1 MR RANDOLPH: Ms Nicholls, you were asked a lot of questions  
2 about email communication with Alison.

3 A. Yes.

4 Q. For ease of access, you have a hard copy of your witness  
5 statement?

6 A. Yes.

7 Q. You were taken to them and they can be found behind RN1,  
8 and they start at {F3/1405/1} going forward to  
9 {F3/1405/7}, yes?

10 A. Yes.

11 Q. Can you go to a paragraph you were taken to in your  
12 witness statement, please, paragraph 83.

13 A. Is this in my first statement?

14 Q. This is in your first statement. For the EPE operator,  
15 it is {D1/1/19}.

16 A. Yes.

17 Q. "It since transpired that the documents I shared with  
18 Alison were not our up-to-date documents ..."

19 You answered questions about that:

20 "... which we know because Alison was in fact  
21 a representative of E&R or their legal team ..."

22 Then you go on to say:

23 "... their letter sent in January 2021 prompted  
24 further investigation of the exchange between Alison  
25 and I."

1 A. Yes.

2 Q. Now, can you just help the tribunal with that statement:

3 "... which we know because Alison was in fact  
4 a representative of E&R or their legal team ..."

5 A. Yes, so when I was initially contacted by Alison, she  
6 presented herself as a customer who had purchased  
7 a couple of our gowns, but when Ede & Ravenscroft's  
8 lawyers contacted us in January 2021, they stated that  
9 they had purchased the gowns.

10 Q. Thank you.

11 Could you turn to page 67 of Mr Middleton's witness  
12 statement, which can be found at {D4/1/20}. Although  
13 this is the confidential version, the section I am going  
14 to take you to is not.

15 Can you see paragraph 67 on page {D4/1/20}?

16 A. Sorry, it has not come up yet.

17 Q. Oh, sorry.

18 A. 67, did you say?

19 Q. 67.

20 A. Yes.

21 Q. "I asked a friend to email Ruth Nicholls ..."

22 So this is Mr Middleton, the Chairman of  
23 Ede & Ravenscroft.

24 A. That is correct, yes.

25 Q. "I asked a friend to email Ruth Nicholls of

1 the Claimants in late 2020 to order some gowns and to  
2 ask about the recycled PET bottle claims specifically.  
3 She asked directly how she could be satisfied that  
4 the claims are true and how the Claimants knew what was  
5 in the gowns. Ms Nicholls replied and made a number of  
6 representations to this person about the composition of  
7 the gowns and the certification of the gowns and/or  
8 those involved in the manufacturing of them ..."

9 Then there is a reference to a document,  
10 "AL 20002049", and that is a reference in the Opus  
11 numbering to {F3/1123}.

12 Can we go there, please. Thank you.

13 Can you look at that.

14 A. That has not come up on my ... oh, it is here, thanks.

15 Q. Can you look at that --

16 A. Yes.

17 Q. -- and compare it to your exhibit that I took you to  
18 a moment ago, RN1, at pages 407 and backwards to  
19 the end.

20 A. Yes.

21 Q. Yes?

22 A. Yes.

23 Q. Are they the same document?

24 A. Yes, it looks like that is a reflection of

25 the conversation I had with Alison on 5 November.

1 Q. Which you exhibit it to your ...?

2 A. Which I did, yes.

3 Q. So we have Mr Middleton, in his witness statement, as

4 Chairman of E&R, saying that he got a friend to email

5 you to find out what the position was with regard to

6 recycling?

7 A. Yes, and asking for the certification of our fabric,

8 yes.

9 Q. So does that assist in terms of the source of who Alison

10 was?

11 A. It does, yes. It sounds like she was essentially

12 a representative of Ede & Ravenscroft, or communicating

13 with Ede & Ravenscroft.

14 Q. Thank you.

15 Can you now turn to {F3/2551/1}, please. Has that

16 popped up?

17 A. It has not yet, no.

18 Q. Sorry, mine pops up more quickly than yours, but there

19 we are.

20 A. Oh yes, "Supply of school uniforms review", is that ...?

21 Q. Yes.

22 A. Yes.

23 Q. So this is an OFT document dated September 2006, yes?

24 A. Yes.

25 Q. Could we turn to {F3/2551/20}, please. Can you see

1 paragraph 5.1:

2 "Both stages ..."

3 This is the OFT in their school uniforms decision:

4 "Both stages of the mystery shopping study were  
5 carried out by telephone. Trained mystery shoppers  
6 posed as prospective parents and requested prices for  
7 uniform items from suppliers."

8 Yes?

9 A. Yes.

10 Q. Now, can we go back to {F3/1102/2}, which is  
11 the exhibit, I think, to your ...?

12 A. Yes.

13 Q. This is the document you were taken to --

14 A. Yes, I recall.

15 Q. -- yesterday by Mr Patton.

16 A. Yes.

17 Q. This is where you were posing as a freelance journalist.  
18 That is what you admitted yesterday.

19 A. That is correct, yes.

20 Q. You were accused by Mr Patton of unethical behaviour and  
21 being a liar, and that has actually been picked up in  
22 the press. In the light of the identity of Alison that  
23 we have established, and the use by the OFT, in an  
24 official investigation, of professionals who posed as  
25 something they were not, professionals posing as

1 shoppers, would you like to respond to the accusation  
2 put to you by Mr Patton that you are an unethical liar?

3 A. Yes, I guess what I would say is that this is fairly  
4 common practice and is often used in scenarios where you  
5 would think that someone would not necessarily give you  
6 an honest answer if they knew your real identity, and  
7 therefore, in order to get honest insights, it is  
8 sometimes necessary to engage in this sort of practice.

9 Q. Thank you.

10 You said that one of the problems Churchill faced  
11 was the fact that you had to supply all parts of  
12 academic dress, so that means gown, cap and hood, yes?

13 A. Yes.

14 Q. Could you just explain that a little more. You said one  
15 of the problems Churchill faced was the fact that you  
16 had to supply all parts of the academic dress.

17 A. Yes, so, the hoods that are used at universities are  
18 usually very specific, not just to the university but  
19 also to the level of the degree and sometimes to  
20 the specific -- you know, whether it is a Bachelor of  
21 Arts or Bachelor of Science. So, in order to supply  
22 students at a university in a situation where you have  
23 to supply the gown, the cap and the hood together, you  
24 can only supply universities where you have those hoods.

25 In a scenario where you can -- students are free to



1           order, for example, a gown from one supplier and a hood  
2           from another, then we would have a much larger potential  
3           market, because we could target all the universities  
4           where we have the caps and gowns, which is quite a large  
5           number, as the caps and gowns are pretty standardised  
6           across universities. So it would be a larger potential  
7           market for us.

8           Q. Thank you.

9                     You also mentioned the use of logos being added to  
10           hoods and then being subtly watermarked.

11          A. Yes.

12          Q. Could you explain that a little more to the tribunal.

13          A. Yes, so a trend that we noticed relatively recently --  
14           I believe when I joined Churchill Gowns, we were aware  
15           of one or two universities that had subtly woven their  
16           coat of arms into the -- usually the lining fabric or  
17           onto the neck band of the hoods. It is a trend that we  
18           have seen increase over the last two/three years, so now  
19           more universities are adopting that, and essentially  
20           the arms are not really visible, I would say, from more  
21           than a metre away, but when you look up close, you can  
22           see the arms woven into the hoods, and therefore it kind  
23           of -- as Mr Middleton alluded to in his letter to  
24           the Burgon Society, it prevents us being able to make  
25           the hood to the universities' specifications insofar as

1 the universities are now specifying that they need to be  
2 watermarked with their trademarked coat of arms.

3 I think that is also something that the University  
4 of Birmingham have alluded to on their website where  
5 essentially they have said you can only get those gowns  
6 from Ede & Ravenscroft, because those gowns now contain  
7 a university crest, which is trademarked.

8 Q. Thank you.

9 It was put to you that some of the academic dress  
10 you supplied was not of good quality. I think there was  
11 some discussion about a sort of gap.

12 A. Yes.

13 Q. How many complaints have you received from students and  
14 what have you done about them?

15 A. I would say that overall we have got very few  
16 complaints. We have over 90% five star reviews on  
17 Trustpilot, and in terms of direct complaints, I would  
18 say we have received fewer than 50 from close to 15,000  
19 orders, so it is a very small number. Also we supply on  
20 a wholesale basis to, as I mentioned yesterday, four  
21 colleges at the University of Cambridge, one at  
22 the University of Oxford, the graduate union at  
23 Cambridge, and they have always been very happy with  
24 the quality of the goods that they have received, so we  
25 have no reason to believe that there is an issue with

1 the quality of our regalia.

2 Q. Thank you.

3 Finally, you said this morning that -- you mentioned  
4 that -- I think you said that your business has improved  
5 recently. How have you operated during the pandemic?

6 A. So, as soon as the lockdown was announced in sort of  
7 March 2020, a lot of universities started cancelling or  
8 postponing their graduation ceremonies, so we quite  
9 quickly launched what we called a home graduation gift  
10 set, whereby students could purchase their regalia and  
11 it kind of came in a gift box with a few other items,  
12 some chocolates, a scroll prop for taking photographs,  
13 a graduation teddy bear and some kind of  
14 graduation-themed decorations for their home so that  
15 essentially they could kind of have their own graduation  
16 celebration at home with their families. Obviously  
17 the idea as well was that they purchased the regalia, so  
18 when they did get their ceremony, they could also reuse  
19 it to attend. So that proved really successful.

20 Alongside as well, our home delivery for hires also  
21 lent itself to students wanting to celebrate at home, so  
22 we actually performed really well in 2020, and in 2021,  
23 I think -- to just give you a rough indication, in 2019  
24 I think we turned over just under £100,000, and then in  
25 2020 we more than doubled that, and then in 2021 we

1           turned over £650,000, and that is when graduation  
2           ceremonies, in the main, were not happening. So we saw  
3           a big increase in students taking us up on our offers  
4           when their ceremonies were not actually taking place.

5           MR RANDOLPH: Thank you.

6           MR LOMAS: Can I just ask a question. The ceremonies were  
7           not taking place physically. Were they taking place  
8           virtually, or were they not taking place at all?

9           A. There has been a bit of a mixture. Some have taken  
10          place physically. Especially towards the end of last  
11          year, a few had postponed. Some had virtual  
12          celebrations and some had kind of a hybrid, sort of,  
13          like, more of an informal garden party or something like  
14          that; but what we saw with either the online  
15          celebrations or the more informal celebrations was that  
16          academic dress was not mandatory.

17          So, some students might choose to hire a cap and  
18          gown for an online celebration, but it was not  
19          prescribed in the same way that it would be for a formal  
20          graduation ceremony.

21          MR LOMAS: Thank you.

22          MR RANDOLPH: Thank you.

23          Finally, what did Ede & Ravenscroft do insofar as  
24          the pandemic was concerned, because you obviously  
25          changed your -- you just described what you did. What

1           did Ede & Ravenscroft do?

2           MR PATTON:  Sir, I object to that question on two grounds.

3           First of all, it does not arise out of

4           the cross-examination, and second of all, why is this

5           witness being asked about the defendants' conduct?

6           MR RANDOLPH:  Well, because it arose out of a question that

7           she has answered not only from me but also from

8           the tribunal, and it is perfectly fair, it seems to me,

9           given the fact that the tribunal is going to be

10          interested in the question of competition.

11          If my learned friend wants to press this, then fine,

12          but I think this witness would be perfectly well able --

13          THE CHAIRMAN:  Let me interrupt there, if I may.  It arises

14          out of a question that was asked of her by the panel;

15          I accept that.

16          Do you know anything about Ede & Ravenscroft's

17          performance during the pandemic, from personal

18          knowledge?

19          A.  I obviously do not have a great insight into their

20          turnover, but I did see reports in the press that, for

21          example --

22          THE CHAIRMAN:  Well, reports in the press is not really

23          personal --

24          A.  Okay, not personal --

25          THE CHAIRMAN:  Do you have any personal knowledge of it?

1 A. Okay. No, aside from that they -- I know that at  
2 the beginning they took a while to have the home  
3 delivery hire model. So they took longer than we did to  
4 offer students the opportunity to hire their regalia to  
5 their homes.

6 MR RANDOLPH: Thank you very much indeed. I have no further  
7 questions in re-examination.

8 THE CHAIRMAN: Mr Ridyard has a question?

9 MR RANDOLPH: May I sit down?

10 THE CHAIRMAN: Yes, of course.

11 MR RIDYARD: Just one question.

12 A. Sure.

13 MR RIDYARD: I wondered what your experience was, or whether  
14 there was a difference in your experience in trying to  
15 sell to the universities that have an OSA with  
16 Ede & Ravenscroft compared to the universities that have  
17 an OSA with another supplier, such as Marstons?

18 A. I think there are some features that are quite common.  
19 So, for example, some universities that use other  
20 suppliers will also have, for example, the statement on  
21 their website about ordering from a specific company,  
22 and then some features are more common to universities  
23 that are served by the defendants. For example,  
24 the watermarking of the hoods is something that we  
25 observed more in relation to those universities than



1 MR RANDOLPH: Perfect. Thank you, sir.

2 (12.50 pm)

3 (The short adjournment)

4 (1.56 pm)

5 MR SPITZ: Good afternoon.

6 Before Mr Patton cross-examines the next witness,  
7 just a timetabling update that we would like to share  
8 with the tribunal. It is to let you know that  
9 Mr Johnson Zhuang, who was scheduled if necessary for  
10 Friday, an early start Friday, 9 am, we do not propose  
11 to call him and cross-examine him. So that means on  
12 28 January, we will be able to have a normal 10.30 am  
13 start.

14 THE CHAIRMAN: Right, thank you very much.

15 MR RANDOLPH: May I call Mr Adkins.

16 MR OLIVER ADKINS (affirmed)

17 Examination-in-chief by MR RANDOLPH

18 MR RANDOLPH: You should have in front of you hard copies of  
19 the claimants' witness statements, which should include  
20 yours. Can you turn to -- I am afraid I do not have  
21 the tab references. Have you found your first witness  
22 statement? I think it says, "Witness Statement of  
23 Oliver Adkins".

24 A. Yes, sir.

25 Q. For the EPE operator, that is {D1/2/1}. Thank you.



1           Can you turn to page 35 internally, which is  
2           {D1/2/35} for Opus. Thank you. Can you see statement  
3           of truth?

4           A. Yes, sir.

5           Q. Is that your signature?

6           A. Yes, it is.

7           Q. Are the facts in the witness statement true?

8           A. Yes, they are.

9           Q. Thank you.

10           Can you turn over. Hopefully you have exhibit OA1,  
11           do you? You do not have an exhibit there? Fine, do not  
12           worry.

13           Can we turn up {F3/1317/1}, please.

14           THE EPE OPERATOR: Sorry, could I have the reference again?

15           MR RANDOLPH: Of course. {F3/1317/1}. Thank you.

16           Is this the exhibit that you refer to in your  
17           witness statement? You can turn through it.

18           A. Yes. Yes, it is.

19           Q. Good, thank you.

20           In your hard copy of the witness statements, you  
21           should have a document that is described as your second  
22           witness statement. {D1/5/1}

23           A. Yes, sir.

24           Q. Good.

25           Can you turn to internally page 12, and for

1 the EPE operator {D1/5/14}. Yes?

2 A. Yes.

3 Q. Is that your signature?

4 A. It is.

5 Q. You have signed underneath the statement of truth:

6 "I believe that the facts in this witness statement  
7 are true."

8 Is that correct?

9 A. That is correct.

10 Q. Thank you very much.

11 Is there anything in your -- oh, sorry, there is an  
12 OA2, which will not be behind you -- it is, apparently.  
13 I am very grateful.

14 After the signatory page that we have seen, there  
15 should be a legal representative certificate. Do you  
16 have that? The one that we were just looking at, your  
17 signature, in the second witness statement?

18 A. Yes.

19 Q. Yes? Do you have something called a "Legal  
20 Representative Certificate"?

21 A. Yes.

22 Q. Turn over. What do you have there?

23 A. Next page, I have a schedule.

24 Q. Yes. After that?

25 A. Then exhibit OA2.

1 Q. Splendid. Good.

2 For the EPE operator, that is {F3/1876/1}.

3 Is that the second exhibit referred to in your  
4 second witness statement?

5 A. That is correct.

6 Q. Thank you.

7 Is there anything you wish to add, change or  
8 otherwise comment on in either of your two witness  
9 statements that we have just identified?

10 A. No, sir.

11 MR RANDOLPH: Thank you very much. Could you please stay  
12 there; Mr Patton will ask you some questions.

13 Cross-examination by MR PATTON

14 MR PATTON: Good afternoon, Mr Adkins.

15 A. Good afternoon.

16 Q. Could you turn in your first witness statement to  
17 page 2. That is {D2/2/2}. Page 2.

18 A. Yes, I have it on the screen.

19 Q. As you prefer.

20 If we look at paragraph 4 of your statement, you  
21 say:

22 "I joined Churchill Gowns in 2016 after applying to  
23 a job ad on the platform Angel List.com. My initial  
24 employment was on a part time, ad hoc basis. My work  
25 was predominantly focused on market research during this

1           time. After working on a trial basis for a few months  
2           Mr Alec Ramsey (Director) and Mr Stefan Muff (Director),  
3           the Churchill PTY founders flew to the UK and offered me  
4           a full-time position."

5           Just to get the chronology clear, it was Mr Ramsey  
6           and Mr Muff who had the idea of starting a gowns  
7           business in the UK; correct?

8           A. That is correct.

9           Q. They advertised for people to come and work for them,  
10          yes?

11          A. That is correct.

12          Q. You had not heard of the Churchill Gowns business before  
13          you saw the advert, had you?

14          A. Not that I recall.

15          Q. You saw the ad and you applied for it and you were  
16          successful; correct?

17          A. That is correct.

18          Q. Can we go, please, to {F3/409}. Do you see, this is  
19          headed "Churchill Gowns Executive Summary". Do you  
20          recognise this document?

21          A. Yes, I do.

22          Q. Can you describe what the document was for?

23          A. I believe this was as part of a pitch deck that was sent  
24          out to prospective investors.

25          Q. That was at the time, was it, of raising investment for

- 1 the second claimant, Student Gowns Limited?
- 2 A. That is correct.
- 3 Q. If we look at page {F3/409/6}, do you see your signature  
4 in the right-hand column?
- 5 A. Yes, I do.
- 6 Q. You were saying that the contents of this document were  
7 true?
- 8 A. That is correct.
- 9 Q. Can I just ask you this. You provided a copy of this  
10 document not just to the investors, or prospective  
11 investors, but also to HMRC; correct?
- 12 A. I do not recall exactly what we have sent to HMRC, but  
13 that is possible, yes.
- 14 Q. If we could look at F3/3304.
- 15 THE EPE OPERATOR: Sorry, can I have that again?
- 16 MR PATTON: Sorry, it is my mistake {F3/3004}.
- 17 This is an HMRC form. Do you recognise this?
- 18 A. I do recognise this form, yes.
- 19 Q. So, the second claimant, when it was set up, it was  
20 going to benefit from tax reliefs under the Enterprise  
21 Investment Scheme and the Seed Enterprise Investment  
22 Scheme, yes?
- 23 A. That is correct.
- 24 Q. You had to fill in a form to HMRC in support of getting  
25 those tax reliefs; correct?

- 1 A. Yes.
- 2 Q. If we look at page 3 {F3/3004/3}, we see your name; do  
3 you see that in the middle of the page?
- 4 A. Yes, I do.
- 5 Q. You were going to sign this document?
- 6 A. Yes, it does look -- it suggests that I was going to  
7 sign it, although the copy I am looking at has not been  
8 signed or dated.
- 9 Q. Do you have any reason to doubt that you did indeed sign  
10 this form?
- 11 A. It is possible that I did, although myself or any of  
12 the other directors could have filled out this form as  
13 well.
- 14 Q. You agree that a form like this was filed with HMRC for  
15 the tax reliefs?
- 16 A. I believe so, yes.
- 17 Q. If we look at the top of the page:  
18 "The following documents/information are attached."  
19 There are tick boxes in relation to some of these,  
20 and do you see the third one says:  
21 "The latest draft of any prospectus or similar  
22 document (such as a business plan) to be issued to  
23 potential investors."  
24 Do you see that?
- 25 A. I do, yes.

1 Q. Is that a reference to the document we were just looking  
2 at?

3 A. That is likely. I do not know if that was the exact  
4 business plan that was sent with this application.  
5 There were quite a number of different versions of  
6 business plans. It is possible that it was the one you  
7 referred to earlier.

8 Q. Thank you.

9 If we go back to {F3/409/1}, on the first page, can  
10 you look in the top right-hand corner and do you see  
11 the heading "Context"?

12 A. Yes.

13 Q. It says:

14 "Impressed by the concept and branding of  
15 Churchill Gowns Australia, Oliver approached the company  
16 to enquire about establishing a UK operation, using  
17 their successful business model as a template for  
18 success here in the UK.

19 "Alec and Stefan, the founders of Churchill Gowns in  
20 Australia, were immediately struck by the untapped  
21 potential of the UK market, and invested £70k into  
22 market research, web development, stock and legal due  
23 diligence."

24 Do you see that?

25 A. I do.

- 1 Q. Do you agree that gives the impression that you found  
2 Churchill Gowns Australia and you approached them?
- 3 A. Yes, I agree it could be interpreted in that way.
- 4 Q. It suggests, does it not, that it was only after you  
5 contacted them with the idea of a UK operation that they  
6 were struck by the untapped potential; do you agree?
- 7 A. Yes, I think during our initial conversations it was  
8 much more the case that they were looking for kind of  
9 co-founder roles. So it was not a case that they were  
10 necessarily set on expanding into the UK, they were  
11 exploring the option, they were looking for a co-founder  
12 who was also interested in this, and throughout those  
13 conversations they became more and more convinced that  
14 the UK was a worthy market of targeting next.
- 15 Q. We have been through the chronology already, Mr Adkins.  
16 You accepted that they had the idea of UK operations,  
17 they advertised for a role, and that was when you heard  
18 of them and you applied for the role; correct?
- 19 A. That is correct.
- 20 Q. Do you agree that this gives a completely different  
21 impression of how the company was being founded?
- 22 A. I agree the wording about "Oliver approached" perhaps  
23 could have been articulated better, and perhaps those  
24 initial dialogues -- that could have been expressed in  
25 a better way.



- 1 Q. In fact this was an impression that you were  
2 deliberately seeking to give, was it not?
- 3 A. I do not recall the -- this document and the impression  
4 we were trying to build at that point in time.
- 5 Q. You were seeking to give the impression that you, in  
6 the UK, had come up with the idea of the UK operation  
7 and that only then had you approached Churchill  
8 Australia; do you accept that?
- 9 A. I agree that it does look that way from reading that  
10 paragraph.
- 11 Q. No, I agree with that, but what I am putting to you is  
12 that that was what you intended; that was the impression  
13 you intended to give?
- 14 A. Yes, I cannot recall what my intention was at that time,  
15 other than to say that I can see how it could be  
16 interpreted in that way.
- 17 Q. Okay.
- 18 Could we look, please, at {F3/3002}. Could we start  
19 at page 5 {F3/3002/5}. Do you see in the middle of  
20 the page your email of 2 October 2017?
- 21 A. Yes, I see an email that I have sent to a Kate.
- 22 Q. Who was Kate, do you know?
- 23 A. Kate was an accountant, I believe, who had worked with  
24 the consortium of investors that we now have. She had  
25 worked with them basically on helping them with their

1 tax relief and their personal tax liabilities, and also  
2 advising companies, ensuring that they would qualify for  
3 SEIS and EIS tax relief.

4 Q. So you were looking to her to help you ensure that  
5 the new company obtained the tax reliefs; correct?

6 A. That is right, yes. She was advising us on that basis.

7 Q. If we look at your email, you say:

8 "Thanks for your email, Few points to pick up on.

9 "Churchill Gowns.

10 "Owned 50/50 by Alec & Stefan.

11 "Student Gowns ..."

12 Then you set out the shareholdings and you say:

13 "The initial investment was made from us as  
14 individuals. There are no terms. The brand name  
15 CG carries no goodwill in any territory outside the UK  
16 with the exception of Australia. SG carries no goodwill  
17 in any territory."

18 Then you make a number of further points.

19 Then do you see the paragraph beginning "We are  
20 more ..."?

21 A. Yes.

22 Q. You say:

23 "We are more than happy to change the business plan  
24 and reduce the mention of CG and or include the mention  
25 of various other brand names for which we would like to

1 use; For example Clergy Gowns, Choir Gowns ..."

2 So you were seeking to reduce the mention of  
3 Churchill Gowns in the business plan, were you not?

4 A. Under Kate's advice, she was trying to explain what  
5 structure would qualify for SEIS and EIS. These were  
6 some of the things we discussed with her and some of her  
7 various suggestions. One of the things that we were  
8 happy to do was potentially change the brand name from  
9 CG to some of these other names that are mentioned here.

10 Q. The reason for that was to seek to distance this company  
11 from the Australian operation; correct?

12 A. Yes. I do not necessarily think it was to distance  
13 itself, but was with the purpose of ensuring that we  
14 would qualify for this tax relief. This was one  
15 question that I had for her and as it turned out, she  
16 said that that was not necessary.

17 Q. Well, if you look at page {F3/3002/4}, this is your  
18 email of 2 October 2017 and you wrote:

19 "Hey Kate,

20 "I will get the share holders agreement and our  
21 privet placement documents out to you by the morning.  
22 As it is the middle of the night of Alec and Stefan  
23 currently and it would be good to get their input.

24 "I also have a more details executive summary which  
25 we are using as a short business plan. My worry is it

1 is very Churchill Gowns heavy (again this can easily be  
2 changed)."

3 So that is the same point: you felt there was too  
4 much emphasis on Churchill Gowns in the business plan;  
5 yes?

6 A. That is correct, yes.

7 Q. That was because you wanted to distance this company  
8 from the Australian business, was it not?

9 A. That is right. We had submitted an application under  
10 the Churchill Gowns brand for SEIS and EIS tax relief.  
11 However, we were not sure that it would qualify under  
12 its current structure, so we requested that that  
13 submission be cancelled and we resubmit.

14 One of my concerns were that if Churchill Gowns did  
15 not qualify, then perhaps they would prefer that we  
16 distance our brand, so I flagged this a number of times  
17 with Kate.

18 Q. If we look at page 2 {F3/3002/2}, towards the top of  
19 the page, this is the email you get back:

20 "Hi Oliver,

21 "Some homework for you. Please can you update  
22 the exec summary and make it a stand alone plan for SG?"

23 That is Student Gowns, yes?

24 A. Yes, I can see that, yes.

25 Q. Then it says:

1           "Refs to Australia should be removed, ref to CG,  
2           refs to 'we' when speaking about SG, remove Alec and  
3           Stefan from the team - remove everything that makes this  
4           not feel like a standalone business and a brand new  
5           trade for SG ..."

6           Do you see that?

7           A. Yes, I do.

8           Q. So your understanding was that if you presented this  
9           company as being related to the Australian business,  
10          there was a risk it would not be seen as a brand new  
11          trade?

12          A. Part of us moving to this different structure was  
13          changing the legal entity of the business. Prior to  
14          this, Alec and Stef owned all of the equity under their  
15          company. Here they are owners as individuals. So they  
16          wanted to remove reference of Churchill Gowns Australia  
17          owning shares in Churchill Gowns UK. So that was part  
18          of the restructure which we thought was necessary.

19          Q. Yes, but your concern was that if you explained  
20          the relationship between Student Gowns and Australia,  
21          you might not get the tax relief; correct?

22          A. That was possible, and that is certainly what I was  
23          checking with Kate.

24          Q. That was a concern that you had, was it not?

25          A. That was a concern, yes.

1 Q. So when we go back to {F3/409}, and look again at  
2 the wording that you came up with:

3 "Impressed by the concept of branding of  
4 Churchill Gowns Australia, Oliver approached the company  
5 to enquire about establishing a UK operation, using  
6 their successful business model as a template for  
7 success here in the UK.

8 "Alec and Stefan, the founders of Churchill Gowns in  
9 Australia, were immediately struck by the untapped  
10 potential ..."

11 You were deliberately seeking to give the impression  
12 that you, in the UK, had had this idea and that it was  
13 you then who approached them in Australia; correct?

14 A. I agree that the word "approached" perhaps is misplaced  
15 in this context.

16 Q. That is not an answer to my question. My question is  
17 that you intended to give the impression that you had  
18 come up with the idea of establishing a UK operation.  
19 Do you accept that?

20 A. That was not my intention at the time, no.

21 Q. We have seen the emails. You did that because you had  
22 a concern that if you told the truth, the tax relief  
23 would not be given?

24 A. Again, it was not my intention to imply that I had come  
25 up with the business plan, the business model and

1           approached them. It was merely out of the fact that  
2           there was an ongoing dialogue with us and we were doing  
3           research into the UK market and that collectively we  
4           agreed that this was a viable business model.

5       Q. Do you agree that you downplayed the references to  
6       Australia in this document?

7       A. Yes. I believe there is reference to Australia  
8       elsewhere in this document, as far as I am aware.

9       Q. Do you agree that you deliberately downplayed  
10      the references to Australia in this document?

11      A. No, I do not agree with that, no.

12      Q. So even though you had had that exchange with the tax  
13      adviser who had said to remove references to Australia,  
14      you say you did not do that; is that right?

15      A. This document was produced for the purpose of attracting  
16      investors. Actually, a big reason why the investors  
17      were interested in our business model is to an extent it  
18      had been proven elsewhere, it had gained some traction  
19      in Australia, so they saw this as taking a proven  
20      concept and applying it to a new market. So that was  
21      the purpose of creating this document. As far as I am  
22      aware, it was not changed before it was submitted to  
23      HMRC.

24      Q. You accept this was submitted to HMRC, so that was  
25      something else you knew was going to be done with

1 the document?

2 A. Not at the time when it was being created.

3 Q. But you knew when it was submitted that it was being  
4 submitted?

5 A. Yes.

6 Q. You knew that HMRC would have to consider whether you  
7 were entitled to the tax relief?

8 A. That is correct.

9 Q. Just to be very clear, you deliberately gave a false  
10 impression about the creation of the company in order to  
11 ensure that you got the tax relief. Do you accept that?

12 A. That certainly was not my intention, no.

13 Q. Can I just ask a little more about what you were doing  
14 in 2016 and 2017. You agree, do you not, that the first  
15 claimant, that is CGL, so before this entity, CGL was  
16 incorporated in July 2016?

17 A. That date sounds correct.

18 Q. You were in court for Mr Muff's evidence, were you not?

19 A. Yes, sir.

20 Q. Do you agree that CGL never had any assets?

21 A. That sounds correct, yes.

22 Q. Do you agree that it never traded?

23 A. That sounds correct, yes.

24 Q. Could we look at your first witness statement, page 19  
25 {D2/2/19}, paragraph 75. You say:



1            "As explained elsewhere in this statement,  
2            the initial investment came from Alec Ramsey and  
3            Stefan Muff. This, however, was more in the form of  
4            resources and stock as opposed to working capital. They  
5            did, however, cover some of the initial outlay. We have  
6            estimated this initial investment to be worth around  
7            £70,000."

8            Now, do you agree that that investment was not made  
9            in CGL?

10          A. It was not capital that was put into a UK bank account,  
11          or put into the company. We estimated that there was  
12          around £70,000 of stock and investment into things like  
13          the website. It is quite difficult to calculate that  
14          number, because some of the resources are shared between  
15          the UK and Australia, but that was certainly put into  
16          the UK business, yes.

17          Q. So when you say it was not capital, you are saying there  
18          was no cash; is that it?

19          A. Correct, yes.

20          Q. My question was, do you accept that this investment was  
21          not made into CGL, the first claimant?

22          A. There is probably some crossover when they were -- using  
23          the example I used earlier, for example the website,  
24          when they were investing into the website knowing that  
25          we would be placing -- customers would be placing orders

1           and we would be selling academic gowns, there was  
2           probably some crossover when the intention was that that  
3           would be under the Churchill Gowns company and then  
4           the structure changed to be under the Student Gowns  
5           company.

6           Q. I do not immediately understand that answer. I mean,  
7           you were a director of CGL since its incorporation?

8           A. That is correct, yes.

9           Q. You signed the accounts, which confirmed it never had  
10          any assets; correct?

11          A. I believe so, yes.

12          Q. So it obviously cannot have had any of this investment;  
13          do you agree?

14          A. Again, the figure there is an estimate that we put on  
15          the resources that Australia was able to develop into  
16          things such as the website.

17          Q. It cannot have been invested in CGL; do you agree?

18          A. Again, I agree that the books show that there was no  
19          monies in the accounts.

20          Q. Not just monies; there are no assets at all?

21          A. Correct.

22          Q. Those accounts are accurate, are they?

23          A. Yes, that is correct.

24          Q. So do you accept that the investment was not in CGL?

25          A. Yes, I am quite happy to accept it was not in

1           the Churchill Gowns company and we could perhaps place  
2           those assets into the Student Gowns structure.

3       Q.   Right, and that company was incorporated in  
4           September 2017; correct?

5       A.   That sounds correct, yes.

6       Q.   So is that when the investment was made?

7       A.   Again, the investment that they placed into resources  
8           such as the website may have been before that.

9       Q.   When did you conduct the estimate of what the investment  
10          was worth?

11      A.   I cannot recall when this calculation was made.

12      Q.   Is there any breakdown of this calculation anywhere?

13      A.   Not that I can recall.

14      Q.   What was the basis on which you attached figures to  
15          the investment?

16      A.   I had a discussion with Alec and Stefan in Australia and  
17          we tried to break down the various costs that they had  
18          incurred in establishing Churchill Gowns and  
19          Student Gowns in the UK.

20      Q.   So is there a spreadsheet which shows all of this, for  
21          example?

22      A.   There may be, but I do not recall.

23      Q.   It was about you just agreeing figures that could be  
24          attached to these things; is that right?

25      A.   As I mentioned, some of them are difficult to calculate,

1           because, for example, the website is used by both  
2           Churchill Gowns Australia and Churchill Gowns UK. Other  
3           things such as their initial investment in stock that  
4           was sent to the UK is much more finite and easy to  
5           calculate.

6           Q. If you look at paragraph 81 of your statement, you are  
7           describing, you can see the heading here, "Preparation  
8           for breaking into the market". At paragraph 81, in  
9           the fourth line, you say:

10                   "I also held discussions in 2016 with suppliers in  
11           the UK and overseas such as Graduation Attire in the UK  
12           and Oak Hall in the US."

13                   Do you see that?

14           A. Yes, sir.

15           Q. Now, we went over this with Mr Muff, but it is right, is  
16           it not, that you held yourself out to Oak Hall as  
17           a student journalist?

18           A. I actually recall it slightly differently in that I told  
19           them that I was finishing up a postgraduate diploma at  
20           the University of Cambridge, which indeed I was doing,  
21           and I said that I was doing some research into  
22           the academic dress market and that I was likely to  
23           publish a blog or a paper of some kind -- I do not think  
24           I was too specific about that -- and I also mentioned  
25           that I was working part-time for a company that was

1           looking to expand into the UK. So it was a relatively  
2           candid conversation that I had with them about a number  
3           of things.

4           Q. This is an oral conversation, is it?

5           A. That is correct, yes.

6           Q. There is no record of that anywhere, is there?

7           A. Not as far as I am aware, no.

8           Q. It is not something you have ever suggested in this case  
9           before today; is that correct?

10          A. Sorry, could you ...

11          Q. This is not something you have ever suggested in your  
12          witness statements?

13          A. I think I have mentioned that I have contacted --

14          Q. You said you were acting for a company that was  
15          considering expanding?

16          A. I do not think I gave the context as to how I reached  
17          out to them.

18          Q. You did have emails with Oak Hall, did you?

19          A. Not that I recall, although it is possible.

20          Q. Have you looked for those emails?

21          A. I believe under the disclosure exercise we did look for  
22          them.

23          Q. But you have not produced any?

24          A. Unfortunately they were not to be found.

25          Q. You see, there is no suggestion in the exchanges that we

1           have seen that you disclosed to Oak Hall that you were  
2           acting for a company that was considering entering  
3           the market, and that would have been completely  
4           inconsistent with what Mr Ramsey was suggesting you  
5           should do in terms of getting photographs of the factory  
6           and putting that into Google Earth. Do you accept that?

7           A. Yes, I think what Mr Ramsey was suggesting was a more  
8           creative solution to find out more information of them.  
9           From my recollection, that was not necessary and we were  
10          able to have a relatively frank and candid conversation.  
11          This was very early on in my employment with  
12          Churchill Gowns, so I was able to tell them, you know,  
13          we were considering expanding into the UK, and it was  
14          a fairly open exchange of information, from what  
15          I remember.

16          Q. There is absolutely no record of that, is there?

17          A. Of the telephone conversation?

18          Q. Of you suggesting that you told Oak Hall that you were  
19          considering expanding into the market?

20          A. Not that I am aware of, no. That is my recollection of  
21          it.

22          Q. I suggest you have just made up that evidence.

23          A. That is how I recall that conversation going.

24          Q. In fact, what was being done was telling lies to  
25          Oak Hall in order to get hold of their confidential

1 business information; that is correct, is it not?

2 A. I think I did mention that I was looking at publishing  
3 something, or writing a blog about the UK graduation  
4 market, which I do not think I did and I do not think  
5 I intended to do. But during my conversation, from what  
6 I recall, we were able to be much more candid.

7 Q. Why, if you were telling them that you were expanding  
8 into the market, would you have said that you were  
9 a student journalist? Why would you have said that?

10 A. I believe that was my introduction and then I mentioned  
11 that I was interested in the graduation market and had  
12 also been speaking to an Australian company that were  
13 looking it to expand.

14 Q. Did you say you were already working for that company?

15 A. I believe so, yes.

16 Q. Oh, really?

17 A. Yes, that is my recollection, yes.

18 Q. So then did you say you were not actually a student  
19 journalist, "What I said at the start of the call was  
20 not true"? Did you say that?

21 A. I cannot recall the specifics.

22 Q. Can you look at paragraph 82, page 21 {D2/2/21}. You  
23 say one of your first tasks:

24 "... was to call university student unions. During  
25 this period I spoke to a few student unions who





1 21 November 2016; yes?

2 A. Yes. Is it -- oh, that is better.

3 Q. So this is your email to the Intellectual Property  
4 Office; correct?

5 A. Yes.

6 Q. You say:

7 "To whom it may concern,

8 "My enquiry is in regards to copyright within  
9 the garment industry.

10 "I own a company that rents graduation gowns to  
11 students.

12 "I have been informed by a university that their  
13 supplier holds the copyright to the design and colours  
14 of the gowns. From my understanding this could not be  
15 true because;

16 "Colours can not be copyrighted

17 "The design is used by multiple university and  
18 suppliers

19 "From our knowledge the gowns are over 70 years old.

20 "The companies that supposedly hold the copyrights  
21 are ede and ravens croft and J Wippel & Co Ltd.

22 "Could you please tell me if intact copyrights to  
23 university gowns do exist and if they are owned by these  
24 to companies."

25 Do you see that?

- 1 A. Yes.
- 2 Q. So your question to the Intellectual Property Office was  
3 only about university gowns; correct?
- 4 A. Yes, this email I believe only refers to gowns.
- 5 Q. You are not aware of any other emails you sent to  
6 the Intellectual Property Office, are you?
- 7 A. No, I am not aware.
- 8 Q. Then if we look at the top of the page, we see  
9 the response dated 25 November 2016 {F3/334/1}:  
10 "Dear Oliver.  
11 "Thank you for your query.  
12 "Please be aware that the Copyright Enquiries  
13 service is only able to provide general advice regarding  
14 current UK Copyright law and cannot provide legal advice  
15 regarding how the law should be interpreted in specific  
16 cases."  
17 You understood that, did you not?
- 18 A. Yes, sir.
- 19 Q. Do you see at the start of the next paragraph, they  
20 said:  
21 "Although copyright would subsist in a document  
22 containing the design of a garment ..."  
23 Do you see that?
- 24 A. Yes.
- 25 Q. You understood that point as well, that copyright could

- 1           subsist in the design document?
- 2       A.   Yes.
- 3       Q.   Unsurprisingly, if you look at the rest of the email,  
4           because you asked about gowns, they deal with gowns and  
5           there is nothing in this email about hoods, is there?
- 6       A.   I do not think they refer specifically to hoods,  
7           although they give some general advice in terms of what  
8           would or potentially would not qualify for copyright.  
9           Obviously we used the advice that they gave, which  
10          helped inform us in terms of whether hoods would qualify  
11          for any IP protection.
- 12      Q.   Then if you look at {F3/138}, this is an exchange from  
13          Mr Lewis of Graduation Attire.  Now, that was one of  
14          the companies I think you said you had been in contact  
15          with; correct?
- 16      A.   That is correct.
- 17      Q.   This email exchange is between him and Mr Ramsey,  
18          copying Mr Muff, but would you have seen this sort of  
19          exchange at the time?
- 20      A.   I do not recall having seen this specifically, but it is  
21          quite possible that I might have seen it in 2016.
- 22      Q.   Yes.
- 23                 If you go down to the penultimate paragraph on this  
24                 page, do you see he says:
- 25                 "Did you tell the IP office the whole story?  They

1 are only considering gowns ... gowns aren't the problem,  
2 they've been worn by fat monks since the 1400s.

3 The problem is anything that has been specifically  
4 designed by Ede and Ravenscroft for the university.

5 There is a process, conceptual artwork, development of  
6 ideas, samples and prototypes, and finally when  
7 the contract is in place a huge financial commitment to  
8 produce the garments. The only designs we can be sure  
9 aren't copyrighted are those of the historic  
10 universities: Oxford, Cambridge, St Andrews ..."

11 Et cetera. Then he says:

12 "Other than that they will be a post-1965  
13 polytechnic that converted to a university and would  
14 have had robes specifically designed by E&R?"

15 Did Mr Ramsey and Mr Muff share that reaction from  
16 Mr Lewis with you?

17 A. I do not recall having seen this specifically, no.

18 Q. So you were not aware that this was what -- I mean, it  
19 is clear that he knows, is it not, that you have been in  
20 touch with the Intellectual Property Office?

21 A. Correct.

22 Q. But your evidence is you did not know about the points  
23 that he had made in his email commenting on that?

24 A. We were aware that there was contention over the hoods.  
25 I felt that the answer that the IPO office gave

1 clarified the point that the hoods would unlikely  
2 qualify, because they were not artistic and there was no  
3 sort of craftsmanship that was needed to create them.

4 Q. So this is you, with no background in IP at all;  
5 correct?

6 A. Correct.

7 Q. Interpreting a single email from the Intellectual  
8 Property Office setting out general guidance about  
9 copyright?

10 A. That, coupled with the conversations that my colleagues  
11 and I had with people who were perhaps a bit more  
12 learned than ourselves. We came to the conclusion that  
13 it was very unlikely to qualify for any IP in  
14 the majority of the hoods at UK universities.

15 Q. But you did not know about what Mr Lewis had said about  
16 this?

17 A. I do not recall this specific email, no.

18 Q. Can I ask you this. You are a graduate of  
19 Coventry University?

20 A. Correct.

21 Q. Do you recall that when you graduated there was a logo  
22 sewn into the hood at that time?

23 A. I am aware that there is a -- I think a phoenix in  
24 the hood lining.

25 Q. That was the case when you graduated?

1 A. I believe so, yes.

2 Q. When was that?

3 A. Say again, sir?

4 Q. When was that?

5 A. 2015, I believe.

6 Q. That was not a new introduction at that time, as far as  
7 you were aware?

8 A. As far as I am aware, the logo was on the hood. I could  
9 not tell you at what point that was introduced.

10 Q. You have no reason to suppose it was something that had  
11 been added recently?

12 A. Yes, I have no date as to when that was introduced, no.

13 Q. Now, on page 22 of your witness statement {D2/2/22},  
14 paragraph 86, you say:

15 "We called university graduation departments with  
16 the purpose of opening a dialogue. We informed them we  
17 would be selling directly to students and that if they  
18 had concerns ... we would be happy to send samples."

19 Then about six lines from the bottom, do you see:

20 "During the conversations ..."

21 A. Yes.

22 Q. You say:

23 "During the conversations with Universities  
24 I received very disparaging responses and it became  
25 clear that the universities did not want any dialogue,

1 open or otherwise. Due to the opaque relationships  
2 between the universities and their suppliers it was  
3 difficult to obtain information about the market so it  
4 then became necessary to use requests under the Freedom  
5 of Information Act, which binds the universities, to  
6 find information not publicly available."

7 So you decided to use a statutory process to get  
8 information; correct?

9 A. That is right, yes. We sent some freedom of information  
10 requests.

11 Q. Can we look at {F3/2963}. So this is a letter dated  
12 3 October 2016 and we can see that it is a letter from  
13 the University of Bedfordshire:

14 "Thank you for your FOI request and your interest in  
15 the University of Bedfordshire. Please see below for  
16 a response to your request."

17 Then do you see below that your request is actually  
18 quoted in full?

19 A. Yes, I can see that.

20 Q. You wrote that request, did you not?

21 A. Can I just have a second to read over it?

22 Q. Yes.

23 (Pause)

24 A. Yes, it is likely that I wrote this, yes.

25 Q. So you are now in a statutory process of, as you put it,

1 binding the universities to provide information, yes?

2 A. I do not know whether they are bound to provide us  
3 information or not. We felt that when we had contacted  
4 them directly, a lot of them were giving quite  
5 conflicting answers, seemed to be unsure, many of them  
6 refused to answer, so we thought this was perhaps  
7 the only avenue where we could get some insight into  
8 these questions that we were asking.

9 Q. When I say "binding", I mean, that is just your word at  
10 the end of 86. You say "which binds universities"; yes?

11 A. Yes.

12 Q. You put this in under a false name; correct?

13 A. I believe we did use a different name, again because we  
14 felt that the universities were unlikely to answer us  
15 truthfully.

16 Q. You say:  
17 "I am a alumnus ..."  
18 Do you see that?

19 A. Yes, I do see that.

20 Q. You were not, obviously, an alumnus of Bedfordshire  
21 University?

22 A. No, I am not.

23 Q. You say you were:  
24 "... writing a post grad paper on monopolisation,  
25 and how this can lead to inflated prices."



- 1           You were not doing that either; correct?
- 2       A. No, we were not.
- 3       Q. So this was all untrue; correct?
- 4       A. Yes, the reason for this is, again, because we felt we  
5       were not getting the answers to these questions, which  
6       we believe should have been publicly available and we  
7       felt that this perhaps was our only avenue to gain some  
8       insight here.
- 9       Q. You had not yet made any freedom of information  
10      requests, had you, at this date?
- 11      A. Not as far as I am aware.
- 12      Q. So you had no reason to think that the universities  
13      would not do what they were required to do under  
14      the Freedom of Information Act, did you?
- 15      A. The rationale for this was based on the prior  
16      communications I had had with the universities, so  
17      I contacted them, many of them over the phone, and their  
18      responses were that they would not allow another  
19      supplier to sell to their students, they would not  
20      provide us any information, and they kind of shut down  
21      the opportunity to have a kind of open dialogue, hence  
22      why we sent this.
- 23      Q. Suppose you did not want to send it in the name of your  
24      business. Why do you have to go further and say that  
25      you are an alumnus and you are writing a post grad

- 1 paper? Why did you have to tell those lies?
- 2 A. We thought perhaps that they would be more inclined to  
3 answer these questions, given that they are telling  
4 their students to purchase or rent their gowns from  
5 this -- from a particular supplier.
- 6 Q. Is it that you thought that if it was a request made for  
7 a journalistic purpose, the university would be more  
8 likely to respond than if it was made for a commercial  
9 purpose?
- 10 A. Yes, that is correct.
- 11 Q. If we look at {F4/292} and we look on the second page  
12 {F4/292/2}, do you see the bottom email, dated  
13 25 October?
- 14 A. Yes, I can see that.
- 15 Q. For some reason, the name is deemed confidential, which  
16 we do not accept, but there it is, but that is you  
17 again, is it not?
- 18 A. That is right.
- 19 Q. If you look at the bit that is said to be confidential,  
20 highlighted in yellow, again, all completely untrue?
- 21 A. That is right. We used the same rationale as  
22 the previous email.
- 23 Q. So this is now a number of years on, in October 2019,  
24 and you are still making untruthful freedom of  
25 information requests to the universities; yes?

1       A. Yes, from what we could tell, the universities between  
2       that point and this had not changed their approach, so  
3       they were still quite aggressively telling us not to  
4       sell to their students and had declined previous  
5       requests to open up a dialogue, as it were, so we still  
6       felt that this was necessary.

7       Q. Could you go to {F4/335} and look at page {F4/335/2},  
8       please. So this is an email of 12 December 2016 sent in  
9       your own name; do you see that?

10      A. Can I have a second to just read over?

11      Q. Yes, please do.

12               (Pause)

13      A. Yes.

14      Q. So we saw what you had sent in October,  
15      the journalist/alumnus of Bedfordshire freedom of  
16      information request, but now two months later you were  
17      making a request in your own name; is that correct?

18      A. That is correct.

19      Q. You say:

20               "Hi, my name is Oliver. I am writing on behalf of  
21      Churchill Gowns ... in the capacity of an interested and  
22      prospective supplier of graduation services to the  
23      university and its members."

24               So what is the rationale between sending an  
25      untruthful request in October and now sending a truthful

1 and open one in December?

2 A. We felt that the universities may have a concern over  
3 students looking different on the graduation day. If,  
4 perhaps, one student had a hood that was of a slightly  
5 different shade to another student and would look maybe  
6 incongruous, then that could be a legitimate concern of  
7 theirs. So we felt that they would be more open to  
8 sharing information about the fabrics, because then that  
9 would allow us to create something that would match  
10 their current suppliers. That is perhaps why we felt  
11 that they would be more willing to provide this  
12 information.

13 Q. You say:

14 "I want to make a freedom of information ... request  
15 specifically to find out which, if any, elements of  
16 the design (eg colour) or make (eg cut or fabric), of  
17 hoods, mortarboards, gowns or any other item used in  
18 your graduation ceremonies is under copyright, or  
19 protected from replication in any way. If copyright or  
20 legal protection from replication exists, I would like  
21 to know whether these rights are owned by  
22 the university, their current graduation supplier or  
23 some other party.

24 "We have reason to believe that some graduation  
25 service providers have been claiming that they own the

1 copyright to these designs, implying friction if another  
2 supplier were to take over the contract."

3 Then you say:

4 "However, we have also been informed by  
5 the Copyright Enquiries Service (part of  
6 the Intellectual Property Office) that to the contrary,  
7 it is most likely that copyright cannot exist for these  
8 designs. Please see the following correspondence."

9 Now, in fact, the Intellectual Property Office had  
10 only commented on gowns?

11 A. Other than they had also provided some general advice in  
12 terms of what would qualify for copyright which, my  
13 interpretation was that it would not -- the hoods  
14 therefore would not qualify. I thought it was important  
15 to send this directly on to the university so that they  
16 could make their own assessment of that letter from  
17 the IPO.

18 Q. Well, you just quoted a couple of paragraphs, you did  
19 not actually send it on, did you, the whole of  
20 the advice and the request that led to that advice?

21 A. From my recollection, I think we sent the letter they  
22 had -- we forwarded the letter they had sent to us, but  
23 I cannot --

24 Q. I am sorry, that is unfair, because I realise I can see  
25 the next page and you cannot. If you just look over at

1 page 3 {F4/335/3}, you quote some excerpts and that is  
2 it.

3 A. Yes, that seems to be the case. We have copied and  
4 pasted these paragraphs from their letter.

5 Q. Then if you go back to page 2 {F4/335/2}, you actually  
6 follow up an hour later with another freedom of  
7 information request asking about colours and seeking  
8 Pantone numbers; correct?

9 A. That is correct.

10 Q. Now, this is the first written contact you have had with  
11 most of these universities, is it not?

12 A. From my recollection, we have called them before, but  
13 this may well have been the first time that they had  
14 received a written email.

15 Q. Yes.

16 Do you agree that if you want to go into business  
17 with another commercial entity, it is important to have  
18 good relations?

19 A. I do agree, but I would say it is important to stress  
20 that from the outset we were aiming to be a B2C  
21 supplier, so obviously we saw our customers as  
22 the students. We wanted to offer the students directly  
23 something that would add value -- that would offer  
24 value.

25 Q. Did you say already in December 2016 you were going to

- 1           be bidding for tenders?
- 2       A. It is not that we were going to be bidding for tenders;  
3           it is that our -- the primary focus was on  
4           a direct-to-student model. We certainly were not trying  
5           to antagonise universities, but we were conscious that  
6           our focus was to appeal to students.
- 7       Q. Do you accept that being on the receiving end of  
8           a Freedom of Information Act is not the most promising  
9           start to a commercial relationship prospectively with  
10          you?
- 11      A. It is hard for me to speculate how they would have  
12          interpreted this. Ideally they would have interpreted  
13          it as a supplier who is conscientious and doing their  
14          due diligence and ensuring that the gowns that they are  
15          producing match that of their current supplier. I think  
16          it is professional and reasonably polite, but it is hard  
17          for me to speculate how they would have received this  
18          letter.
- 19      Q. Could you go to {F3/275}. So this is a response from  
20          the University of Central Lancashire, dated  
21          10 January 2017, to your request; do you see that?
- 22      A. Yes, sir.
- 23      Q. Do you see towards the bottom of the page a paragraph  
24          beginning:  
25                 "Regarding ..."

1 Do you see that?

2 A. Yes, sir.

3 Q. It says:

4 "Regarding the issue of copyright, the supplier is  
5 likely to maintain that it holds the copyright; however  
6 this would not influence the University in terms of  
7 awarding the contract to supply the hire of gowns to  
8 another supplier if that supplier's tender was  
9 competitive. We would take the opportunity to redesign  
10 the hoods and possibly change the colour. The general  
11 design/shape of gowns and hoods cannot be considered to  
12 be covered by copyright."

13 Do you recall receiving that answer?

14 A. Not specifically, but yes, now that I have jogged my  
15 memory, yes.

16 Q. So the point being made by this university was that even  
17 if the supplier had copyright and maintained that it had  
18 copyright, that would not prevent you from having a fair  
19 shot in a tender process; do you agree?

20 A. They are suggesting that I could apply to a tender and  
21 that that would be competitive. I do think that having  
22 the university redesign all of its hoods would  
23 potentially be quite a hurdle and that could pose quite  
24 a challenge to the university, it could be quite  
25 a hassle for them. It is not necessarily an advantage



1 from the university's perspective, but again, we were  
2 more interested in supplying directly to the university  
3 students, because we believed our business model would  
4 be more advantageous that way.

5 Q. Could you go in your statement to page 24, please.

6 {D2/2/24}.

7 You say at paragraph 92 at the top of the page:

8 "In 2016 we had a basic website which was capable of  
9 taking orders but we did not have the necessary  
10 university hoods as we found it harder than expected to  
11 obtain samples and match the hoods fabrics/colours  
12 adequately. We also delayed much of our activity and  
13 focused our attention on the anti-competitive barriers  
14 to entry."

15 Do you see that?

16 A. Yes, sir.

17 Q. You say here that you did not have the necessary hoods  
18 in 2016; do you see that?

19 A. Yes.

20 Q. That implies that you did have the necessary gowns and  
21 mortarboards?

22 A. From my recollection, we did not have any gowns or  
23 mortarboards, other than perhaps some samples.

24 Q. Right.

25 So you in fact did not have any stock at all in

1           2016, did you, apart from possibly some samples?

2           A. That is correct. I think the point that I was trying to  
3           make in this paragraph is that we were experiencing some  
4           difficulties in terms of matching the current supplier's  
5           regalia at particular universities. We did not have any  
6           problems particularly with the gowns and mortarboards,  
7           we could have manufactured those quite quickly and  
8           easily and had those shipped over. It was the hoods  
9           that we were struggling to match. The reason we were  
10          struggling to match them was because the universities  
11          were enforcing their current supplier's standards and  
12          not necessarily their own regulations.

13          Q. When you say:

14                 "We ... delayed much of our activity and focused our  
15                 attention on the anti-competitive barriers to entry."

16                 Can you just explain what that meant to you on  
17                 a day-to-day basis?

18          A. Yes, it meant that we ended up doing kind of further due  
19          diligence into legal issues, into intellectual property,  
20          things such as this.

21          Q. Did that take up all of your time in the second half of  
22          2016?

23          A. Perhaps not all of my time, no. During some of this  
24          time I was working part-time, so it probably did take up  
25          a considerable amount of my time.

1 Q. As we have covered, you did not actually have any cash  
2 in 2016 to buy any stock either, did you?

3 A. Not directly, no.

4 MR PATTON: Sir, is that a convenient moment for  
5 mid-afternoon break?

6 THE CHAIRMAN: It is, yes. We will take a five-minute  
7 break.

8 (2.55 pm)

9 (A short break)

10 (3.05 pm)

11 MR PATTON: Now, could you please look in your first  
12 statement at page 24, paragraph 93 {D2/2/24}. You say:

13 "We had planned to launch in 2016 but due to  
14 the significant resistance in the market emanating from  
15 the universities this was pushed back to 2017."

16 Well, I have already put my points to you on why  
17 that happened.

18 Just on 2017, is it not right that the stock was not  
19 actually ordered until March 2017?

20 A. I cannot recall the exact date that the stock was  
21 purchased, but that sounds about right.

22 Q. It was delivered in May 2017; is that right?

23 A. Again, I am not aware of the exact date off the top of  
24 my head, but that sounds like it could be right.

25 Q. It was only gowns?

- 1 A. That is correct.
- 2 Q. So you did not have a full set in the UK of regalia for  
3 any university?
- 4 A. That is right, we just had gowns at that point.
- 5 Q. That was the reason why you did not launch for  
6 the summer 2017 graduation, that season, is it not?
- 7 A. Yes, that is correct. I mean, we did believe that there  
8 would be some demand just for the gowns on their own.  
9 Even now, we have a number of customers -- I think it is  
10 around the 15% mark -- who will hire individual items,  
11 so just a gown on its own or a hood on its own. So we  
12 believed that there would be some demand for customers  
13 who would just buy the gown and not as part of a full  
14 set.
- 15 Q. But you decided not to launch until you could offer  
16 the full set; correct?
- 17 A. As far as I am aware, customers -- as soon as the gowns  
18 arrived in the UK, customers were able to purchase or  
19 hire the gowns that we had.
- 20 Q. Do you know if anyone did so?
- 21 A. I believe we had very few numbers of orders in 2017.  
22 Perhaps a handful.
- 23 Q. A handful?
- 24 A. Yes, I think it was a very small number in 2017.
- 25 Q. Could you go to {F3/849}, please.

1 THE EPE OPERATOR: Sorry, can I have the reference again?

2 MR PATTON: 849. Thanks.

3 Can we turn to page 3 {F3/849/3}. Now, this is an  
4 email dated 23 March 2017 from you, do you see that,  
5 entitled "Graduation Services"?

6 A. Yes, that is correct.

7 Q. This is a relatively long email. You recall in general?  
8 Not every word, but you recall this email, do you not?

9 A. Correct.

10 Q. Is it right that you sent that to a large number of  
11 universities in essentially the same terms?

12 A. Yes, that is correct.

13 Q. Just pausing there, that was true of your freedom of  
14 information requests as well; that went out to a large  
15 number of universities?

16 A. Yes.

17 Q. So if we just look at the first paragraph:

18 "My name is Oliver Adkins, and I am writing on  
19 behalf of Churchill Gowns. I wanted to get in contact  
20 to let you know that we will be supplying students  
21 graduating from University of Essex this year."

22 So did you have a kind of a mail merge which  
23 inserted then the name of the university?

24 A. That is quite likely. I do not recall exactly  
25 the method that sent out the email, but yes.

1 Q. "If this email has not reached the right department,  
2 please forward it onwards or let us know."

3 You say:

4 "We are a supplier of high-quality graduation  
5 services to universities and tertiary institutions  
6 internationally, and will be launching in the UK in  
7 2017."

8 Now, why did you say that in this email?

9 A. Specifically the second paragraph, sorry?

10 Q. Why do you say you would be launching in 2017?

11 A. I think we wanted to let them know that we had  
12 the intention to soon be supplying their students.

13 Q. Right.

14 It is right, is it not, that at the time of this  
15 email you did not actually have any gowns in stock?

16 A. Correct.

17 Q. I mean, it is around this time, is it not, that you  
18 actually placed the order for those gowns?

19 A. I believe that is correct, yes.

20 Q. We have been over the other elements of the set. You  
21 were not going to have those for 2017, were you?

22 A. We were intending on manufacturing some hoods that  
23 hopefully would arrive towards the end of the summer,  
24 and also to be able to supply students graduating in  
25 the autumn.

1 Q. So that would be too late for the main summer graduation  
2 ceremonies?

3 A. It potentially would miss out some of the ceremonies  
4 happening at the beginning of summer.

5 Q. You say:

6 "Our core values and delivery model differ markedly  
7 from those of established UK suppliers, and it is these  
8 differences that I largely wanted to discuss.

9 "We focus on providing services that are ethical,  
10 environmentally sustainable and affordable for students.  
11 We donate 10% of all our profits to charity to help  
12 provide education for disadvantaged communities ..."

13 Just pausing on that point, it is right that as at  
14 today, you have not actually donated any money to these  
15 charities; correct?

16 A. As of right now, the Churchill Gowns UK or Student Gowns  
17 UK has not generated a profit so we have not.

18 Q. Donated any money at all?

19 A. That is correct.

20 Q. You say:

21 "... our high-quality gowns are made from 100%  
22 recycled, post-consumer plastic waste, and our business  
23 operations are fully carbon neutral.

24 "Perhaps in greatest contrast to other UK suppliers,  
25 however, is our delivery model. We have extensive

1           experience supplying regalia directly to students  
2           internationally through our online store ..."

3           What was that a reference to?

4       A. The experience, is your question?

5       Q. Yes.

6       A. I suppose I am in part looking at the experience that we  
7           had gained in Australia.

8       Q. Did you say "that we had gained in Australia"?

9       A. I did say that, yes.

10      Q. So what you are praying in aid here is the business that  
11      Mr Muff and Mr Ramsey had been running in Australia and  
12      you are saying that:

13           "We have extensive experience ..."

14      A. Yes, as kind of major shareholders in the UK company and  
15      as a kind of sister brand, if I can use that term, they  
16      obviously were sharing a lot of their insights, a lot of  
17      what they had learnt about manufacturing, about branding  
18      and also about fulfillment, and so we were looking to  
19      replicate a lot of the things that they had found  
20      success in, here.

21      Q. You were now in charge of the UK business?

22      A. Yes, that is correct.

23      Q. You did not have any experience of supplying regalia  
24      directly to students, did you?

25      A. I did not personally, no.



1 Q. Then you say:

2 "... through our online store, home delivering all  
3 items in advance of their ceremony. Using this model  
4 allows us to provide regalia much more affordably ..."

5 Then you say:

6 "We understand that you are currently under contract  
7 with an official graduation supplier. As a result, we  
8 have no intentions to break or undermine the terms of  
9 your agreement, and are not looking for any direct  
10 support from the university."

11 So, was that right, you were not asking them to  
12 promote you in any way?

13 A. That is right, yes.

14 Q. Or to give you access to campuses?

15 A. No, that was not the intention of this email. It was  
16 not designed to be a kind of sales pitch necessarily; it  
17 was to kind of open up a dialogue and perhaps  
18 demonstrate some of the benefits that the university  
19 could experience and the university students could  
20 experience by giving their students a choice, giving  
21 them the option of choosing where they hired or  
22 purchased their gown from.

23 Q. Then you say:

24 "However, as a courtesy we wanted to let you know  
25 that we will soon be providing your students with an

1 alternative. As a professional ..."

2 Then I am afraid it is slightly cut off, but I think  
3 it says:

4 "... and well experienced company, we share the same  
5 concerns for consistency in colour, material and quality  
6 as you do ..."

7 You accepted then, did you not, that consistency in  
8 colour, material and quality was important from  
9 the point of view of the universities?

10 A. Yes, we were aware that the universities were wanting to  
11 ensure a kind of level of uniformity. However, it did  
12 seem that they were not enforcing their own regulations  
13 because more often than not the universities'  
14 regulations were quite broad, it would just use general  
15 descriptions like "black gown" or "lined blue",  
16 something like that. It would not specifically talk  
17 about shades or fabrics or Pantone colours that could  
18 ensure that we would match it exactly.

19 So part of the purpose of this was to give them  
20 the opportunity to look at our designs and open up that  
21 dialogue as well.

22 Q. Then you say: {F3/849/4}

23 "We have extensively researched our legal position  
24 with regards to all copyright and design right claims  
25 relating to academic regalia in the UK ..."

1           That is a reference to your email to  
2           the Intellectual Property Office; correct?

3           A. That is correct.

4           Q. "We would like to stress that we are confident that our  
5           provision of regalia, which meets the standards set by  
6           the university, will not infringe on any IP rights, and  
7           are very aware of the rights of UK consumers regarding  
8           any anti-competitive behaviour to prevent new market  
9           entrants."

10          Now, that was a shot across the bows of  
11          the universities, was it not?

12          A. It certainly was not designed to antagonise  
13          the universities. It was perhaps to make them aware of  
14          anti-competitive behaviour. I think around this time we  
15          had become aware of the school uniforms case, which we  
16          thought had a lot of parallels, so we wanted to kind of  
17          encourage them to do their research as well.

18          Q. You do not accept that this was intended to make them  
19          think: beware, because we may be accusing you of  
20          anti-competitive behaviour?

21          A. The intention certainly was not to threaten them or  
22          imply at that point anything in particular, other than  
23          perhaps they should do their own research and  
24          double-check their own position.

25          Q. Then:

1            "We hope that you see the incredibly positive  
2            contribution we will be making to the market through  
3            increased affordability for students, and our focus on  
4            ethical and sustainable business practices.

5            "We look forward to working together to deliver  
6            the best graduation experience possible, and will be  
7            applying to all future official tenders offered by  
8            the university."

9            Now, was that your intention as at March 2017?

10          A. We would certainly look at each tender as and when they  
11          became available and assess whether it is worth our time  
12          and resources to apply. Retrospectively, saying that we  
13          will apply to all tenders perhaps is not accurate. We  
14          would assess them on an ad hoc basis as they come in and  
15          decide at that point.

16          Q. Is it right that at this stage you were intending to  
17          consider applying for the tenders offered by  
18          the university?

19          A. We were certainly considering, yes.

20          Q. That is despite the fact that, as you said earlier, you  
21          were really focused on B2C; you were actually intending  
22          to consider each of the tenders offered by  
23          the universities?

24          A. Yes, that was -- part of our growth strategy did include  
25          B2B avenues, although that was always designed to be

1 supplementary to our main business focus.

2 Q. Then you say:

3 "In the meantime, we would be more than happy to  
4 send through any samples to help you confirm the quality  
5 of the products we will be supplying to your  
6 students ..."

7 Now, the sample gowns that you had at this stage,  
8 these were the ones from the first batch, were they not?

9 A. That is my understanding, yes.

10 Q. Those were the ones that Mr Muff did not think looked  
11 matte enough; correct?

12 A. I believe that was part of the reason he looked for  
13 a different fabric supplier, yes.

14 Q. So if you provided those samples to the universities,  
15 they would not have looked particularly good; do you  
16 agree?

17 A. I do not agree that they were bad particularly, it is  
18 just that there were incremental improvements that could  
19 have been made. As a business on an ongoing basis we  
20 are always looking at how we can improve our products.

21 Q. You never again ordered any gowns from that batch;  
22 correct?

23 A. I believe that is correct.

24 Q. Now, if you look at page 2 {F3/849/2}, we see  
25 the reaction from someone at the University of Essex.

1 Do you see that at the bottom of the page:

2 "Dear colleagues ..."

3 A. Yes, I see that.

4 Q. Now, obviously this response was not sent to you at the  
5 time. If we look at page 1 {F3/849/1}, can you see that  
6 someone has forwarded this to you on 12 September 2019?

7 A. Yes, I can.

8 Q. That is someone who is on the list server with these  
9 universities; yes?

10 A. Yes.

11 Q. Is this someone you have a business relationship with?

12 A. No, we do not have a business relationship.

13 Q. So how did it come about that he was forwarding these  
14 messages to you?

15 A. This contact reached out to my directly. He said he had  
16 a lot of concerns with the market. He was not a direct  
17 competitor but had a business that was in the same  
18 industry. He said that he also believed that there was  
19 a lot of anti-competitive behaviour. He was a member of  
20 this forum, I suppose we could call it, or email list.  
21 He had been aware that the Churchill Gowns company brand  
22 name had come up in conversation here and he forwarded  
23 them to me as he thought that they might be of interest.

24 Q. Did you discuss with him that he was going to forward  
25 them to you before he sent them?

1 A. I believe it was preceded by a phone call where he said  
2 he was going to send them.

3 Q. You agreed to that?

4 A. I did, yes.

5 Q. He is in the photography business; is that right?

6 A. That is correct, yes.

7 Q. Was he looking to get into partnership with you in  
8 relation to photography?

9 A. I believe he was open to that option, but he was not  
10 explicitly pitching to me at that point.

11 Q. You understood that was where he was coming from and  
12 that was one of his angles in approaching you; correct?

13 A. At that point in time, I do not think that was the main  
14 motive. He has contacted me since and we have stayed in  
15 contact, but we have, as of yet, never worked together.

16 Q. You would have appreciated that the recipients of this  
17 list would not have envisaged that these emails would be  
18 forwarded to you, would you not?

19 A. Given that they talk about the brand directly, I assumed  
20 that they were not aware that they were being sent to  
21 me, no.

22 Q. Now, the email forwarded from Steve Solomons at the top  
23 of that page is dated September 2019. Is that when he  
24 first forwarded anything to you? Ie is September 2019  
25 when you first started getting copies of these messages,

1 or did you get some earlier?

2 A. No, I believe they were all sent in one batch, as it  
3 were.

4 Q. So just looking at {F3/849/2}, just going back to  
5 the reaction from the University of Essex, do you accept  
6 that the University of Essex is a university where  
7 the official supplier is GGC?

8 A. I believe that is correct, yes.

9 Q. It is not Ede & Ravenscroft.

10 We see what he says:

11 "This email came into our Graduation inbox this  
12 evening. Needless to say, I made a very quick and angry  
13 phone call to this individual, who simply said they had  
14 consulted their lawyers, and weren't doing anything  
15 illegal."

16 So that was you, presumably, who were on  
17 the receiving end?

18 A. Yes.

19 Q. Then he says:

20 "A quick check of their website shows they aren't  
21 currently able to supply Essex hoods ..."

22 That was true, was it not?

23 A. At the time of this message, I believe that was true.

24 Q. Presumably anyone, any graduation officer who on receipt  
25 of your email had logged into your website would have



1           also seen that you could not offer theirs; correct?

2           A. That is correct.

3           Q. Then he says:

4                     "... and the gown they offer isn't even the correct  
5                     gown."

6                     That was true as well, was it not?

7           A. With regards to Maz's email?

8           Q. Yes.

9           A. I would need to double-check that. I know that Essex --  
10           off the top of my head I know that Essex use a gown that  
11           is shared by a number of universities. It is possible  
12           that we did stock it at this time, but I would need to  
13           check, to be honest.

14          Q. He looked and thought it was not the correct gown. That  
15           is possible, is it not, at least?

16          A. Yes, that is possible.

17          Q. Then he says:

18                     "Oh, and he requested proof of our intellectual  
19                     property!"

20                     Was that something that you had said on the call  
21                     with him?

22          A. I do not recall discussing that on the telephone call,  
23           and perhaps they are referencing the initial email, but  
24           it is possible. I do not recall the details of that.

25          Q. It may be a reference to the freedom of information

- 1 request?
- 2 A. Correct.
- 3 Q. I mean, you did not see this in March 2017 but you saw  
4 it in September 2019. Do you agree that if you were  
5 seeking to go into business with this university, this  
6 was not a good start?
- 7 A. Their reaction clearly shows that they were not open to  
8 other suppliers selling to their students directly.
- 9 Q. Well, their reaction shows, does it not, a concern that  
10 you did not have the correct hoods or the correct gowns  
11 on your website; do you agree?
- 12 A. Yes, from this message, this individual does express  
13 that. However, part of the point of the email was to  
14 give samples and discuss fabrics and hopefully allay  
15 some of the concerns they might have about students  
16 looking incongruous on the day.
- 17 Q. You recognised in your email that consistency in colour,  
18 material and quality would be important to  
19 the universities, had you not?
- 20 A. Yes, that is correct.
- 21 Q. So if a university immediately consults your website on  
22 receiving that message and sees that the designs are all  
23 wrong, that is not a good start from their point of  
24 view, is it?
- 25 A. I would not agree that the designs were all incorrect.

1 As I said, a lot of the gowns are shared between  
2 multiple universities, and so from my recollection,  
3 the first batch of gowns was the gown that is most  
4 commonly used within the UK. So, for the largest number  
5 possible, a lot of representatives of the universities  
6 would have been able to log on to our website and see  
7 a gown that actually did conform to their regulations.

8 Q. If you look to the top of page 2, this is from  
9 the University of York, and she says: {F3/849/2}

10 "Thanks for the heads up. I've not received any  
11 such email - yet. However, their website indicates that  
12 students would be able to order gowns for the University  
13 of York."

14 That was indicated on your website at this time,  
15 was it not?

16 A. I believe the University of York was listed on the  
17 website, but I assume that they would not have been able  
18 to rent or purchase a gown, cap or hood.

19 Q. She says:

20 "I'm not at all convinced they would be the right  
21 colour as we have grey gowns."

22 That is true that they have grey gowns, is it not?

23 A. That is true, yes.

24 Q. You did not have any grey gowns, did you?

25 A. We did not, no.

1 Q. You had not placed an orders for any grey gowns at the  
2 time of this email, had you?

3 A. No, the only order that we had placed was for what we  
4 refer to as a B1 gown, which as I mentioned is the most  
5 common style of gown used within the UK. Most  
6 universities use a black gown. York is a bit of an  
7 outlier here, so we tried to target the largest group  
8 possible, what we were considering the kind of  
9 low-hanging fruit.

10 Q. Could you go to {F4/336} and look at page 2, please  
11 {F4/336/2}. This is a version that is -- this is an  
12 email reaction which has been disclosed by  
13 the defendants, so I do not know if it is one of  
14 the ones -- in fact, it is probably not one of the ones  
15 that was forwarded to you from the list server. We can  
16 see your email right at the foot of the page in the same  
17 terms.

18 Then if you look at the reaction from the University  
19 of Chichester, can you see her email, "Dear Shaun ..."

20 Then she says in the third paragraph:

21 "I've had a look at their website and the whole  
22 thing is misleading, the robes they are supplying are  
23 not University of Chichester robes ..."

24 That was true, was it not?

25 A. Again, I would have to double-check and see which robes

1 Chichester uses. It may well have been the B1 gown we  
2 stocked at that time but I would have to check.

3 Q. Then they says:

4 "... the image they had for us on their website  
5 isn't even of Chichester."

6 That is possible, is it not? Do you accept that?

7 A. That is possible. I think at this point in time we had  
8 a banner image which was supposed to be a geographic  
9 image, so it was an image of the local town, and then we  
10 had a product image. Both were fairly generic. So it  
11 is possible that the image may have been incorrect, or  
12 was not recognised by this person.

13 Q. So in hindsight, looking at back at your 23 March 2017  
14 email, do you accept that it is understandable that  
15 a university who received that and looked at the website  
16 would have been unimpressed by your offering?

17 A. It is a possibility. I would be speculating in terms of  
18 how the universities interpreted it, but our intention  
19 was not necessarily to sell our business proposal at  
20 that point to the universities. We wanted to open  
21 a dialogue and make them aware of our intentions,  
22 encourage them to do some research into their -- into  
23 potentially anti-competitive practices, but hopefully,  
24 in opening up a dialogue, we could ensure that we could  
25 offer their students something that did not conflict

1 with the way in which they ran their graduation  
2 ceremonies.

3 Q. The fact that there were these errors on your website at  
4 the time you sent this email to all the universities,  
5 that would not fill them with confidence that you would  
6 be able to provide the consistency that you recognise  
7 they required?

8 A. Yes, I mean, we tried to allay their fears, again, in  
9 the attempt of sending samples. The website is  
10 continually being improved and it is possible that there  
11 were things that the university considered an error with  
12 the website at this time.

13 Q. Now, in the autumn of 2017, you were establishing, as we  
14 have already seen, the new company, the second claimant,  
15 that is CGL; correct?

16 A. That sounds correct, yes.

17 Q. You were still trying to raise investment in that  
18 period, were you not?

19 A. What was the date of it? End of 2017?

20 Q. Yes, the autumn of 2017.

21 A. Correct.

22 Q. You had not yet started trading, had you?

23 A. That is correct, yes.

24 Q. It is correct, is it not, that by November 2017 you had  
25 only about £10,000 worth of stock, yes? Does that sound

1 right?

2 A. That is possible, yes.

3 Q. I mean, are you unsure about that? I can show you  
4 a document, or do you think that sounds right?

5 A. No, that sounds about right, yes.

6 Q. Yes.

7 It took longer to raise investment from investors  
8 than you had expected, did it not?

9 A. Yes, that is correct.

10 Q. That is the real reason that you did not launch until  
11 sometime in 2018, is it not?

12 A. Our initial intention was that Alec and Stefan in  
13 Australia would be able to send stock here. Obviously  
14 by renting that stock, that would generate some profits,  
15 which would then allow us to buy additional stock and we  
16 could grow organically from there. However, that looked  
17 like it was not possible, so the only way to grow was to  
18 raise external investment, solely external investment,  
19 so we needed to approach investors.

20 Q. You were in court when Ms Nicholls was being  
21 cross-examined, were you not?

22 A. I was, yes.

23 Q. You were there when I showed her the loan application  
24 that you made and which explained that the seed  
25 investment raised had taken longer than expected and you

- 1           accept that?
- 2       A.   Sorry?
- 3       Q.   The seed investment raised had taken longer than
- 4           expected; you accept that?
- 5       A.   Yes.
- 6       Q.   At page 19 of your witness statement, {D2/2/19}, at
- 7           paragraph 79 you refer to the BBC programme Dragons' Den
- 8           and you say you received two investment offers on that
- 9           programme?
- 10      A.   That is correct, yes.
- 11      Q.   That programme was broadcast on 18 August 2019, yes?
- 12      A.   That sounds correct.
- 13      Q.   During the film, one of the dragons, Deborah Meaden,
- 14           offered to invest, as you say at the bottom of this
- 15           page:
- 16                 "... £60,000 investment for 22% of the equity in
- 17           Churchill Gowns ..."
- 18                 By which you mean the second claimant?
- 19      A.   Yes.
- 20      Q.   Do you accept that valued the company at about £300,000
- 21           at that time; yes?
- 22      A.   Yes, if we had taken her investment, it would have
- 23           valued the company at around that figure.
- 24      Q.   You were in principle happy to accept her investment,
- 25           were you not?



1       A. That is not quite true. After we accepted  
2       the investment on the TV show, we were aware that we  
3       would need to then go back to our investors, see if they  
4       were happy with it, we would have to listen to any  
5       concerns they may have and factor those in before  
6       signing on the dotted line.

7       Q. You personally were happy to accept her offer at that  
8       level, were you not?

9       A. I certainly saw the benefits of that investment,  
10      potentially the contacts that she had and the profile  
11      that she was able to bring. However, our current  
12      investors did express some concerns because it would  
13      greatly devalue the company.

14             I would not say I was sold either way. I was not  
15      a hundred per cent in favour or not in favour. I would  
16      say there was still an element where we needed to  
17      discuss things through before making a final decision.

18      Q. Am I right in saying, you do not suggest anywhere in  
19      your witness statement, do you, that you had concerns  
20      about accepting her offer?

21      A. Not that I am aware of, no.

22      Q. If you look at the top of page 20, {D2/2/20}, you say:

23             "After the show Deborah Meaden's team ..."

24             This is in the third line:

25             "... did some further due diligence and after

1           several meetings decided the investment was too  
2           uncertain."

3           So she walked away, not you; correct?

4       A. That is correct, yes. She walked away from the deal,  
5           or -- well, to be more precise, I think she expressed  
6           some concerns and then our kind of communications  
7           pattered out. At no point did she say explicitly that  
8           she would never invest, but at this point she certainly  
9           was indicating that it was unlikely.

10       Q. She never made any kind of contractual offer to invest?

11       A. Correct.

12       Q. You were not still waiting to hear back from her  
13           expectantly, were you?

14       A. We thought there was a possibility that perhaps she  
15           would get in touch, or there was a chance that we could  
16           open up communications with her again, but we felt that  
17           that was not necessary.

18       Q. That never happened?

19       A. Yes, that never happened.

20       Q. Now, you say in the fourth line:

21           "She identified two main concerns: [1] ...

22           I am adding "1":

23           "... our ongoing legal challenges; and [2] the level  
24           of stock needed to grow rapidly."

25           Do you see that?

1 A. Yes.

2 Q. Can we look at {F3/901}. This is an email to  
3 Ms Nicholls but copied to you from Debbie -- is that  
4 pronounced "Wholey"?

5 A. I believe so, yes.

6 Q. Dated 28 October 2019, subject, "Due diligence". Now,  
7 she was effectively running the due diligence on behalf  
8 of Ms Meaden, was she not?

9 A. That is right.

10 Q. She says:

11 "Dear Ruth,

12 "Firstly let me apologise for the delay in bringing  
13 your due diligence to a conclusion however there have  
14 been a number of issues that have caused me concern and  
15 these issues needed further exploration and  
16 consideration by Deborah. I have now finalised my  
17 report and unfortunately, identified to conclude that  
18 there is an unacceptable level of risk for Deborah in  
19 going ahead with the investment and have recommended  
20 that she does not proceed. Ultimately, hers is  
21 the final decision but I wanted to outline to you my  
22 main reasons for this recommendation."

23 That was fairly clear, that you were not going to be  
24 getting an investment after all; correct?

25 A. I mean, she makes it clear that her advice that she

1 would be passing on to Deborah was that, quote, there  
2 was "an unacceptable level of risk". She does not  
3 necessarily reflect Deborah's opinions on the matter.

4 Q. Okay.

5 Now, she then says:

6 "The primary concern is the potential for Deborah  
7 becoming the largest or one of the largest single  
8 shareholders in the business. The shareholding position  
9 in relation to you and Oli has already moved from what  
10 was agreed in the den and with the strong possibility  
11 that further funds will need to be raised to meet  
12 the needs of the business plan, this will further reduce  
13 yours and Deborah's combined shareholding further below  
14 50%, which is a position she was very clear she wanted  
15 to avoid."

16 Now, that was her primary concern, that your and  
17 Ms Nicholls' shareholding, together with hers, was not  
18 going to command a majority of the company; correct?

19 A. That is correct. She believed that to grow rapidly,  
20 which was necessary in this market, to disrupt this  
21 market, you would need additional equity that could be  
22 given to new investors to be able to raise new capital,  
23 and therefore she felt it was necessary that myself,  
24 Ruth and her had enough equity to still be able to give  
25 some away to raise new investment.

1 Q. While still retaining control of the business; correct?

2 A. I think at this point she believed that the threshold  
3 was the 50% mark. In the future, if more capital was  
4 needed, then my understanding is that it would come  
5 from -- it would dilute further down.

6 Q. Your understanding at the time was that this was her  
7 primary concern; correct?

8 A. Yes. As she has expressed here, Debbie's primary  
9 concern is the equity holdings.

10 Q. So when you look back at your witness statement, at  
11 page 20, in the fourth line, you say:

12 "She identified two main concerns: our ongoing legal  
13 challenges; and the level of stock needed to grow  
14 rapidly."

15 You do not actually identify what Ms Wholey said was  
16 the primarily concern; do you agree?

17 A. Well, the equity holding was in relation to ability to  
18 raise capital with the purpose of purchasing stock.

19 Q. So that is your explanation for why you do not say that  
20 the primary concern was the position in relation to  
21 the shareholdings and whether you, Ms Nicholls and she  
22 would hold a majority of the shares?

23 A. Perhaps I could have been clearer in that paragraph.

24 Q. If we go back to {F3/901}, she says, just reading on in  
25 the middle of that paragraph:

1            "I appreciate that you would hope to fund some of  
2            the growth from profits however your net profit  
3            projections are quite ambitious ..."

4            So that was the view of someone who was considering  
5            investing in the business at this time, is it not?

6            A. I believe this is Debbie's view.

7            Q. I see.

8            A. Who is advising Deborah Meaden.

9            Q. But subject to that qualification, that was the view  
10           that she expressed to you at the time? This is a fair  
11           reflection of what you understood her concern to be?

12           A. Yes. I mean, we did have other communications with her  
13           where we went into further details in terms of the legal  
14           position and other, perhaps, barriers to entry, but  
15           certainly within this letter, she does point that out.

16           Q. She did not retract the concern that the net profit  
17           projections were quite ambitious, did she?

18           A. No.

19           Q. She says:

20                "... [she] would assess there is a strong  
21                possibility of falling short of the cash required."

22                That also was a fair reflection of the concerns she  
23                expressed in the discussions with you?

24            A. That is correct.

25            Q. She also says:

1           "Your model is also quite different to your main  
2 competitor as the turnaround time is significantly  
3 longer so stock investment is a major driver in this  
4 cash requirement ..."

5           So one of the reasons she gives as to why stock is  
6 so important is because your turnaround times are going  
7 to be longer than that of, say, Ede & Ravenscroft;  
8 correct?

9       A. That is correct.

10      Q. She says she is:

11           "... mindful that stock management is rarely 100%  
12 efficient ..."

13           That is obviously true, yes?

14      A. That is correct, yes.

15      Q. She says:

16           "... the calculated value of stock required can  
17 often increase in practice."

18           So that was the concern about stock, that because  
19 your turnaround time was significantly longer, stock  
20 investment was going to be particularly important, and  
21 that would mean you would have a cash requirement, yes?

22      A. Yes.

23      Q. Then she says in the next paragraph:

24           "The legal position is another potentially  
25 significant risk factor and whilst I appreciate you do

1 not necessarily need to pursue the case against E&R for  
2 anti-competitive practices, there are still some  
3 unknowns around the action from St Andrews and E&R to  
4 which we cannot assign potential costs with any  
5 reasonable accuracy and which could be material. If you  
6 continue to grow according to your projections, E&R will  
7 certainly move to protect their position and you may  
8 well be forced into a legal action whether you choose to  
9 or not."

10 So she is identifying litigation as a potential risk  
11 factor, as another concern?

12 A. Yes.

13 Q. But the primary concern was the one about  
14 the shareholders; correct?

15 A. As stated in this letter, that is right.

16 Q. She did not retract that view, did she?

17 A. No.

18 Q. Then she says:

19 "I understand that this is possibly not the response  
20 you were hoping for ... it is important to assess at  
21 the outset if the investment will work for both you and  
22 Deborah and in this situation, it is my opinion that  
23 the direction your business needs to take does not  
24 necessarily align with the picture as it originally  
25 appeared in the den and would not align with Deborah's



1 objectives with such an investment."

2 So that really draws the concerns together and says  
3 she does not now think that the direction of  
4 the business aligns with what she had understood in  
5 the den; correct?

6 A. Yes.

7 Q. Then she says:

8 "Of course Deborah will have the final decision ...  
9 however in my experience, despite her admiration for you  
10 and Oli as people and entrepreneurs, I would anticipate  
11 this investment does not proceed ..."

12 That proved to be the case, yes?

13 A. Correct.

14 Q. Just to confirm that point, if we look at -- no, that is  
15 fine.

16 Could you go in your statement to page 12 {D2/2/12}.  
17 At paragraph 48, you say:

18 "As part of this B2B business model we do/did intend  
19 to tender for university contracts ..."

20 Do you see that?

21 A. Yes, I do.

22 Q. You say that:

23 "... [your] appetite has changed due to  
24 the stringent prerequisites listed by the universities.  
25 These prerequisites, such as high turnover threshold or

1 proof of pre-existing B2B contracts essentially produce  
2 new or smaller businesses from taking part."

3 Do you see that?

4 A. Yes.

5 Q. Now, one way in which you could have obtained experience  
6 of doing B2B contracts is to approach some of  
7 the smaller colleges that have less stringent  
8 requirements; do you agree?

9 A. Yes, I do.

10 Q. That would have allowed you to build up experience that  
11 you could then rely on when making an application for  
12 a bigger tender; do you agree?

13 A. Yes. The only thing I would like to add is, we did  
14 approach a number of smaller institutions, but there  
15 seems to be a kind of a marked jump from a small  
16 technical college to a university. The smaller  
17 institutions seem to be different, not just in terms of  
18 their size but in terms of what they are looking for,  
19 how they fund the ceremonies, et cetera. So although  
20 that experience would be relevant, it does not always  
21 necessarily translate when applying for a university  
22 tender.

23 Q. Do you agree that, not just for the purposes of looking  
24 good in a tender but for your own purposes, you would  
25 want to have the experience of actually running

1 ceremonies at smaller institutions first so that you can  
2 iron out any teething issues before you then open your  
3 mouth too wide? Is that a fair point?

4 A. Certainly, yes. We were certainly very open to gaining  
5 any type of business. A smaller university would have  
6 been attractive to us -- sorry, a smaller institution  
7 would have been attractive to us. We certainly were not  
8 refusing to apply for those types of contracts.

9 Q. Did you actually bid for tenders at any small  
10 institutions?

11 A. I was not aware of -- I do not believe I was aware of  
12 any tenders from smaller institutions at this time. We  
13 did directly approach some small institutions with  
14 a kind of marketing pitch. On some occasions, we sent  
15 samples, we sent catalogues, called them, emailed them,  
16 et cetera, in a bid to perhaps become their official  
17 supplier.

18 Q. Then the second reason you give, just in the middle of  
19 this paragraph, you say:

20 "Secondly, the universities' reactions to our B2C  
21 approach made it clear that the universities do not wish  
22 to work with us."

23 Now, I have put some points to you about that, but  
24 do you not agree that the fact that the universities  
25 might have disliked your B2C approach does not mean that

- 1           they will not work with you on a B2B basis, does it?
- 2       A. I do not think it should stop them from openly  
3       considering us, no, but it does appear that  
4       the relationship between the universities and, more  
5       often than not, Ede & Ravenscroft seems to be quite  
6       entrenched and it did not seem that they were happy for  
7       us to be a B2C supplier and we were not accepted as an  
8       official supplier either.
- 9       Q. In the tenders that you submitted?
- 10      A. Correct.
- 11      Q. There were six of those?
- 12      A. Yes. I believe six or seven, yes.
- 13      Q. Now, you say, if you turn on in your statement to  
14      paragraph 64, page 16 {D2/2/16}:  
15                "Graduation day services include many different  
16      components including, but not limited to ..."  
17                You set out some of those.  
18                You say:  
19                "The expertise and resources required to provide  
20      these services are completely different and there is  
21      little overlap or benefits derived via economies of  
22      scale."  
23                Now, you tendered for contracts where all of those  
24      services would have to be provided, did you not?  
25      A. I am not sure all of the services were -- it was

1           mandatory that all of the services that had to be  
2           provided, but certainly we tendered for university  
3           contracts where some of these additional services were  
4           included.

5       Q.   So certainly, say:

6                 "... ticketing; staff gowning; and general event  
7           management."

8       A.   Yes.

9       Q.   You believed that you were capable of providing all of  
10       those services, presumably?

11       A.   Yes, we put a bid application together and we explained  
12       the ways in which we would be able to meet the demands  
13       that the university had. We tried as best we could to  
14       demonstrate innovation and demonstrate ways in which we  
15       could offer more value to the students, which did not  
16       necessarily always include the university, it was about  
17       putting the student at the heart of what we did, but  
18       yes, we did, within our tenders, include these services.

19       Q.   That is because you believed that you were capable of  
20       providing all of those services together; correct?

21       A.   Yes, we believed we could offer the universities those  
22       services.

23       Q.   Just four or five lines from the bottom, you say:

24                 "In all cases that I am aware of E&R supply staff  
25       gowning and on the day 'event management services' in

1 the round. I do not believe that this needs to be done  
2 by the academic dress supplier or that much of it needs  
3 to be done at all. For example I don't think it is  
4 necessary to have someone help you put the gown on or  
5 adjust the regalia before stepping on stage. Most  
6 able-bodied adults are capable of doing this  
7 themselves."

8 Now, do you accept that the universities generally  
9 ask for these services to be provided?

10 A. It certainly seems to be the standard and it is included  
11 in a lot of the tenders.

12 Q. Could we just look at {F3/923}, and if we look at page  
13 {F3/923/2}. Can we look, sorry, at page 4 {F3/923/4}.  
14 Can you see at the top of the page an email from  
15 Winchester University? Do you see that?

16 A. Yes.

17 Q. It is addressed to Ms Nicholls, so it is not necessarily  
18 an email you saw at the time, dated 29 August 2019. Do  
19 you see a question 2:

20 "Do you offer a dressing service on the day, or do  
21 you just deliver the gowns?"

22 Do you see that?

23 A. I do, yes.

24 Q. That is a question that universities would typically ask  
25 Churchill whenever you approach them for B2B business;

- 1 do you agree?
- 2 A. Out of the large universities, who are more likely to  
3 tender, I would say that this is a common question that  
4 they have. It seems to be the industry standard that  
5 the official robe-maker or robe supplier offers this  
6 on-the-day robing service. We have tendered where we  
7 have offered this kind of service. I believe we have  
8 also tendered and suggested why do we not do a delivery  
9 model, because that offers more value to the students as  
10 well. So we have challenged that status quo, that  
11 standard.
- 12 Q. If it is asked for or insisted on, it is something you  
13 are perfectly capable of providing?
- 14 A. Yes, we believe we could have staff help people with  
15 their robing, if necessary.
- 16 Q. If we go to {F3/934}, can you see right at the top of  
17 the screen, so above the document, this appears to be  
18 a file called "Churchill Gowns\_catalogue 2020"? Does  
19 that sound right to you?
- 20 A. That is correct, yes
- 21 Q. If we look at page 3, just so you recall the document  
22 {F3/934/3}, this is a catalogue that you issue to  
23 universities?
- 24 A. Yes, universities and perhaps other institutions like  
25 technical colleges or other wholesale customers.

1 Q. If you go to page 13 {F3/934/13}, so here you are  
2 dealing with other services "On the day":

3 "Robing room.

4 "Take the pressure off on the day of your ceremony  
5 by having us provide a comprehensive 'robing room'  
6 service. Our expert team will liaise directly with your  
7 venue, take care of logistics, and bring all  
8 the necessary equipment to provide your ceremony  
9 attendees with a seamless and professional gowning  
10 service.

11 "Our well trained and friendly staff will also  
12 assist your students with putting on the gowns, caps and  
13 hoods, to ensure everyone looks their best for their  
14 special day."

15 Do you accept that universities often see a robing  
16 room as something that takes the pressure off on the day  
17 of the ceremony?

18 A. I suspect that a lot of institutions see some value in  
19 this. It is not necessarily something I think  
20 the students see any value in, especially if they are  
21 aware that they are potentially paying for it.

22 The purpose of the catalogue was not to suggest what  
23 they should purchase, but merely what they could, as in  
24 what we were able to offer them.

25 Q. When you say that the staff will assist the students "to



1           ensure everyone looks the best for their special day",  
2           I mean, that is what everyone wants on graduation day;  
3           do you agree?

4           A. Yes, I would agree, people want to look good on their  
5           graduation day. I suppose it is a momentous day for  
6           most students. We have had lots and lots of customers  
7           who have hired directly from us, they have received  
8           their gown in the post, I assume they have put it on at  
9           home, or maybe even on the day of the ceremony itself,  
10          and we have never heard anybody having any particular  
11          issues with this. So they seem perfectly capable to put  
12          a robe on themselves and take it off and send it back  
13          to us.

14          Q. Are you sure about that? You have never heard of anyone  
15          saying they have had some difficulty? This is the first  
16          time they are putting on the dress and you have never  
17          come across anyone saying, "I am not quite sure how it  
18          is supposed to go on"?

19          A. It would certainly be a very rare case. If a student  
20          was particularly confused, we do give them a lot of  
21          resources to help them robe themselves at home. So  
22          there is a video that they can watch, which we provide  
23          a link to on the website, which explains how to put the  
24          gown on and how to attach the hood. There is also  
25          a kind of how to wear guide via our website as well. So

1           if customers are struggling we do try to give them  
2           additional resources, but as I say, for the vast  
3           majority of customers, this is something that is not an  
4           issue.

5       Q.   You refer to able-bodied students.  What about students  
6           who have disabilities?  Do you accept that they may need  
7           assistance on the day?

8       A.   Sure, I think it is definitely plausible that somebody  
9           would need assistance when getting robed and that is  
10          part of the reason why we have tried to give it  
11          additional resources.  But that is certainly  
12          a possibility.

13       MR PATTON:  Sir, that may be a convenient moment, if that is  
14          convenient to the tribunal.

15       THE CHAIRMAN:  Yes, it is.  Thank you very much.

16                 Mr Adkins, you are in the middle of your evidence,  
17                 obviously.  You are not allowed to speak about the case  
18                 to anyone between now and when you resume in  
19                 the morning.

20                 We are resuming at 9 am with Mr Muff.

21       MR PATTON:  Yes.

22       THE CHAIRMAN:  Then a couple of hours with him, do you  
23          expect?

24       MR PATTON:  Yes, I will update you in the morning.  It will  
25          not be more than a couple of hours, that is for certain.

1 THE CHAIRMAN: Thank you very much.

2 (3.56 pm)

3 (The Court adjourned until 9.00 am on Wednesday,

4 26 January 2022)

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